

MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND THE CITY OF NATIONAL CITY TO CONTRIBUTE FUNDS FROM THE MARITIME INDUSTRIAL IMPACT FUND FOR THE FUNDING OF THE FREE RIDE AROUND NATIONAL CITY PROGRAM

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into on _____, 2023, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter referred to as "District", and the CITY OF NATIONAL CITY, a municipal corporation, hereinafter referred to as "City". The District and City are collectively hereinafter referred to as "parties".

RECITALS

WHEREAS, in 2010, the District's Board of Port Commissioners (BPC) adopted BPC Policy No. 773 to establish a Maritime Industrial Impact Fund (MIIF), based on the recognition that certain communities adjacent to industrialized areas near San Diego Bay may be subject 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 City of National City desires to provide a clean and safe travel option around National City, including on Tidelands, through a zero-emission shuttle program that provides a clean and safe travel option around National City and improves quality of life by expanding affordable travel options and access to National City's waterfront while reducing pollution; and

WHEREAS, the District and City desire to work together to reduce air pollution, improve air quality and public health, and increase access to National City's waterfront for those residing in National City; and

WHEREAS, the City, in partnership with Circuit Transit, Inc., created the Free Ride Around National City (FRANC) Program (FRANC Program), which is proposed to be a Neighborhood Electric Vehicle (NEV) shuttle system that ties together destinations in downtown National City, Old Town National City, and West Side National City with the 8th and 24th Street Transit Centers, and with waterfront employers along the waterfront (e.g., Naval Base San Diego, National City Marine Terminal, shipyards), by providing first and last-mile connections; and

WHEREAS, the FRANC Program service area is proposed to include District Tidelands in National City, including Pepper Park; and

WHEREAS, when operational, the FRANC will serve as a connector that provides the City's residents with access to the National City waterfront; and

WHEREAS, the City applied for and was awarded a "Mobility Project Voucher" from the Clean Mobility Options Voucher Pilot Program (CMO), which is administered by CALSTART, a national non-profit which works to advance clean transportation initiatives, as designated by the California Air Resources Board (CARB); and

WHEREAS, the CMO program aims to increase access to clean mobility options in disadvantaged communities, reduce greenhouse gas emissions and criteria pollutants, increase the uptake of zero-emission vehicles, and improve air quality and public health in the State's most vulnerable communities; and

WHEREAS, the City proposes to use the Mobility Project Voucher to fund the FRANc Program; and

WHEREAS, the Mobility Project Voucher for the FRANc Program is a maximum of \$1,500,000 for a 5-year term, consisting of one year of planning, three years of operation funded by the Mobility Project Voucher, and one additional year of mandatory operation not funded by the Mobility Project Voucher; and

WHEREAS, the District has offered to contribute Four Hundred Thousand Dollars (\$400,000) in MIIF funds to support the FRANc Program; and

WHEREAS, the total \$400,000 is to be used for the purposes supporting the FRANc Program and for no other purposes whatsoever.

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

1. Contribution. The District shall issue a check or wire funds payable to "City of National City" for Four Hundred Thousand Dollars (\$400,000) ("Contribution") within 30 days following the Effective Date of this MOU.

2. City's Use of the Contribution. The City agrees to use District's Contribution only for the FRANc Program, provided any capital-related expenses must remain under \$100,000.

3. Time Deadlines. The City shall use the Contribution within five (5) years of the City's receipt of the Mobility Project Voucher funds or within five (5) years of the Effective Date of this MOU, whichever is later. If the Contribution is not used within this timeframe, the City must return any unused portion of the Contribution to the Port District within six (6) months following the end of the Mobility Project Voucher term or within five (5) years of the Effective Date of this MOU, whichever is later.

4. Records and Audit.

a. The City shall maintain full and complete records of the use of District's Contribution. Such records shall be open to inspection by the District at all reasonable times and such records shall be kept for at least three (3) years after the City notifies the District in writing of completion of the FRANc Program or until all disputes, appeals, litigation or claims arising from this MOU have been resolved, whichever is later.

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

The City shall, at no cost to the District furnish reasonable facilities and assistance for such review and audit.

5. Indemnify, Defend, Hold Harmless.

- a. To the fullest extent provided by law, the City agrees to defend, indemnify and hold harmless the 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 the City'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 the City, its officers, agents, subcontractors and employees, as provided for in this MOU or related to the operation of the FRANC Program, or failure to act by the City, its officers, agents, subcontractors and employees. The City'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 District, its agents, officers, or employees.
- b. The City further agrees that the duty to indemnify, and the duty to defend the District as set forth in 5.a, requires that the City pay all reasonable attorneys' fees and costs the District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the City provided for in this MOU.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this MOU. If the 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 the City provided for in this MOU, the City agrees to pay all reasonable attorneys' fees and all costs incurred by the District.

6. Compliance by the City.

- a. In performance of this MOU, the City and the City'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. The City shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. The City shall comply with all Federal, State, regional and local laws, and District Ordinances and Regulations applicable to the performance of services under this MOU as exist now or as may be added or amended.
- c. Two weeks prior to commencement of operation the FRANC Program, the City shall send the District notice via email of the proposed commencement date.
- d. On an annual basis for the term of this MOU, City shall provide the District with:
 - (1) Ridership Information. Data on overall ridership information for the FRANC Program, as well as ridership information specific to District tidelands,

including but not limited to, peak periods of demand for trips to District tidelands; and

(2) Use of Contribution. A description of how the District's Contribution was utilized for the past year.

- e. The City shall calculate any annual air pollutant and greenhouse gas emissions net reductions associated with the overall operation of the FRANCO Program and provide the District the opportunity to review and verify the results.

7. City to Recognize District's Contribution.

- a. The City shall communicate all media opportunities with the District in advance and allow for review of as well as contribution and reasonable modifications to press releases, key messaging, talking points, or any other written material relating to the District's Contribution or this MOU.
- b. The City shall, to the best of its ability, proactively inform the District of any issues concerning this MOU that are of media and/or public interest immediately (e.g., any unforeseen crisis situations).
- c. The City shall present any proactive or reactive media opportunities to the District and allow for participation in any joint events (e.g., media or community events).
- d. District branding shall be included on the NEVs, and content of such branding shall be at the discretion and approval of the District and City.

8. 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

City: Roberto Yano, PE, Director of Public Works/City Engineer
City of National City
1243 National City Boulevard
National City, CA 91950

or to such other address as either party may indicate in a written notice to the other. All notices and communications given under this MOU 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

9. Counterparts. This MOU 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 MOU. In addition, properly executed, authorized signatures may be transmitted via facsimile or electronic mail and upon receipt shall constitute an original signature.

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

The Parties hereto have executed this MOU as indicated by the signatures below.

SAN DIEGO UNIFIED PORT DISTRICT

CITY OF NATIONAL CITY

By: _____
Joe Stuyvesant
President/CEO

By: _____
Ron Morrison
Mayor

Date: _____

Date: _____

Approved as to form and legality:
GENERAL COUNSEL

Approved as to form and legality:
CITY ATTORNEY

By: _____
Thomas A. Russell

By: _____
Barry J. Schultz, City Attorney