

Attachment B

**MEMORANDUM OF AGREEMENT BETWEEN THE SAN DIEGO COUNTY AIR
POLLUTION CONTROL DISTRICT AND THE SAN DIEGO UNIFIED PORT
DISTRICT (PORT DISTRICT) FOR THE PORT DISTRICT TO CONTRIBUTE FUNDS
FROM THE MARITIME INDUSTRIAL IMPACT FUND FOR THE PURCHASE OF
NEW PORTABLE AIR FILTRATION DEVICES AND AIR MONITORING SYSTEMS
IN SUPPORT OF THE PORTSIDE AIR QUALITY IMPROVEMENT AND RELIEF
PROGRAM**

This Memorandum of Agreement (“MOA” or “Agreement”) is entered into by and between the San Diego County Air Pollution Control District (“APCD”) and the San Diego Unified Port District (“Port District”). The APCD and the Port District are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, the APCD is a government agency that regulates stationary sources of air pollution within San Diego County with a mission to protect the public from the harmful effects of air pollution; and

WHEREAS, the APCD nominated the Portside Community to be included in the Community Air Protection Program established by the California Air Resources Board (CARB) pursuant to Assembly Bill 617 to identify community-focused strategies and actions to reduce air pollution and improve public health, and CARB approved the nomination on December 13, 2019; and

WHEREAS, the Portside Community encompasses parts of Barrio Logan, Logan Heights, Sherman Heights, and National City neighborhoods, which are low-income areas that rank within the top 15% of most polluted neighborhoods in California, and are impacted by poor air quality generated from activities occurring within the adjacent industrialized areas and freeways and roadways near San Diego Bay; and

WHEREAS, on September 27, 2018, the Portside Community was designated by CARB as one of ten communities within the state to be selected during the first year of the Assembly Bill 617 Community Air Protection Program (AB 617 Program); and

WHEREAS, on October 25, 2018, the APCD established a 26-member Portside Community Steering Committee, (half of which are local community residents and the remaining half are composed of a representative from the City of San Diego, Industrial Environmental Association (IEA), Port District, San Diego Association of Governments (SANDAG), Environmental Health Coalition (EHC), City of National City, Greenlining Institute, California Department of Transportation (CALTRANS), U.S. Navy Base San Diego, San Diego Gas and Electric (SDG&E), Mothers Out Front, a union representative, and a medical expert), to encourage collaboration and the development of emissions reduction programs that focus on residents impacted by poor air quality; and

WHEREAS, the APCD formally nominated the Portside Community for a Community Emission Reduction Program (CERP) after the August 27, 2019 Portside Community Steering Committee meeting and CARB approved the nomination on December 13, 2019; and

WHEREAS, in July 2020, the USS Bonhomme Richard Navy vessel caught fire and burned for four days, resulting in degraded air quality and odors throughout San Diego County and in particular, the adjacent Portside Community; and

WHEREAS, on August 19, 2020, the San Diego County Board of Supervisors voted to approve the San Diego County Fiscal Year 2021-21 and 2021-22 Operational Plan budget and approve Action 2.8 (#3) that modified the budget to establish a one-time appropriation of \$550,000 from the San Diego County General Fund for residential air quality monitoring, air purifiers, and data analysis for the Portside Community.

WHEREAS, on November 18, 2020, the San Diego County Air Pollution Control District Governing Board approved the Phase I CERP, which included strategies related to Portside Community-wide goals, heavy duty trucks, and advocacy measures; and

WHEREAS, the Phase I and Phase II CERP documents provide for a residential air filtration and air monitoring program (“Action B3: Reduce Exposure to Air Pollution”) to improve indoor air quality and address exposure vulnerabilities in the Portside Community; and

WHEREAS, consistent with the CERP, the APCD is developing the Portside Air Quality Improvement and Relief (“PAIR”) Program in San Diego County that is to be funded by the one-time allocation of \$550,000 from the San Diego County General Fund; and

WHEREAS, the PAIR Program will provide new portable air filtration devices and indoor air monitoring systems to participating residences within the Portside Community; and

WHEREAS, eligible participants in the PAIR program must currently reside within the Portside community, defined as living full-time within the following twelve (12) census tracts: 6073005000, 6073004900, 6073003902, 6073003601, 6073003901, 6073005100, 6073003603, 6073004000, 6073003502, 6073021900, 6073004700, and 6073011602, as depicted in Attachment A; and

WHEREAS, the Port District was created by the California Legislature in 1962 pursuant to the Harbors and Navigation Code Appendix 1, § 1 et seq. (“Port Act”) as a trustee for the people of the state of California and holds and manages tidelands and submerged lands (“Tidelands”) that span five member cities (Chula Vista, Coronado, Imperial Beach, National City and San Diego), 34 miles of waterfront along San Diego Bay and portions of the Pacific Ocean; and

WHEREAS, in 2010, the Port District established the Maritime Industrial Impact Fund (MIIF), based on the recognition that certain communities adjacent to industrialized areas near San Diego Bay may be subject to adverse impacts; and

WHEREAS, the MIIF is used to fund projects to mitigate Off-Tidelands impacts from the Port District’s marine terminals and the maritime industry operating at the terminals; and

WHEREAS, the APCD and the Port District are working together to reduce air pollution and improve air quality and public health for those residing in the Portside Community; and

WHEREAS, the APCD has dedicated resources for the PAIR Program and is well-positioned to develop, design, and implement the PAIR Program in partnership with the Port District; and

WHEREAS, the Port District has offered to contribute One Hundred Three Thousand Dollars (\$103,000) in MIIF funds to APCD to support the PAIR Program for the specific purpose of purchasing the portable air filtration devices and indoor air monitoring systems, and APCD desires to accept said contribution for the PAIR Program; and

WHEREAS, given the proximity of the Portside Community to the Port's marine terminals and working waterfront, there is a sufficient nexus between maritime operations and air quality within the Portside Community to comply with the Port Act and the use of MIIF funds, and the Port's contribution to the PAIR Program is a reasonable proportion of mitigation of air quality issues within the Portside Community.

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

1. Contribution. The Port District shall issue a check or wire funds payable to "San Diego County Air Pollution Control District" for One Hundred Three Thousand Dollars (\$103,000) ("Contribution") within 30 days following the Effective Date of this MOA.

2. APCD's Use of the Contribution: The APCD agrees to use Port District's Contribution only towards the purchase of new portable air filtration devices and indoor air monitoring systems at participating residences in the Portside Community as part of the PAIR Program, and to return any un-used funds from the Contribution to the Port District. The APCD shall report to the Port District on a quarterly basis in writing regarding the status of the purchase of the new portable filtration devices and indoor air monitoring systems and expenditure of the Contribution.

3. Time Deadlines. APCD shall use the Contribution to purchase new portable air filtration devices and indoor air monitoring systems under the PAIR Program expeditiously and shall use the Contribution within two (2) years from the Effective Date of this MOA. If the Contribution is not used within this timeframe, APCD must return any unused portion of the Contribution to the Port District within 25 months of the Effective Date of this MOA.

4. Ongoing Air Filtration and Air Monitoring System Maintenance Responsibilities. Participants in the PAIR Program will agree to regularly and properly maintain the Air Filtration and/or Air Monitoring systems in accordance with manufacturer recommendations.

5. Records and Audit

- a. APCD shall maintain full and complete records of the use of Port District's Contribution. Such records shall be open to inspection of Port District at all reasonable times and such records shall be kept for at least three (3) years

after APCD notifies the Port District in writing of completion of the PAIR Program or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

- b. APCD understands and agrees that the Port District, at all times under this MOA, has the right to review documents and work in progress and to audit financial records, whether or not final, which the APCD or anyone else associated with the work has prepared or which relate to the use of the Port District's Contribution regardless of whether such records have previously been provided to the Port District. APCD shall provide the Port District at APCD's expense a copy of all such records within fifteen (15) working days of a written request by the Port District. The Port District's right shall also include inspection at reasonable times of the APCD's office or facilities, which are engaged in the performance of services pursuant to this MOA.

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

6. Indemnify, Defend, Hold Harmless

- a. To the fullest extent provided by law, APCD agrees to defend, indemnify and hold harmless the Port District, 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 APCD's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services and/or use of the Port District's Contribution by APCD, its officers, agents, subcontractors and employees, as provided for in this MOA or related to the purchase of new portable air filtration devices and indoor air monitoring systems for the PAIR Program, or failure to act by APCD, its officers, agents, subcontractors and employees. The APCD'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 District, its agents, officers, or employees.
- b. The APCD further agrees that the duty to indemnify, and the duty to defend the Port District as set forth in 6.a, requires that APCD pay all reasonable attorneys' fees and costs the Port District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the APCD provided for in this MOA.
- c. The Port District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this MOA. If the Port

District 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 APCD provided for in this MOA, APCD agrees to pay all reasonable attorneys' fees and all costs incurred by the Port District.

7. Compliance by APCD

- a. In performance of this MOA, APCD and APCD'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. APCD shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. APCD shall comply with all Federal, State, regional and local laws, and Port District Ordinances and Regulations applicable to the performance of services under this MOA as exist now or as may be added or amended.

8. APCD to Recognize Port District's Contribution.

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

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

Port: Lesley Nishihira, Planning Director
 Planning Department
 San Diego Unified Port District
 3165 Pacific Highway San Diego, CA 92101

APCD: Nick Cormier, Air Quality Specialist
 San Diego County Air Pollution Control District
 10124 Old Grove Rd. San Diego, CA 92131

or to such other address as either party may indicate in a written notice to the other. All notices and communications given under this MOA 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 MOA 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 MOA. In addition, properly executed, authorized signatures may be transmitted via facsimile or electronic mail and upon receipt shall constitute an original signature.

11. Effective Date. The term "Effective Date" as used in this MOA shall mean the date this MOA is fully executed by the Parties.

The Parties hereto have executed this Memorandum of Agreement as indicated by the signatures below.

SAN DIEGO UNIFIED PORT DISTRICT

By: _____

Name: Joe Stuyvesant

Title: President/CEO

Date: _____

Approved as to form and legality:

GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: Assistant/Deputy

LEGALITY AND FORM APPROVED

Rodney Lorang, Counsel, San Diego County Air
Pollution Control District

SAN DIEGO COUNTY AIR POLLUTION CONTROL
DISTRICT

By: _____

Name: Paula Forbis

Title: Interim Air Pollution Control Officer

Date: _____

Approved in public meeting of the San Diego
County Air Pollution Control District
Governing Board on _____

Date: _____

Marvice Mazyck
Clerk
San Diego County Air Pollution Control
District Governing Board

ATTACHMENT A

Census tracts eligible to participate in the PAIR Program

