

**Attachment A to Agenda File No. 2019-0445**

**MARITIME INDUSTRIAL IMPACT FUND  
CONTRIBUTION AGREEMENT FOR THE  
BENEFIT OF PERKINS ELEMENTARY SCHOOL  
BETWEEN  
SAN DIEGO UNIFIED SCHOOL DISTRICT  
AND  
SAN DIEGO UNIFIED PORT DISTRICT**

The San Diego Unified School District ("School District"), a school district under the State of California, and the San Diego Unified Port District ("Port"), a California public corporation, enter into this Maritime Industrial Impact Fund Contribution Agreement ("Agreement").

**RECITALS**

WHEREAS, in 2010, the Port established the Maritime Industrial Impact Fund (MIIF), formerly Maritime Terminal Impact Fund in recognition that certain communities may be subject to disproportionate adverse impacts and constraints as a result of the presence of maritime industry and terminals, which at the same time enable a significant benefit to the Port, or region, as a whole; and

WHEREAS, the MIIF is used to fund projects to mitigate Off-Tidelands impacts from Port's maritime terminals and maritime industry; and

WHEREAS, the School District has initiated a public works project to install an Air Conditioning System at Perkins Elementary School, located at 1770 Main Street, San Diego, CA 92113; and

WHEREAS, the School District and the Port share the mutual desire to provide an enhanced air filtration system at Perkins Elementary School, (the "Air Filtration System"), which will be part of a larger School District public work of improvement (collectively as the "Project"); and

WHEREAS, the Port has offered to contribute Four Hundred Eighty Eight Thousand One Hundred Sixty Five Dollars (\$488,165) in MIIF funds to the Project for the specific purpose of purchasing and installing the Air Filtration System, and School District desires to accept said contribution to help construct Air Filtration System as part of the Project; and

WHEREAS, given the proximity of Perkins Elementary School to the Port's maritime terminal, there is a sufficient nexus between terminal operations and air quality at Perkins Elementary School to comply with the San Diego Unified Port District Act, and the Port's contribution to the Air Filtration System is a reasonable proportion of mitigation of air quality issues at Perkins Elementary School.

THEREFORE, in exchange for the promises and consideration outlined in this Agreement, the Parties agree as follows:

1. Contribution. The Port shall issue a check or wire funds payable to "San Diego Unified School District" for Four Hundred Eighty Eight Thousand One Hundred Sixty Five Dollars (\$488,165) ( "Contribution") at the time when both parties have executed this Agreement.

2. School District's Use of Funds: The School District agrees to use Port's Contribution only towards purchase and installation of an enhanced air filtration system at Perkins Elementary School as part of the Project, and to return any un-used funds from the Contribution to the Port after the School District's filing of the Notice of Completion of the Project. School District shall report to Port on a quarterly basis in writing regarding the status of the purchase and installation of the Air Filtration System and expenditure of the Contribution until filing of Notice of Completion of the Project.

3. Time Deadlines. School District shall take actions to obligate use of the Contribution to the Air Filtration System portion of the Project within 36 months of execution of this Agreement and shall use the Contribution within five (5) years from date of execution of this Agreement. If funds are not committed and/or not used within these time deadlines, School District must return the Contribution to the Port.

4. School District to Maintain Air Filtration System. The School District agrees to regularly and properly maintain the Air Filtration System, including without limitation, replacement of air filters in accordance with manufacturer recommendations, at no further cost to the Port, for a period of at least three (3) years from installation.

5. Records and Audit

- a. School District shall maintain full and complete records of the use of Port's Contribution. Such records shall be open to inspection of Port at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after School District's filing of the Notice of Completion of the Project.
- b. Such records shall be maintained by School District for a period of three (3) years after School District's filing of the Notice of Completion of the Project or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. School District understands and agrees that Port, at all times under this Agreement, has the right to review documents and work in progress and to audit financial records, whether or not final, which School District or anyone else associated with the work has prepared or which relate to the use of Port's Contribution regardless of whether such records have previously been provided to Port. School District shall provide Port at School District's expense a copy of all such records within fifteen (15) working days of a written request by Port.

Port's right shall also include inspection at reasonable times of the School District's office or facilities, which are engaged in the performance of services pursuant to this Agreement.

School District shall, at no cost to Port furnish reasonable facilities and assistance for such review and audit. School District's failure to provide the records within the time requested shall preclude School District from receiving any compensation due under this Agreement until such documents are provided.

#### 6. Indemnify, Defend, Hold Harmless

- a. To the fullest extent provided by law, School District agrees to defend, indemnify and hold harmless the Port, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including School District's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services and/or use of Port's Contribution by School District, its officers, agents, subcontractors and employees, as provided for in this Agreement or related to the Air Filtration System or the Project, or failure to act by School District, its officers, agents, subcontractors and employees. The School District's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the Port, its agents, officers, or employees.
- b. The School District further agrees that the duty to indemnify, and the duty to defend the Port as set forth in 6.a, requires that School District pay all reasonable attorneys' fees and costs Port incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the School District provided for in this Agreement.
- c. The Port may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the Port chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of School District provided for in this Agreement, School District agrees to pay all reasonable attorneys' fees and all costs incurred by Port.

#### 7. Compliance by School District

- a. In performance of this Agreement, School District and School District's sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. School District shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. School District shall comply with all Federal, State, regional and local laws, and Port Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

8. School District to Recognize Port's Contribution.

- a. School District shall reasonably cooperate with Port for any media recognition and publicity relating to Port's Contribution or this Agreement.

9. Notice. Any notice required hereunder shall be in writing and shall be addressed as follows:

Port: Ronald W. Powell, Program Manager  
Government and Civic Relations Department  
San Diego Unified Port District  
3165 Pacific Highway  
San Diego, CA 92101

School District: Lee Dulgeroff, Chief  
Facilities Planning and Construction  
San Diego Unified School District  
4860 Ruffner Street,  
San Diego, CA 92111

or to such other address as either party may indicate in a written notice to the other. All notices and communications given under this Agreement shall be deemed to have been duly given and received: (i) upon personal delivery, or (ii) as of the third business day after mailing by United States certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit (for next day delivery) with Federal Express or other similar overnight courier system.

10. Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same Agreement. In addition, properly executed, authorized signatures may be transmitted via facsimile or electronic mail and upon receipt shall constitute an original signature.

The Parties hereto have executed this Maritime Industrial Impact Fund Contribution Agreement as indicated by the signatures below.

SAN DIEGO UNIFIED PORT DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form and legality:

GENERAL COUNSEL  
SAN DIEGO UNIFIED PORT DISTRICT

By: Assistant/Deputy

SAN DIEGO UNIFIED SCHOOL DISTRICT BOARD OF TRUSTEES

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Approved in public meeting of the Board of  
Education of the San Diego Unified School  
District on \_\_\_\_\_

\_\_\_\_\_, Board Action Officer  
Board of Education

LEGALITY AND FORM APPROVED

Sandra T.M. Chong, Assistant General  
Counsel II, San Diego Unified School District

11.7.19