

MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND THE CITY OF NATIONAL CITY TO CONTRIBUTE GRANT MATCHING FUNDS FOR CONSTRUCTION OF SEGMENT 5 OF THE BAYSHORE BIKEWAY

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into on _____, 2025, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter referred to as "District", 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 may be subject to disproportionate adverse impacts and constraints as a result of the presence of maritime industrial facilities; and

WHEREAS, the City was awarded a grant from the San Diego Association of Governments (SANDAG) through SANDAG's Active Transportation Program (ATP), Cycle 7 grant program, for construction of Segment 5 of the Bayshore Bikeway (Project), which is located on City and District property; and

WHEREAS, the City submitted a request to the District for \$2,000,000, to match SANDAG ATP grant funding for construction of the Project; and

WHEREAS, the Project is approximately 1.4 miles long, of which the southernmost portion (approximately 900 feet) is on District Tidelands, and the remaining alignment is off-Tidelands on City property (see Exhibit 1); and

WHEREAS, the Project will construct a Class I bike and pedestrian facility located adjacent to and on District Tidelands along Marina Way between Bay Marina Drive and 32nd Street, adjacent to an abandoned rail line and along the Paradise Marsh; the alignment transitions onto Marina Way south of Bay Marina Drive to West 23rd Street, on West 23rd Street to McKinley Avenue, and generally on McKinley Avenue to Harbor Drive; and

WHEREAS, the City's funding request to the District requested \$600,000 from MIIF funds for construction of the Project off-Tidelands, and \$1,400,000 for construction of the Project on District Tidelands, for a total request of \$2,000,000; and

WHEREAS, the California Harbors and Navigation Code, Appendix 1 (Port Act) Section 30.5(b) specifies that the District may make capital expenditures between \$100,000 to \$1,000,000 outside District tidelands for transportation facilities like the Project, conditioned on giving the California State Lands Commission (SLC) written notice of the proposed expenditure at least 60 days prior to making said expenditure (Section 30.5 Notice); and

WHEREAS, when completed, the Project will provide a critical connection and gap closure for the approximately 24-mile regional Bayshore Bikeway that links the District's five member cities and provides access to the waterfront; and

WHEREAS, the total Project cost is estimated at approximately \$14,000,000; and

WHEREAS, the Project was adequately analyzed in the Final Environmental Impact Report for the National City Bayfront Projects & Plan Amendments (UPD# EIR-2018-232; SCH #2018121054, Clerk Document No. 74430) prepared by the District and certified by the District's Board of Port Commissioners on November 16, 2022 (Resolution No. 2022-137).

NOW THEREFORE, for valuable consideration, the parties agree as follows:

1. The term of this MOU shall be three (3) years from the Effective Date.
2. The District shall, pursuant to the terms of this MOU, reimburse the City up to \$2,000,000 for the Project's construction, anticipated to be spent in fiscal years (FY) 26-28, as follows:
 - a. Within 30 days following the Section 30.5 Notice period expiration, without objection from the SLC, the District shall issue a check or wire funds payable to "City of National City" for Six Hundred Thousand Dollars (\$600,000) ("First Contribution").
 - b. The "Second Contribution" and "Third Contribution", each in the amount of Seven Hundred Thousand Dollars (\$700,000), will be progress payments based on City's proof of progress made on construction of the Project. The First Contribution, Second Contribution, and Third Contribution are collectively herein referred to as "District Contribution."
 - c. As a prerequisite for each progress payment, the City shall invoice the District in the amount of \$700,000 for costs associated with construction of the Project. Each invoice shall be accompanied by construction contractor invoices and receipts and proof of payment by the City for the work associated with construction of the Project.
3. The District will review invoices submitted by the City. If the services rendered fall within the scope of this MOU, the District will use commercially reasonable efforts to reimburse the City within thirty (30) days of receipt of the qualifying invoices for the associated Second Contribution and Third Contribution.
4. At approximately six months following the First Contribution, the City shall submit the invoice for the Second Contribution. At approximately six months following the Second Contribution, the City shall submit the invoice for the Third Contribution. All invoices for the Second Contribution and Third Contribution shall be received by the District before the MOU term expires.
5. The City shall be solely responsible for the Project and shall act as overall program manager for the construction of the Project. The construction of the Project may be carried out by the contractor retained by the City, with prevailing wages paid, and under the management and direction of the City.

6. The City is solely responsible for the remaining funds necessary to complete the Project over and above the District Contribution.

7. If the construction of the Project is not completed by the end of the MOU term, both parties may execute a written amendment to this MOU extending the term. The Executive Director of the District, and the City Manager of the City, are each hereby granted authority to extend the term of the MOU up to a total term of five (5) years under this Section without returning to the BPC, or the City Council, respectively. Any extensions described in this Section also extend the respective FY deadlines in Section 2 and otherwise described in this MOU.

8. If not already submitted before final execution of this MOU, the District shall submit the Section 30.5 Notice to SLC, notifying SLC of the MOU and District's commitments hereunder within ten (10) days of the final execution of the MOU.

9. The District has no obligation under the MOU until the Section 30.5 Notice period expires without objection from the SLC.

10. The Project's purpose is to:

- a. Enhance bicycle connections to public transit, parks, and the working waterfront including Naval Base San Diego and District tenant shipyards and other industrial businesses; and
- b. Further expand bicycle connectivity between the District's five member cities and the waterfront; and
- c. Promote safe and viable bicycle and public transportation as mobility choices.

11. The District Contribution shall be used solely for construction of the Project and for no other purposes.

12. Records and Audit

- a. The City shall give the District written notification within thirty (30) days of completion of the Project. The City shall maintain full and complete records of the use of the District Contribution. Such records shall be open to inspection of 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 Project 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 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. The City's failure to provide the records within the time requested shall preclude the City from receiving any compensation due under this MOU until such documents are provided.

13. 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 District's Contribution by the City, its officers, agents, subcontractors and employees, as provided for in this MOU or related to the construction of the Project, 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 Section 13.a of this MOU, 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.

14. Compliance by the City of National 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 Americans 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.

15. The City of National City to Recognize District's Contribution. The City shall reasonably cooperate with the District for any media recognition and publicity relating to the District's Contribution or this MOU.

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

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

City: Stephen Manganiello, 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.

17. 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.

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

19. Entire Understanding. This MOU contains the entire understanding of the parties, and by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the subject matter of this MOU. No modification, amendment, or alteration of this MOU shall be valid unless it is in writing and signed by the parties hereto.

20. Section Headings. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

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

SAN DIEGO UNIFIED PORT DISTRICT

CITY OF NATIONAL CITY

By: _____

By: _____

Scott Chadwick
President/CEO

Ron Morrison
Mayor

Date: _____

Date: _____

Approved as to form and legality:

Approved as to form and legality:

GENERAL COUNSEL

CITY ATTORNEY

By: _____

By: _____

Barry J. Schultz, City Attorney

Exhibit 1

Bayshore Bikeway - Segment 5 Alignment

