

Staff Report 60

TRUSTEE:

San Diego Unified Port District

PROPOSED ACTION:

The San Diego Unified Port District (Port) requests that the Commission make determinations and findings under Public Resources Code section 6702 (b)(1)-(3) for an Intergovernmental Support Agreement that allows the Navy Region Southwest (Navy) to participate in California's Low Carbon Fuel Standard (LCFS) market and allows the Port to register, generate, and sell credits from Navy shore power to provide Naval Base San Diego with energy and utility improvement projects. The Port also requests that the Commission authorize the Port to expend funds generated from the LCFS market on projects located on Naval Base San Diego, adjacent to the Port's granted Public Trust Lands.

BACKGROUND:

The LCFS is designed to decrease the carbon intensity of California's transportation fuel pool and provide an increasing range of low-carbon and renewable alternatives, which reduce petroleum dependency and achieve air quality benefits. Under the LCFS, the California Air Resources Board (CARB) calculates a "carbon intensity" score to diesel and gasoline fuels, and also establishes a carbon intensity benchmark. Providers of transportation fuels must stay below the carbon intensity benchmark, which lowers over time, by using less carbon intensive fuels or by purchasing credits.

Using fuels whose carbon intensity is under the benchmark generates credits and using fuels that exceed the benchmark creates deficits. Credits can also be generated by emissions-reducing projects, like carbon-capture and sequestration projects, and by operating zero emission vehicle infrastructure. When an entity generates credits, it can use those credits itself or sell them on a credit market. Under CARB's LCFS regulations and guidance, proceeds from credit sales can only be used for electrification projects serving the same sectors in which the credits

were generated. For example, revenue from credits generated from electric vehicle charging stations could be used to incentivize public electric vehicle charging or to install additional charging infrastructure.

CARB identified the LCFS as one of nine early action measures to reduce California's greenhouse gas emissions that cause climate change. The LCFS is a key part of a comprehensive set of programs in California to reduce greenhouse gas emissions and other smog-forming and toxic pollutants by improving vehicle technology, reducing fuel consumption, and increasing transportation mobility options.

When docked, ships can either connect to shore electric cables or else they must rely on their onboard fossil fuel-based engines and generators. Providers of electric shore power can generate LCFS credits, which represent the difference between the carbon intensity of the electricity versus the carbon intensity of the fossil fuel.

The Navy could generate LCFS credits while ships are plugged into shore power at Naval Base San Diego. But under federal law, the Navy could not use the proceeds from LCFS credit sales for electrification projects at Naval Base San Diego as required by LCFS regulations.

PROJECT DESCRIPTION:

The LCFS program allows designation of a third party to manage and collect LCFS credits. The Port has several agreements already in place with lessees where the Port accepts responsibility for generating and selling credits in exchange for a portion of the revenue from credit sales. The Port and Navy signed an Intergovernmental Support Agreement in September 2022, forming a partnership that gives the Navy access to California's LCFS credit program.

Under the Intergovernmental Support Agreement, the Navy designated the Port to be the generator of its LCFS credits. The Port will register Naval Base San Diego's electric shore power infrastructure in the LCFS program, monitor and report on its use, collect LCFS credits generated by the use, and sell those credits on the market. The Port estimates that this partnership with the Navy as described in the Intergovernmental Support Agreement will generate over \$200 million in credit sales.

The Port will use 81.75 percent of the proceeds from the Navy credit sales to undertake electrification projects at Naval Base San Diego, which is adjacent to Port property but outside of the Port's granted lands. The Port will procure and manage the projects under its existing authority, using standard competitive procurement procedures.

The projects at Naval Base San Diego will modernize, build out, and expand electrical infrastructure at the base. This will increase shore power capacity to meet expected growth, expand car charging, and install electrical resilience systems. The Navy has provided project examples in the Intergovernmental Support Agreement.

The utility infrastructure at Naval Base San Diego is approaching or past the end of its useful life. The expected life of most large electrical equipment at the Base is approximately 30 years. Much of the infrastructure replacement and upgrades are about 10 years overdue. The electrical infrastructure is close to capacity and additional power is significantly constrained or not possible in its current configuration and age. Naval Base San Diego needs to rebuild its electrical infrastructure to increase vehicle charging and accommodate planned ship number increases. The Port will retain the remaining 18.25 percent to pay its administrative costs in administering the LCFS credit generation and undertaking the Naval Base San Diego electrification projects. These remaining funds will also help to pay for the Port's own electrification projects.

Commission approval is required for the Port to expend funds for projects on property outside of its legislatively granted lands. Therefore, the Port requests that the Commission authorize its expenditures on Naval Base San Diego pursuant to the Intergovernmental Support Agreement.

LEGAL REQUIREMENTS:

AUTHORITY:

Public Resources Code sections 6005, 6009, 6009.1, 6216, 6301, 6701, and 6702; Harbor & Navigation Code, Appendix 1, § 30.5; California Code of Regulations, title 2, section 2802.

STAFF ANALYSIS AND RECOMMENDATION:

PUBLIC TRUST AND STATE'S BEST INTERESTS ANALYSIS

The Port's legislative grant is codified as the San Diego Unified Port District Act, Harbor & Navigation Code, Appendix 1, section 1 *et seq* (The Port Act). The Legislature created the Port to provide a holistic approach to waterfront planning in the San Diego Bay (Port Act, § 2). Section 4 of the Act provides that the Port is charged with "management of the harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the

promotion of commerce, navigation, fisheries, and recreation thereon" and to "protect, preserve, and enhance [. . .] the natural resources of the bay, including plant and animal life." (Port Act, § 4.) Section 87 of the Act states that a purpose of the grant is "For the establishment, improvement, and conduct of a harbor" (subdivision (a)(1)).

The partnership created by the Intergovernmental Services Agreement will allow Naval Base San Diego and the Port to fund electrification projects that are designed to remove harmful particulates from the air and reduce greenhouse gas emissions and are intended to reduce the health and environmental impacts on nearby communities. Electrification projects will also help accommodate increased ship use. Increased electrification will also benefit future facility development, including nearby shipyards that are critical to the State and regional economy.

The Agreement aligns with the Port's [Maritime Clean Air Strategy](#) (MCAS), a policy document to help the Port identify future projects and initiatives to improve health through cleaner air while also supporting efficient and modern maritime operations. The MCAS recognizes that its neighboring communities continue to suffer a disproportionate burden of environmental impacts, including air pollution, and more needs to be done to reduce these impacts. The MCAS is the Port's strategy to reduce those burdens by, among other things, transitioning cargo fleets and equipment to zero-emission alternatives, doubling shore power for cruise ships by 2023, and adding shore power or an alternative technology to reduce ocean-going emissions at berth at the National City Marine Terminal by 2025. As an example, based on the Port's MCAS modeling Inputs for 2030, the various operational improvements could reduce 30-year maximum cancer risks by nearly 50% for the neighboring communities of National City, Barrio Logan, and Coronado.

Electrification projects at Naval Base San Diego, funded through LCFS credit sales, will address environmental impacts disproportionately burdening neighboring communities. The Port can use the portion of the credit sales it retains to implement ongoing and future MCAS related projects.

Like all Port trust revenue, the proceeds from LCFS credit sales will be deposited in an appropriate fund and can only be used for statewide purposes authorized by the Port Act. CARB's regulations and guidance require that proceeds from LCFS credit sales be used for electrification projects and other uses that further the purposes of the LCFS program.

For these reasons, staff recommends that the Commission find that the Intergovernmental Services Agreement is consistent with the Port's granting statute.

San Diego Unified Port District Act section 30.5

Section 30.5 of the San Diego Unified Port District Act requires that before the Port makes an expenditure of over \$1 million on property adjacent to, but outside of, its granted lands, the expenditure must be approved by the Commission. When reviewing the expenditure, Section 30.5 requires the Commission to consider the factors listed in Public Resources Code section 6702.

Public Resources Code Section 6702

When the Commission approves a trustee's agreement under Public Resources Code sections 6701 and 6702, termination or modification of the trustee's legislative grant does not affect the rights of the other parties to that agreement.

To approve an agreement, Section 6702 subdivision (b) requires the Commission to find:

- (1) That such lease, contract, or other instrument is in accordance with the terms of the grant or grants under which title to the tide or submerged lands in question is held.
- (2) That the proceeds of such lease, contract, or other instrument shall be deposited in an appropriate fund expendable only for statewide purposes authorized by a legislative grant.
- (3) That such lease, contract, or other instrument is in the best interests of the State.

The Commission also has regulations (California Code of Regulations, title 2, section 2802) that establish the criteria it will consider when determining, in the context of Public Resources Code section 6702 subdivision (b), whether an agreement is in the best interests of the State. The criteria are that the project is consistent with the Commission's policies and practices; that the project is economically viable, necessary, and desirable; that it is appropriate for developmental mix; that the project is conducive to public access; that it is consistent with environmental protection; and that the project is otherwise in the best interests of the State.

Taking the above into account, staff recommends that the Commission find that the Agreement is in the best interests of the State, consistent with the findings in both Public Resources Code section 6702 (b)(1)-(3) and section 2802 of Title 2 of the California Code of Regulations, and that the expenditures of trust revenue on property adjacent to, but outside of, the Port's tidelands is consistent with Section 30.5 of the Port Act.

CONCLUSION:

Staff recommends that the Commission make the findings required by Public Resources Code section 6702 subdivision (b)(1)-(3) and approve the Interagency Support Agreement consistent with both the statutes and regulations pertaining thereto. Staff also recommends that the Commission approve off-site expenditures for electrification projects on Naval Base San Diego pursuant to that Agreement.

OTHER PERTINENT INFORMATION:

1. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Committing to Collaborative Leadership" Strategy Strategic Focus Areas of the Commission's 2021–2025 Strategic Plan.
2. Approval of an agreement under Public Resources Code 6702 subdivision (b) and approval of related off-site expenditures are not projects as defined by in the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Intergovernmental Support Agreement
- B. Request from the Port

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

1. Find, under Public Resources Code section 6702 subdivision (b)(1), that the Intergovernmental Support Agreement between the San Diego Unified Port District and Navy Region Southwest, including expenditures on Naval Base San Diego pursuant to that agreement, is consistent with the Port's legislative granting statutes.
2. Find, under Public Resources Code section 6702, subdivision (b)(2), that all proceeds related to the Intergovernmental Support Agreement between the

San Diego Unified Port District and Navy Region Southwest, including the Port's expenditures on Naval Base San Diego pursuant to that agreement, shall be deposited into an appropriate fund expendable only for statewide purposes authorized by the Port's legislative grant.

3. Find that the Intergovernmental Support Agreement between the San Diego Unified Port District and Navy Region Southwest, including the Port's expenditures on Naval Base San Diego pursuant to that agreement, is in the best interests of the State under Public Resources Code section 6702, subdivision (b)(3) and California Code of Regulations, title 2, section 2802.
4. Approve, under Public Resources Code sections 6701 and 6702, the Intergovernmental Support Agreement between the San Diego Unified Port District and Navy Region Southwest.
5. Approve, under San Diego Unified Port District Act section 30.5, the proposed off-site expenditures by the San Diego Unified Port District at Naval Base San Diego for electrification projects pursuant to the Intergovernmental Support Agreement between the San Diego Unified Port District and Navy Region Southwest.

INTERGOVERNMENTAL SUPPORT AGREEMENT**BETWEEN**

**NAVY REGION SOUTHWEST
750 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA 92132**

AND

**PORT OF SAN DIEGO
3165 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA 92101**

FOR**AN AGREEMENT TO REALIZE LCFS REVENUE****[IGSA NUMBER = N00242-22-IGSA-0001]**

This is an Intergovernmental Support Agreement (IGSA or Agreement) between the Department of the Navy (DON), as represented by and through the Assistant Secretary of the Navy (Energy, Installations & Environment), Navy Region Southwest (NRSW), Naval Facilities Engineering Systems Command Southwest (NAVFAC SW) and the San Diego Unified Port District, also known as the Port of San Diego (PSD), a local government created by the legislature of the State of California. When referred to collectively, the DON and PSD are referred to as the “Parties”.

1. **Background:** The Parties enter this IGSA to allow the Port of San Diego to provide services to Naval Base San Diego (NBSD) in order to allow NBSD to accept incentives in the form of goods and services from PSD. PSD will register to generate credits under the California Air Resources Board’s (CARB) Low Carbon Fuel Standard (LCFS) program based on Navy vessels’ use of shore power at port at NBSD that meets the requirements of the LCFS regulation. PSD will sell the credits generated by Navy vessels at NBSD, and utilize a portion of the proceeds from the sale of the credits to provide NBSD with energy and utility infrastructure improvements. PSD will retain a specified portion of the revenues generated by the sale of credits as compensation for services provided.

The LCFS program is an incentive program established by CARB that allows the owners of ocean going vessels to earn LCFS program credits for using power from the electric grid (shore power) rather than electricity generated onboard-or portable diesel generators while in port. PSD will use data generated by fuel-supplying equipment (FSE), to obtain credits, which can be sold to other entities and use those proceeds to improve and expand energy and utility infrastructure (hereinafter “installation infrastructure projects”). PSD currently provides this service to other owners of FSE that operate in San Diego.

2. **Authorities:** This IGSA is entered into by DON pursuant to 10 U.S.C. § 2679 and 10 U.S.C. § 2913(c), and by Port of San Diego pursuant to California Harbors & Navigation Code, Appendix 1, i.e., §§ 30, 30.5, 35, 87.

2.1. On December 10, 2019, in accordance with PSD's Board of Port Commissioners Policy No. 110, following a full and open competitive solicitation utilizing a Request for Proposal (RFP) initiated in June 2019, PSD awarded a contract to Blue Source, LLC, since renamed Anew EV, LLC (Blue Source/ Anew and any successor selected by PSD referred to herein as Broker) which includes LCFS credit realization for PSD's own use. PSD staff have affirmed the costs included in the agreement are fair and reasonable.

2.2. Pursuant to California Code Regulations, Title 17 § 95483(c)(5), the PSD may act as the Navy's designated generator of credits. The specific regulatory governing language is below:

(A) Subsection (A) above notwithstanding, the owner of the FSE may elect not to be the credit generator and instead designate another entity to be the credit generator if the two entities agree by written contract that:

2.2.1. 1. The owner of the FSE will not generate credits and will instead provide the electricity data to the designated entity for LCFS reporting pursuant to sections 95483.2(b)(8), 95491 and 95491.1.2. The designated entity accepts all LCFS responsibilities as the fuel reporting entity and credit generator."

3. Purpose: This IGSA is made by and between the Parties to provide NBSD with installation-support services from PSD in the form of installation utility infrastructure improvements and other projects to provide more water front electrification and reduce air emissions. PSD will generate and realize value from LCFS credits generated by activities at NBSD. The purpose of this IGSA is to outline the roles and responsibilities of the Parties, identify the services to be furnished by PSD, the agreed upon rates for services provided by PSD to be funded with proceeds from credits sales, and the appropriate liability and dispute procedures. This IGSA supersedes and terminates the Memorandum of Understanding executed 12 AUG 2022.

4. RESPONSIBILITIES OF THE PARTIES

4.1. Navy Region Southwest

4.1.1. As owner of certain Fuel Supply Equipment (FSE), and as provided in 17 CCR § 95483(c)(5)(B), elects not to be the credit generator and instead designates PSD to be the credit generator of such credits for such FSE.

4.1.2. Assist PSD in its efforts to provide infrastructure improvements to NBSD.

4.1.3. Each quarter NRSW will report its energy usage from the FSE to PSD and to Broker. Data shall be provided in a format subject to use and disclosure restrictions contained in this IGSA.

4.1.4. NRSW and NBSD to work with PSD to identify and prioritize installation infrastructure projects for NBSD.

- 4.1.5. Identify personnel from NRSW and NBSD who will coordinate with PSD to ensure infrastructure projects will meet the needs of NBSD.
- 4.1.6. Subject to national security and base requirements, provide base access to PSD personnel and PSD contractors. The Commanding Officer of NBSD may issue appropriate installation or facility access credentials consistent with local security requirements using Government authoritative databases for vetting purposes, as prescribed in DoD Manual 5200.08, Volume 3, and Physical Security Program: Access to DoD Installations.
- 4.1.7. Develop conceptual scope requirements and Basis of Design for requested NBSD installation infrastructure projects and provide to PSD.
- 4.1.8. Determine priority of NBSD installation infrastructure projects and in accordance with CARB requirements. Initial Project list included as Attachment (3); NRSW and NBSD have flexibility to change priority order of projects.
- 4.1.9. Provide timely review for, at a minimum, each deliverable highlighted in Attachment (2) during the design development stages.
- 4.1.10. Provide review of post-design construction submittals.
- 4.1.11. Provide written approval to PSD to accept the design product at completion in accordance with Attachment (2).
- 4.1.12. Review and comment on PSD contractor's Accident Prevention Plans (and corresponding Activity Hazard Analysis, critical lift plans, crane certificate of compliance-entry, etc.). Monitor and notify PSD of failures of PSD contractors' adherence to plans and contract requirements as well as provide higher-level notification for stop-work orders and/or mishap reporting.
- 4.1.13. Prior to approving any particular installation infrastructure project, complete analyses and obtain approvals required under the National Environmental Policy Act (NEPA) and other laws that the current OPNAV M-5090.1 associates with NEPA.
- 4.1.14. Accept final installation infrastructure projects that satisfy requirements in 4.1.7, approved designs, federal codes, regulations, and other requirements of this IGSA.

4.2. Port of San Diego

- 4.2.1. Accept all LCFS responsibilities as the fuel reporting entity and credit generator for such credits.
- 4.2.2. Assess the total FSE available for shore power and other eligible uses by documenting their physical location and unique identifiers.

- 4.2.3. Register each FSE with the CARB under the PSD's Low Carbon Fuel Standard Reporting Tool and Credit Bank and Transfer System account. PSD's Broker will upload records and generate credits, pursuant to sections 95483.2(b)(8), 95491 and 95491.1.2 of California Code Regulations, Title 17.
- 4.2.4. Safeguard NBSD FSE data. The data provided to PSD may not be sold, transferred or in any way made available to any other party, except in order to demonstrate eligibility and to receive benefits under the LCFS program.
- 4.2.5. Manage the administration of the program including reporting and supervision of the Broker and any other third party contractors performing activities under this IGSA.
- 4.2.6. Ensure that any contract for the provision of the services under this IGSA are awarded on a competitive basis.
- 4.2.7. Separately account for the Navy-generated LCFS funds from other payments received.
- 4.2.8. Provide NRSW with an itemized report of quarterly credit revenue.
- 4.2.9. Provide in-kind installation infrastructure projects for NBSD. PSD will fund the projects utilizing revenue generated by PSD from the sale of credits earned using FSE data provided. PSD will manage procurement for NBSD approved projects under PSD's authority and utilizing the PSD's standard competitive procedures.
- 4.2.10. Provide construction project management (CPM) to finalize project scopes, budgets, timelines, and prepare bid specifications for requests for proposals (RFP). CPM will be responsible for overseeing the project planning and construction of identified projects with close coordination from NRSW and NBSD to ensure proper delivery of desired scope outcomes within approved timelines and budgets.
- 4.2.11. Ensure that any installation infrastructure project provided to NBSD meets applicable federal standards and criteria, including design in accordance with DoD Unified Facilities Criteria (UFC) 1-200-01 (DoD Building Code – General Building Requirements) and the latest versions of the technical criteria (FC, UFC, engineering/architectural codes, technical instructions, etc.) located on the Whole Building Design Guide (WBDG).
- 4.2.12. Manage and respond to all NRSW, NBSD, and NAVFAC SW review comments and resolve to the maximum extent possible.
- 4.2.13. Provide contractor's Accident Prevent Plans and Activity Hazard Analysis to NBSD.

- 4.2.14. On completion of any deliverable, provide all appropriate and necessary operating/maintenance manuals, design deliverables, record drawings and associated training for operations and maintenance personnel to NBSD.
- 4.2.15. Provide NRSW, NBSD, and NAVFAC SW formal reviews for, at a minimum, 21-working days for each deliverable and milestones highlighted in Attachment (2).
- 4.2.16. Provide construction management oversight to work with the NRSW/NAVFAC SW team responsible for the field oversight of in-kind projects funded by the LCFS credit proceeds.
- 4.2.17. Provide construction inspection services on the contractor's delivery of plans and specifications to ensure the quality of the work, timeliness of the completion of the project and compliance with regulatory requirements appropriate on a federal facility.
- 4.2.18. Certify contracts are executed in furtherance of this IGSA are done in a fair and reasonable manner. Specifically, PSD will provide Quality Assurance and oversight on the performance of the contractors, based on timely return on credit proceeds realization.
- 4.2.19. Certify completion of installation infrastructure projects with concurrence from NBSD and NAVFAC SW.
- 4.2.20. Submit all requested base access information for PSD personnel—including its contracted personnel—in accordance with base access requirements. All vehicles and personnel entering a military installation are subject to search. Prohibited items include, but are not limited to: skateboards, scooters, bicycles, glass containers, pets, alcohol, illicit/nonprescription drugs, narcotics, fireworks, firearms, and other types of weapons
- 4.2.21. Take all necessary measures consistent with this agreement, to allow NBSD's FSE to generate credits under the CARB and other State agencies as appropriate

4.3. Both Parties:

- 4.3.1. Cooperate to ensure mutual goals are met and issues are promptly resolved.
- 4.3.2. Promptly notify the other party of any concerns and communicate openly and transparently to ensure any concerns or issues are promptly addressed in order to not impede performance under this IGSA.
- 4.3.3. Develop project review meetings with NBSD and NRSW to evaluate scope, schedule, and cost, as well as to address design approvals, change orders, cost increases, construction contractor issues, and other issues affecting a project. These meetings will occur on a regular basis at no less than once per quarter.

4.3.4. Facilitate community outreach, ensuring the appropriate message and stakeholders are identified and adequately engaged in the process. The Navy and PSD would identify goals prior to engaging in community outreach to ensure needed feedback is obtained.

4.3.5. To the extent feasible, all attempts to resolve disputes should be made prior to initiating the termination process.

5. Public Disclosure: Except as otherwise provided herein, to the extent permitted by the laws governing each Party, the Parties shall protect personal and proprietary information and shall maintain the confidentiality of other exchanged information when requested to do so by the providing Party.

5.1. The Parties will comply with public requests for information related to this IGSA pursuant to the Freedom of Information Act, 5 U.S.C. §552, and PSD will comply with the California Public Records Act, California Government Code § 6250 et seq. ("PRA"). For the purposes of this paragraph, FSE or other data derived from NBSD in the custody of PSD should not be considered to be information owned or controlled by PSD; all data provided to PSD is provided exclusively for the purpose of participation in the CARB LCFS program and is not available to PSD for any other purpose. Pursuant to 10 U.S.C. § 130e, certain information provided by the DON may be excluded from public disclosure notwithstanding conflicting state law requiring its release.

5.2. If PSD receives a request for information about this IGSA made under PRA, PSD will notify in writing NRSW Points of Contact (POCs) in this IGSA. If NRSW receives a request for information about this IGSA under FOIA, NRSW will notify in writing PSD POCs in this IGSA.

6. Relationship of the Parties: In the exercise of their respective rights, powers, and obligations under this IGSA, each Party acts in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Each Party is responsible for all costs of its personnel and contractors, including pay and benefits, support, and travel. Neither Party shall provide, without the prior written consent of the other Party, any contractor or employee with a release that waives or purports to waive any right a Party may have to seek relief or redress against that contractor or employee.

7. GENERAL PROVISIONS

7.1. Administration. This IGSA shall be mutually administered by PSD and by the NRSW collectively, the IGSA Directors. The IGSA Directors will identify personnel in PSD and at NRSW to coordinate and manage the provision of services and the payment for services provided by PSD under this IGSA.

7.2. Points of Contact. The POCs will be used by the Parties to communicate in the implementation of this IGSA. Each Party may change its POC and will provide e-mail notice to all POCs when a POC is changed.

7.2.1. For NRSW:

7.2.1.1. Jim Mugg, NBSD Deputy Public Works Officer
2730 McKean St, Building 121
San Diego, California 92136-5294
james.p.mugg.civ@us.navy.mil
619-556-1319
name and contact information subject to change

7.2.1.2. Janice Torres, NBSD Utilities Branch Head
2730 McKean St, Building 121
San Diego, California 92136-5294
janice.a.torres2.civ@us.navy.mil
619-556-2314
name and contact information subject to change

7.2.1.3. CDR Andrew Cline, CEC USN, NRSW Assistant Regional Engineer
750 Pacific Highway, Rm 1515
San Diego, CA 92132
andrew.d.cline.mil@us.navy.mil
619-705-5450
name and contact information subject to change

7.2.2. For Port of San Diego

7.2.2.1. Adam Deaton,, Maritime, San Diego Unified Port District
3165 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA 92101,
name and contact information subject to change

7.2.3. Correspondence. All correspondence to be sent and notices given pursuant to this IGSA will be addressed as follows:

7.2.3.1. ATTN: Regional Commander, Navy Region Southwest
750 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA 92132

7.2.3.2. Adam Deaton,, Maritime, San Diego Unified Port District
3165 PACIFIC HIGHWAY
SAN DIEGO, CALIFORNIA 92101,
name and contact information subject to change

7.2.4. Records. The Parties shall follow established cost principles and procedures in determining allowable costs and payments under this IGSA and shall maintain books, records, documents, or other evidence pertaining to costs and expenses under this IGSA for a minimum of three years after the expiration of the IGSA. To the extent permitted under applicable laws and regulations, the Parties shall each allow the other to inspect such books, records, documents, or other evidence pertaining to costs and expenses under this IGSA. Each Party shall maintain records of each purchase order and all payments made in accordance with its governing

record retention rules.

8. FINANCIAL DETAILS

- 8.1. Cost. The cost under this IGSA is to be eighteen-and-one-quarter percent (18.25%) of the net revenue from sale of LCFS credits generated from NBSD FSE energy data, as outlined in Attachment (1). In order to maximize revenue generated from sale of LCFS credits, PSD may authorize Broker to advance funds for purchase of Renewable Energy Certificates (REC) and be reimbursed for the cost it advanced for such RECs when credits are subsequently sold. The term "net revenue" shall mean the proceeds remaining after such reimbursement. The U.S. Government is not obligated to PSD or Broker for any loss of advanced funds except through revenue from credits actually sold.
- 8.2. The remaining eighty-one-and-three-quarters percent (81.75%) of net revenue generated by each sale of LCFS credits from NBSD energy usage shall be used by PSD for the planning, design and construction (including construction inspection services required for Navy acceptance) of the NBSD prioritized projects in accordance with CARB regulations and applicable law.
- 8.3. Obligation of Funds. Nothing in this agreement shall be construed in any way to be an obligation of funds by the Department of the Navy or the Department of Defense or in any other manner to be an obligation of funds from the United States Treasury. No provision in this IGSA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.
- 8.4. No Limitation. Nothing in this IGSA shall limit or prohibit the ability of either Party from contracting with other persons or entities for the provision of the same or similar services.
- 8.5. Billing and Payment. The cost of this IGSA is a deduction in the net revenue generated by each sale of the LCFS credits from NBSD FSE energy data as outlined in Attachment (1). PSD/Broker will provide NRSW with an itemized report of quarterly credit revenue with the separation of cost by both PSD and Broker.
- 8.6. Taxes. Pursuant to the Office of Management and Budget 2 CFR § 200.470, taxes that PSD are legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. NRSW will not reimburse PSD for any taxes in which the legal incidence of the tax falls on NRSW. Direct and indirect cost reconciliation will be performed annually in accordance with 2 CFR Part 200, Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards.
9. Term of IGSA. This IGSA is being entered into for a term not to exceed ten (10) years. This IGSA automatically terminates after ten (10) years from the effective date. A new IGSA may be executed for subsequent periods not to exceed ten (10) years.
10. Modification of IGSA. This IGSA may be modified by written agreement of the

Parties, which must be duly signed by their authorized representatives.

11. Suspension of IGSA. The United States reserves the right to suspend performance of the Agreement in event of emergencies, mobilizations, national security reasons, or for other reasons outside the control of the United States. The terms of the IGSA shall continue during suspension as to the sale of LCFS credits generated prior to suspension and the retention by PSD of its percentage of such funds, and the use of the remaining percentage of such funds for NBSD Projects.
12. TERMINATION
 - 12.1. Process. This IGSA may be terminated unilaterally by either Party or mutually for its convenience upon 30 calendar days written notice to the POCs designated in this IGSA. However, the terms of the IGSA shall survive termination of the IGSA as to the sale of LCFS credits generated prior to termination, the retention by PSD of its percentage of such funds. Unspent funds from the portion of proceeds not retained by PSD shall be first used to complete any current Projects, any construction contract termination costs and other capital project termination costs, and the remainder shall be provided to the United States.
13. APPLICABLE LAW
 - 13.1. The Parties shall comply with all applicable Federal, State and local laws, Federal executive orders, and Federal rules and regulations applicable to its performance under this IGSA. If any federal statute expressly prescribes policies or requirements that differ from the terms and conditions of this IGSA, the provisions of the applicable federal statute shall govern. If there is a conflict between Federal law and State law or any local laws, Federal law will control.
 - 13.2. This IGSA is not governed by standard acquisition contracting methods of competitive bidding as delineated in the Federal Acquisition Regulations (FAR) and its supplements.
14. DISPUTES
 - 14.1. If the Parties cannot agree on interpreting or applying a material term of this IGSA, the Parties agree to engage in an effort to reach mutual agreement in the proper interpretation of this IGSA, including amendment or termination of this IGSA, as necessary, or by escalating the dispute within their respective organizations. The Parties will establish an executive escalation process to address concerns from either entity related to expeditious responses. The Parties agree to negotiate in good faith.
 - 14.2. As a condition precedent to a Party bringing any action for breach of this IGSA, that Party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute

resolution with a qualified third party acceptable to the Parties. Each party must pay an equal share of any costs incurred by use of a neutral third party.

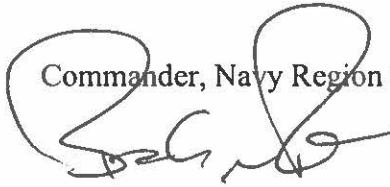
- 14.3. If any third-party dispute or litigation relates to, or potentially affects a Party's ability to perform under this IGSA, the Parties agree to promptly notify each other of such dispute or litigation. The existence of such a dispute or litigation shall not excuse the Parties from performance pursuant to this IGSA.
- 14.4. If any dispute between the Parties arising out of this IGSA requires consideration of the law, the rights and obligations of the Parties shall be interpreted and determined according to the substantive and procedural laws of the United States of America.
15. Liability. PSD agrees to defend and shall hold and save DON free and harmless from all damages, claims, suits of any nature that arise from or are incidental to this IGSA, except for damages due to the fault or negligence of the United States, NRSW or their employees, contractors, or agents. Nothing in this IGSA is intended, nor may it be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever, in any third person not a party to this IGSA.
16. Cooperation of Parties. The Parties recognize that it is essential to cooperate fully concerning the handling of information and provision of services contemplated by this IGSA. In connection with this IGSA, the Parties therefore agree to provide any data, information, and documentation reasonably necessary for the other Party to perform its responsibilities under the terms of this IGSA. Data shall be provided in format subject to use and disclosure restrictions contained in this IGSA.
17. Review for Legal Adequacy. Each Party to this IGSA acknowledges and agrees that this IGSA has been reviewed by each Party's respective legal counsel for legal adequacy
18. Waiver. No waiver of the breach of any of the covenants, terms, restrictions, or conditions of this IGSA by either Party shall be construed to be a waiver of any succeeding breach of the same or other covenants, terms, restrictions, or conditions of this IGSA. No delay or omission of either Party in exercising any right, power, or remedy, provided in the event of default, shall be construed as a waiver, or acquiescence to the default, or be construed as a waiver of a variation of any of the terms of this IGSA.
19. Severability. If any term or portion of this IGSA is held to be invalid, illegal, void, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this IGSA shall continue in full force and effect.
20. Signature in Counterparts. This IGSA, or any amendments or documents entered pursuant to it, may be executed in counterparts by each of the Parties. For purposes of enforcement, true copies of signatures shall be deemed to be original signatures.
21. Entire IGSA. It is understood and agreed that this IGSA, to include Attachment (1) incorporated here by reference, constitutes the entire IGSA between the Parties. In the event of an inconsistency between the provisions of this IGSA and Attachment (1),

the terms of this IGSA shall control.

Attachment (1): Term Sheet with Port of San Diego: Agreed Upon Rates
Attachment (2): PSD Major Procurement Milestones and Design Deliverables
Attachment (3): Initial In-Kind Project List for NBSD from LCFS Credit Sale

22. Effective Date. This IGSA takes effect on the day after the last Party signs.

Commander, Navy Region Southwest



RDML Brad Rosen

DATE: 9/20/2022

San Diego Unified Port District



Joe Stuyvesant

DATE: 9/20/22


APPROVED AS TO FORM
AND LEGALITY:



General Counsel

DATE: September 20, 2022

Assistant Secretary of the Navy (Energy, Installations & Environment)



Meredith Berger

DATE: September 20, 2022

ATTACHMENT (1): TERM SHEET WITH PORT OF SAN DIEGO: AGREED UPON RATES

Process for generation of revenue and distribution of proceeds:

- PSD's Broker will sell credits generated from NRSW FSEs. In order to maximize revenue generated from sale of LCFS credits, PSD may authorize Broker may advance funds for the purchase of Renewable Energy Certificates (RECs). This advance does not permit the Broker to recover any losses from such advances/sales beyond the value of credits sold.
- When revenue is generated from the sale of credits, PSD may authorize Broker to reimburse itself for funds advanced for the purchase of RECs. Remaining revenue shall be considered "Net Revenue."
- In accordance with Section 8.1 and 8.2 of the IGSA:
 - An amount equal to eighteen-and-one-quarter percent (18.25%) of the net revenue is for PSD to use to compensate Broker in accordance with LCFS regulations and as payment for PSD's services rendered under this IGSA.
 - The remaining eighty-one-and-three-quarters percent (81.75%) of the net revenue, shall be held by PSD and used by PSD for the planning, design and construction of the NBSD installation utility infrastructure improvements and other projects to provide more waterfront electrification and reduce air emissions in accordance with CARB regulations and by applicable law.

As an illustrative example only, the following chart demonstrates the financial terms set forth above:

- NRSW generates 10,000 credits with a value of \$800,000.
- Broker advances \$277,230 to purchase RECs which increase number of credits to 15,422, with a value of \$1,233,760 and sells such credits.
- From the \$1,233,760 proceeds, Broker reimburses itself the \$277,230 for the advance, leaving net revenue of \$956,530.
- PSD's 18.25% is \$174,567, from which it allows Broker to retain its commission pursuant to PSD/Broker agreement.
- Broker distributes remaining net revenue to PSD
 - Remainder of PSD's 18.25% is used in its discretion as payment for PSD's services rendered under this IGSA.
 - PSD retains 81.75% of net revenue, \$781,963, to be spent for the design and construction of the NBSD installation infrastructure projects.

ATTACHMENT (2): PSD Major Procurement Milestones and Design Deliverables

The following are the major procurement milestones and design deliverables for typical PSD projects like the NBSD projects addressed in this IGSA (PSD and Navy will coordinate and cooperate at each of these milestones, as well as, as needed between such milestones in order to effectuate the purposes of this IGSA):

1. Basis of Design (from 4.1.7) – provided by the Navy for project scoping to provide to design consultant. Navy to provide all the applicable UFCs pertaining to the project and access to the DOD specifications. Basis of Design includes but is not limited to relevant federal government contract (Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement) clauses, provisions, construction contract specifications, prohibited source restrictions, general and administrative requirements, and installation requirements, as well as other DOD-accepted construction technical codes and specifications and NBSD installation instructions.
2. 60% Design Submittal – Navy to provide written comments
3. 100% (pre-final) Design Submittal – Navy to provide written comments
4. Navy signoff if all comments from step 3, above, are addressed after 100% revisions.
5. Final plans signed off by PSD and submitted to PSD Procurement
6. PSD Procurement compiles contract documents
7. PSD advertises Project on Planetbids
8. PSD holds pre-bid conference (as well as process for requests for information) to address contractors' questions
9. PSD opens bids, validates, and selects lowest responsive bidder
10. PSD Board of Port Commissioners awards to contractor
11. PSD Procurement reviews contractor's insurance, bonds, etc. submitted by contractor
12. PSD issues Notice to Proceed with construction
13. Final Acceptance from Navy per 4.1.14 of this IGSA

ATTACHMENT (3): INITIAL IN-KIND PROJECT LIST FOR NBSD FROM LCFS CREDIT SALE**

NBSD Intentions: The intention of Naval Base San Diego is to use the money generated from the sale of Low Carbon Fuel Standard credits to modernize, build out, and expand electrical infrastructure from our fence-line to the piers. This will allow for increased shore power capacity to meet expected load growth, as well as for expansion of personally owned vehicle car charging, and installation of electrical resilience systems for high MDI facilities. It is NBSD's understanding that the scope of work described in this Attachment conforms with the 10 U.S.C. § 2679(f)(1) definition of "installation-support services" because the work describe are services, supplies, resources and support typically provided by a local government for its own needs

Utility Infrastructure at NBSD is generally approaching or past end of useful life. The installation is currently celebrating its centennial year, and the majority of the infrastructure is showing its age. Most of the electrical infrastructure for NBSD is 1970/1980 vintage. The expected life of most large electrical equipment is approximately 30 years, so the installation is about 10 years overdue for recapitalization on the majority of the 12 kV electrical distribution system. This tardiness on recapitalization is accruing a litany of damaged or inoperable systems that are putting the installation at risk for a catastrophic electrical casualty. A Utilities Master Plan study was conducted in 2018 that rated 8 out of 12 existing switching stations as either in "Poor" or "Very Poor" condition (with "Very Poor" being the worst option). NBSD electrical infrastructure is largely fully utilized and additional power draw is significantly constrained or not possible in its current configuration and age. In order to facilitate increased load from vehicle charging and planned ship number increase, NBSD must rebuild vital sections of electrical infrastructure.

Proposed Infrastructure Projects:

1. Construct Additional 69kV Feed: Estimated Cost is \$29M

- a. NBSD is approaching the maximum capacity (projected to exceed as soon as 2024) on our single 69kV electrical feeder from the utility. In order to meet the electrical demands presented by SLD-21 growth, the installation needs to construct a second 69kV utility feed which will essentially double the available power. Without the second electrical feed the installation will be forced to put some ships at berth on generator power to avoid brownouts, and the installation will not be able to expand vehicle charging capabilities.

2. Construct New Switch Station F: Estimated Cost of \$20M

- a. Switch Station F provides cold iron support/ship to shore power for piers 3 and 4 and the surrounding quay walls. It is also the distribution hub for surrounding facilities. The switch station is operating at below rated capacity due to a faulted feeder wire that cannot be repaired in house due to unsafe collapsed manholes. The project to replace the switch station would construct new manholes, run new feeders, and construct a new switch station that would be elevated to accommodate for projected climate change related sea level rise.

3. Construct New McCandless Switch Station: Estimated Cost is \$59M

- a. McCandless switch station provides power to the dry side (roughly half) of the installation. This switch station is beyond useful service life, and experienced an arcing incident in 2019 that has left the switch station unsafe to conduct maintenance on or operate the switching function. Therefore any time High Voltage Electricians need to work on or with the switching station, all of the dry side of NBSD loses power for the duration of the work. Loads served by McCandless Switch Station include Unaccompanied Housing, the installation's only Galley, high sensitivity training platforms, the installation's only child development center, regional Supervisory Control and Data Acquisition system for Ship to Shore power, a medical and dental clinic, and various MWR and quality of life facilities. Additional desired loads are extensive car charging network and additional virtual training.
4. Construct New Switch Station P7: Estimated Cost is \$21M
 - a. Switch Station P7 was built in 1975 and is operating at below rated capacity due to a feeder fault that cannot be repaired in house because of unsafe manholes. Switch Station P7 provides cold iron support/ship to shore power for Pier 7 and the surrounding quay wall, as well as the Mariners Skills Training Center (MSTC), LCSRON and the AEGIS Weapon Support facility. New switch station would provide reliable power and be constructed above the level of projected seawater rise.
5. Replace Feeder Lines and Repair/Replace Manholes: ROM Cost \$14M
 - a. Electrical feeder lines and associated manholes all over NBSD are in need of replacement. Degraded or inoperable feeder lines (like those for switch station P7 and F) cause a decrease in available capacity and loss of required redundancy. Manholes all over the installation are degraded, especially those on the waterfront that experience heavy crane traffic continuously. The damaged manholes experience water intrusion from high tides and become structurally unsafe to enter. This makes our local high voltage electricians unable to conduct maintenance and repair.
6. Repair/Replace Shore Power Skids: ROM Cost 11M
 - a. Shore power skids provide high quality power from the base electrical grid to the ships. They are continuously exposed to saltwater spray and the elements, therefore they require constant upkeep and refurbishment. Skid refurbishments and replacements are key to maintaining high quality power to the ships.
7. Construct New Switch Station R: ROM Cost \$35M
 - a. Switch Station R needs to be reconfigured to provide reliable electricity to the more power intensive ships. Current feeder lines are overloaded and need to be rebuilt in a new configuration to allow for more power to make it to piers 10, 12, and 13.
8. Construct Microgrid at B150 Port Operations: ROM Cost \$5M

- a. B150 Port Operations is the Regional Port Operations hub as well as the installations Emergency Operations Center. This facility does not meet the NAVFAC P-602 N+1 power requirements. The construction of a Solar PV, battery storage and microgrid controller would provide N+1 power resiliency, as well as construct the first sector hub for the NBSD Sector Microgrid (a high MDI resiliency microgrid)

9. Construct Vehicle Charging Hubs ROM Cost \$16M

- a. Vehicle charging is a rapidly expanding need that will only grow. NBSD plans to build solar PV/battery charging hubs to meet the needs of both the government vehicle fleet as well as the sailors in unaccompanied on-base housing.

This list of \$210M worth of work would still allow for significant follow on work on the Sector Microgrid and the electrical distribution system.

**This project list is subject to change, and should be considered the initial list of example projects

October 10, 2022

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825

Re: Request for Commission Approval of Capital Expenditures in Accordance with San Diego Unified Port District Act, Section 30.5, for Electrification Projects on Port-Adjacent Land at United States Naval Base San Diego to Benefit Commerce, Navigation and Environmental Stewardship, Funded by Navy's Low Carbon Fuel Standard Credits

Honorable California State Lands Commissioners:

The San Diego Unified Port District (Port) requests approval of the California State Lands Commission (Commission) for capital expenditures for electrification projects on Port-adjacent land on United States Naval Base San Diego (NBSD) in accordance with San Diego Unified Port District Act (Port Act). These projects will be funded by the sale of California Low Carbon Fuel Standard (LCFS) credits generated from NBSD and sold by the Port in accordance with an Intergovernmental Support Agreement (IGSA) executed between the Port and the U.S Navy. These NBSD projects will support increased and continued shore powering of Navy ships at berth avoiding use of diesel generators thereby reducing air emission in and around the Port and its local Portside communities, as well as the state. In addition, funds generated from the sale of LCFS credits under the IGSA will cover the costs of Port staff and also provide millions of dollars for electrification projects directly on Port tidelands, helping the Port achieve its Maritime Clean Air Strategy goals of "health equity for all" by reducing air pollution from Port-related activities, reducing impacts on the Portside communities, and continuing to promote commerce and navigation for the benefit if the entire state.

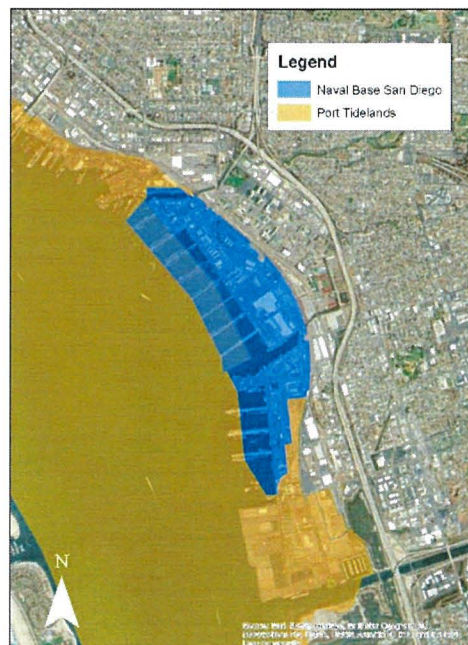
The IGSA and the resulting Navy and Port electrification projects represent a first-of-its-kind partnership that helps reduce air emission and improve air quality on and around San Diego Bay. It supports the state LCFS program, provides electrification projects to support the Navy and reduce air emission from activities at NBSD, as well as provide funds for Port electrification projects on Port-owned land. The Port's participation is consistent with the Port Act, serves statewide interests, and promotes commerce and navigation while also improving air quality by reducing emissions.

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Over the 10-year terms of the IGSA, the Port will generate LCFS credits from the Navy's existing electrification at NBSD and sell the credits on the LCFS market to generate funds expected to be more than \$200 million. The state's LCFS regulations require that funds from the sale of LCFS credits can only be used for further electrification projects. In accordance with the IGSA, 81.75% of the funds will be used by the Port to perform electrification projects on NBSD, and 18.25% percent will be retained by the Port to fully cover its costs and provide millions of dollars for Port electrification projects directly on Port tidelands. The Port is requesting Commission approval for the capital expenditure on the NBSD electrification projects on Port-adjacent lands on NBSD, funded by the Navy LCFS credits in accordance with the IGS, and state LCFS regulations.

The requested capital expenditures on adjacent lands meets the criteria set forth in Port Act, Section 30.5.

- (1) Under the IGSA, all projects on non-Port land will occur on NBSD property which is adjacent to the Port-owned tidelands and submerged lands.



California State Lands Commission

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- (2) As explained above, under the IGSA, the Navy's LCFS credits used to fund these Port-adjacent project expenditures are generated from electricity used at NBSD and the Navy electrification projects to be performed by the District must be located on NBSD. Therefore, adequate areas for these Navy electrification activities do not exist within Port Tidelands. On September 13, 2022, by Resolution No. 2022-104, the Port's Board of Port Commissioners authorized the Port's CEO to execute the IGSA with the Navy.
- (3) The Port-adjacent capital expenditure on NBSD electrification projects directly promotes commerce, navigation, and environmental stewardship in line with the Port's purposes set forth in Port Act, Section 87. The NBSD projects performed by the Port and completely funded by the sale of Navy LCFS credits support electrification on NBSD which helps reduce air emissions in the Port and Portside communities, and the entire state. Furthermore, under the IGSA, the Port will retain millions of dollars to be used on Port-owned land to further the Port's electrification goals, including the Port's Maritime Clean Air Strategy goal of "health equity for all" by reducing air pollution from Port-related activities, reducing impacts on the Portside communities, and continuing to promote commerce and navigation.

Furthermore, the requested capital expenditures on adjacent lands meets the criteria for Commission approval set forth in California Public Resources Code, Section 6701, et seq.

- (1) As described above, the requested expenditures are in accordance with the Port Act, including Sections 30.5 and 87. Not only will the NBSD electrification projects performed by the Port using LCFS credit proceeds promote Navy-related commerce and navigation and reduce air emission, under the IGSA, the Port will retain millions of dollars to be used on Port-owned land to further the Port's electrification goals, including the Port's Maritime Clean Air Strategy goal of "health equity for all" by reducing air pollution from Port-related activities, reducing impacts on the Portside communities, and continuing to promote commerce and navigation.
- (2) In accordance with the IGSA, the proceeds from the sale of Navy LCFS credits shall be paid to the Port and held by the Port solely for the purposes and uses under the IGSA – 81.75% to be used by the Port for electrification projects on Port-adjacent NBSD property and the remaining 18.25% to pay the Port's cost and be spent on Port electrification projects. Like all Port revenue, the proceeds from the sale of LCFS credits in accordance with the IGSA shall be held in the Port's general revenue fund which can only be used for approved Port purposes in accordance with the Port Act – which are statewide purposes authorized by the Port Act.

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- (3) The capital expenditure for Port-adjacent NBSD electrification projects in accordance with the IGSA are in the best interests of the state. The NBSD electrification projects will reduce air emission benefiting the Port and Portside communities as well as the entire state. The remaining funds will cover Port costs and be used for Port electrification projects which further the statewide interest of reducing air emissions, while continuing to promote commerce and navigation. Further, the state's LCFS program benefits from including the LCFS credits generated from existing Navy electrification and the future NBSD and Port electrification projects to be performed using the funds from the sale of LCFS credits.

Therefore, in accordance with the Port Act, Section 30.5, and California Public Resources Code, Section 6701, et seq., the Port requests the Commission approve the capital expenditure by the Port on Port-adjacent electrification projects on NBSD, funded by the sale of Navy LCFS credits by the Port in accordance with the IGSA. The Port requests the Commission make such approval at its first-available meeting.

Respectfully submitted,



J. Stuyvesant
Chief Executive Officer/Executive Director