

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into on this \_\_\_\_ (number) day of \_\_\_\_\_ (month) in \_\_\_\_ (year) (“Effective Date”) by and between:

THE SAN DIEGO UNIFIED PORT DISTRICT, THE SAN DIEGO ASSOCIATION OF GOVERNMENTS, THE CALIFORNIA DEPARTMENT OF TRANSPORTATION, THE CITY OF SAN DIEGO, AND THE CITY OF NATIONAL CITY (Parties may be referenced individually as a “PARTY” and collectively as the “PARTIES”).

### **PURPOSE:**

The purpose of this MOU is to establish a good-faith foundation between the PARTIES for collaborative efforts that are mutually beneficial in the development of the Harbor Drive 2.0 Port Access Improvements Project (“Project”) as further detailed herein. The PARTIES agree to work together in a cooperative and coordinated manner in developing and planning the Project.

The Project is comprised of the construction of the Vesta Street Bridge (Vesta Street Bridge) and the installation of the Harbor Drive Intelligent Transportation System (ITS). The proposed Vesta Street Bridge will facilitate direct vehicular connectivity between the east (dry) and west (wet) portions of Naval Base San Diego (NBSD) that are currently separated by rail lines and Harbor Drive. With the Vesta Street Bridge in place, vehicles would not need to use the City street network between the east and west sides of the NBSD, reducing out of direction travel and relieving traffic congestion at existing NBSD gates and adjacent intersections. Harbor Drive currently experiences high levels of congestion that slow down Port and Naval operations and produce downstream impacts on residents living and working in the portside neighborhoods. The Harbor Drive ITS will improve access and circulation by optimizing signal timing and circulation to facilitate truck and other vehicle movements along Harbor Drive and connecting arterials to I-5 and SR-15 in San Diego and National City. The Project is intended to improve accessibility, goods movement, economic vitality, and the well-being of local communities.

### **RECITALS:**

**WHEREAS**, in 2008, the Board of Port Commissioners (“BPC”) of the San Diego Unified Port District (“District”) accepted federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) funds for improvements; and

**WHEREAS**, in 2016, the District requested that remaining earmarked funds be repurposed and utilized for the Harbor Drive Multimodal Corridor Study (“HDMCS”); and

**WHEREAS**, the BPC authorized completion of the HDMCS in November 2017; and

**WHEREAS**, the HDMCS scope included the segment of Harbor Drive between the Tenth Avenue Marine Terminal and the National City Marine Terminal (“Working Waterfront”), as well as the major east/west arterial roadways from Harbor Drive to interstate and highway access points; and

**WHEREAS**, the District, San Diego Association of Governments (“SANDAG”), the City of San Diego (“San Diego”), the California Department of Transportation (“Caltrans”), the City of National City (“National City”), the San Diego Metropolitan Transit System (“MTS”), and the United States Department of the Navy (“Navy”) all participated and provided substantial input on the Technical Advisory Committee for the HDMCS; and

**WHEREAS**, in December 2019, the BPC (1) received and accepted the completed HDMCS, and (2) directed District staff to proceed with the Harbor Drive 2.0 concept plan (Appendix H to the HDMCS and Attachment 1 to this MOU), and work with partner agencies, including those with jurisdiction over the improvements proposed in the HDMCS; and

**WHEREAS**, through participation in the Technical Advisory Committee, the District, SANDAG, San Diego, Caltrans, MTS, the Navy, and National City, recognized the significant role that both the HDMCS and the Project can play in transportation planning for the local area and region; and

**WHEREAS**, in December 2023, Caltrans completed an Initial Study with Negative Declaration/Environmental Assessment and adopted a Finding of No Significant Impact for the Harbor Drive Intelligent Transportation System (“ITS”) and Vesta Street Bridge Components that propose to improve the movement of goods and people to and from the Port of San Diego’s Working Waterfront; and

**WHEREAS**, the District partnered with Caltrans and SANDAG to advance the Project to construction, including achievement of the following milestones: completion of the Project Report, completion of the Environmental Phase, and commencement of the Design (Project Specifications & Engineering) Phase. Achievement of these milestones included the following activities: (1) a Concept of Operations was completed in January 2022, and (2) funding for design and right-of-way phases was secured in February 2024; and

**WHEREAS**, the District and Caltrans entered into a Master Agreement Regarding Collaborative Projects, effective October 24, 2024, which establishes the respective rights, responsibilities and obligations of the District and Caltrans in collaborating on certain transportation projects, including without limitation, the Project; and

**WHEREAS**, the District, SANDAG, San Diego, Caltrans, and National City support collaborating with one another in the implementation of the Project, and the goals expressed in the HDMCS (Attachment 1).

**NOW, THEREFORE**, the PARTIES hereto agree to the following terms and conditions:

1. The PARTIES agree to work cooperatively toward the mutual goal of completing the Design and Right-of-Way Certification phases of the Project and will meet and discuss, in good faith, the following as necessary:
  - a. *Design/Right-of-Way Certification*: The PARTIES will collaborate to certify that the tasks and deliverables per the *Caltrans Work Breakdown Structure* are part of the mutually agreed upon Project for the Design and Right-of-Way Certification.
  - b. *Implementing Agency*: The following agencies have been assigned as the agencies that are performing the Design and Right-of-Way Certification phases of the Project. The Implementing Agency will determine and execute the required agreements. The Implementing Agency will retain all consultants needed and fund the Design and Right-of-Way Certification phases of the Project.

Harbor Drive ITS Component:

- Design: SANDAG
- Right-of-Way Certification (outside Caltrans Right-of-Way): SANDAG
- Right-of-Way Certification (within Caltrans Right-of-Way): Caltrans

Vesta Street Bridge Component:

- Design: Caltrans-District 11

- Right-of-Way Certification (outside Caltrans Right-of-Way): SANDAG
- Right-of-Way Certification (within Caltrans Right-of-Way): Caltrans

- c. *Funding*: SANDAG and Caltrans will negotiate with the intent to reach a consensus as to future potential cost sharing responsibilities among SANDAG and Caltrans for the construction and installation of the Project, including, but not limited to, identifying funding mechanisms such as grant funding opportunities and manners in which such opportunities should be pursued, based upon availability and necessity.
2. The PARTIES intend to enter into future agreements that will set forth their roles and obligations for constructing, installing, and funding the Project.
  3. Each PARTY agrees to designate a specific individual as a point-of-contact, preferably a Project Manager, for purposes of this MOU by two (2) weeks following the execution of this MOU.
  4. Nothing in this MOU shall be construed to obligate any of the PARTIES, unless specifically provided herein.
  5. The PARTIES will meet a minimum of eight (8) times, starting with the month following execution of this MOU.
  6. This MOU shall be effective on the date set forth above and shall continue in effect for five (5) years from the effective date, unless terminated by any PARTY. The term of this MOU shall not exceed five (5) years unless approved by the Council of the City of San Diego as well as other PARTIES. A PARTY may terminate the MOU by giving the other PARTIES thirty (30) calendar days advance written notice.
  7. In the event that any PARTY materially breaches this MOU and fails to cure such breach within sixty (60) days after receiving written notice of such breach from any of the other PARTIES, the PARTY sending such notice may terminate this MOU by giving the PARTY in breach written notice of its election to terminate, but not before first submitting the dispute to mediation per Paragraph 14. Should the dispute not resolve at mediation, then the Parties may pursue termination for breach or any other legal remedy. Non-attendance at meetings is not a material breach.
  8. No alteration, modification, amendment, or variation of the terms of this MOU shall be valid unless made in writing, agreed to, and executed by the PARTIES before becoming effective. As to the City of San Diego, amendments may require the approval of City Council before becoming effective. The PARTIES will, at the very least, review the MOU once every year, or sooner if mutually agreed upon. Upon giving the other PARTIES thirty (30) calendar days' advance notice, each PARTY may submit a written petition to renegotiate the MOU.
  9. All obligations of the PARTIES under the terms of this MOU are subject to the appropriation of the required resources by the PARTIES and the approval of their respective decision-making authorities.
  10. For purposes of this MOU, the relationship of the PARTIES is that of independent entities and not as agents of each other or as joint ventures or partners. The PARTIES shall maintain sole and exclusive control over their own personnel, agents, consultants, and operations.
  11. With the exception of the PARTIES retaining consultants as necessary to fulfill their obligations under this MOU, the PARTIES agree not to assign any responsibilities in this MOU to a third PARTY without the written consent of all PARTIES.

12. The PARTIES agree they each may use confidential or sensitive information to meet their individual goals. The PARTIES agree to mark any confidential documents as confidential prior to sharing them with any other PARTY. PARTIES may not share any disclosed confidential information with unauthorized third parties, unless disclosure is required to comply with a court order or respond to a request under the California Public Records Act (PRA). In the event that a PARTY intends to disclose another PARTY's marked confidential documents in response to a PRA request, the disclosing PARTY will first notify the other PARTY of the request and describe the confidential documents to be disclosed. Prior to disclosure, the disclosing PARTY and the affected PARTY will meet and confer to determine whether disclosure is proper and to allow the affected PARTY to seek judicial remedies if necessary. To ensure accuracy in responding to a request for public records, a PARTY must notify the other PARTIES of the request and may collaborate before the release of any PRA response for awareness and possible review of the public records to be disclosed. PARTIES may, at their discretion, enter into a Non-Disclosure Agreement to ensure sensitive or proprietary information and trade secrets are kept confidential.
13. The PARTIES agree this MOU represents the most current agreement between the PARTIES and supersedes all other written or oral agreements. If the PARTIES wish to update the terms or otherwise adjust provisions of this MOU, the PARTIES shall do so by the drafting and signing of a new MOU, or by written amendment pursuant to Section 7 above.
14. This MOU shall be governed by all applicable State of California and federal law. Any dispute arising out of or in connection with this MOU may be submitted to mediation in the County of San Diego. Should the dispute not resolve at mediation, then the Parties may pursue any other legal remedies. The venue for any suit concerning the MOU, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.
15. The PARTIES represent and warrant they are authorized to enter into this MOU.
16. Under no circumstances will the PARTIES be liable to each other for any indirect, special, consequential, or punitive damages (including lost profits) arising out of or relating to this MOU or the transactions it contemplates (whether for breach of contract, tort, negligence, or other form of action). The PARTIES' damages are limited to direct damages.
17. If any provision of this MOU is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in force in accordance with the PARTIES' intention.
18. This MOU may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each PARTY has signed one such counterpart.
19. The City of San Diego may enter into an agreement with SANDAG, regarding critical points of coordination during the design and construction of the Project provided that the agreement and any necessary funding is approved by the Council of the City of San Diego.

IN WITNESS WHEREOF, the PARTIES hereto have executed this MOU effective on the day and year first above written. The undersigned PARTIES acknowledge and agree to this MOU:

California Department of Transportation

Approved as to from:

By: \_\_\_\_\_  
Ann Fox  
District 11 Director

By: \_\_\_\_\_  
Jeffrey R. Benowitz  
Deputy Chief Counsel

San Diego Association of Governments

Approved as to from:

By: \_\_\_\_\_  
Mario H. Orso  
Chief Executive Officer

By: \_\_\_\_\_  
Shelby Tucker  
Senior Legal Counsel

San Diego Unified Port District

Approved as to from:

By: \_\_\_\_\_  
Scott Chadwick  
President/Chief Executive Officer

By: \_\_\_\_\_  
Shiraz D. Tangri  
Deputy General Counsel

City of San Diego

Approved as to from:

By: \_\_\_\_\_  
Casey Smith  
Deputy Chief Operating Officer

By: \_\_\_\_\_  
Cassandra Mougín  
Deputy City Attorney

City of National City

Approved as to from:

By: \_\_\_\_\_  
Stephen Manganiello  
Director of Public Works

By: \_\_\_\_\_  
Barry J. Schultz  
City Attorney