

(R-2002-1641)

RESOLUTION NUMBER R- 296583

ADOPTED ON MAY 28 2002

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A COOPERATION AGREEMENT WITH THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO FOR THE CONSTRUCTION OF THE SAN YSIDRO BRANCH LIBRARY IN THE SAN YSIDRO REDEVELOPMENT PROJECT AREA; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AND AUTHORIZING ACCEPTANCE AND EXPENDITURE OF FUNDS.

WHEREAS, the Redevelopment Agency of the City of San Diego [Agency] is engaged in activities necessary to carry out and implement the Redevelopment Plan for the San Ysidro Redevelopment Project Area [Project Area]; and

WHEREAS, the City of San Diego has proposed the construction of a new facility for the San Ysidro Branch Library [Library] in the Project Area that will primarily benefit the Project Area; and

WHEREAS, the Agency has agreed to contribute up to \$2.5 Million for design and construction of the proposed Library; and

WHEREAS, the Agency and the City propose to enter into a Cooperation Agreement setting forth the terms and conditions for the Agency's contribution of funds; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Council finds and determines that construction of the Library in the Project Area for which the Agency proposes to contribute \$2.5 million is of benefit to the Project Area, that the Council finds and determines that no other reasonable means for financing the Agency's contribution of the proposed Library is available to the community, and that the Council finds and determines that the proposed construction will assist in eliminating one or more blighting conditions inside the Project Area, as described in Exhibit A.

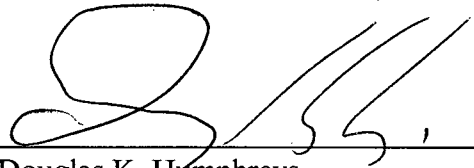
2. That the Council finds and determines that construction of the proposed Library is consistent with the Five-Year Implementation Plan for the San Ysidro Redevelopment Project, as adopted and thereafter amended by the Agency pursuant to California Health and Safety Code section 33490.

3. That the Council authorizes the City Manager, or designee, to execute, for and on behalf of the City, a Cooperation Agreement with the Agency for the contribution of Agency funds under the terms and conditions set forth in the Cooperation Agreement, attached hereto as Exhibit B. A copy of the Cooperation Agreement, when executed, shall be placed on file in the office of the City Clerk as Document No. RR- 296583.

4. That the Council states for the record that the Environmental Impact Report SCH No.95-101015 (adopted April 2, 1996 by Council Resolution No. R-287149) and Mitigated Negative Declaration (adopted May 12, 1998 by Council Resolution No. R-290105) covering this activity has been reviewed and considered prior to approval of the Library, and directing the City Clerk to file a Notice of Determination in accordance therewith.

5. That the Council authorizes the City Clerk to deliver a copy of this resolution to the Executive Director and members of the Agency.

APPROVED: CASEY GWINN, City Attorney

By 

Douglas K. Humphreys
Deputy City Attorney

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Or.Dept:REDV
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EXHIBIT A

FINDINGS

1. FINDINGS OF BENEFIT

The proposed San Ysidro Branch Library Project [the Branch Library] for which the Redevelopment Agency of the City of San Diego [Agency] proposes to pay, will benefit the San Ysidro Redevelopment Project Area [the Project Area] and the immediate neighborhood in which the Branch Library is located in that:

- a. The existing 4,089 square foot San Ysidro Branch Library is outdated and too small to meet current community needs, and it does not have any dedicated parking spaces. The proposed Branch Library provides for a new 25,500 square foot library to meet the current and growing needs of the Project Area and its immediate neighborhood. The Branch Library will be located in the Project Area and will provide additional services and facilities to the residents and businesses of the Project Area and surrounding community including: a formal education and support center for children; a family literacy program; a "Door to Learning Program" for preschoolers; a computer lab with computers and Internet access available for use; community meeting room space for public programs, meetings, and workshops, or private use; audiovisual facilities; and other related areas. The Branch Library contemplates the expansion of special collections including a Business Career and College Exploration Center, foreign language materials, and resources relating to San Ysidro and the Border region's history. The Branch Library space will permit greater access by library patrons to the existing and expanded collections.
- b. The Branch Library site is located in the Las Americas site, at the corner of Camino De La Plaza Boulevard and Sipes Drive. Based on projected increased patronage (Exhibit A-1), the Branch Library will serve as a key destination in the Shops at Las Americas, bringing additional library users and potential business customers into the shopping center, strengthening the generation of sales tax revenues for the City.
- c. The Branch Library will enhance the area for residents and nearby users, and will, through the investment of public and private dollars and the addition of public services, encourage development of and investment in the surrounding properties.

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2. FINDINGS OF NO OTHER REASONABLE MEANS OF FINANCING

The Agency proposes to contribute up to \$2.5 million to the Branch Library, pursuant to the terms and conditions set forth in the Cooperation Agreement between the City and the Agency. There are no other reasonable means available to the community for financing the portion of the Branch Library for which the Agency proposes to pay, in that:

- a. The Fiscal Year 2003 Budget for the City of San Diego decreased by \$289 million over Fiscal Year 2002. The overall decrease is attributable to a decrease in the Capital Improvement Program [CIP] for projects using non-general fund revenue sources. Increases to the General Fund were required for negotiated labor agreements, public safety requirements and annualized costs of operating new facilities. Capital projects remain unfunded due to limited funds.
- b. The City's CIP budget is funded primarily with water and sewer fees, developer impact fees, grant funds, enterprise funds revenues, Facility Benefit Assessment funds, and TransNet funds. By law, these funds have restricted use and must provide for sewer upgrades of the City's Metropolitan and Municipal Wastewater System, water projects, freeway improvements, lane widening, storm water projects, and installation and improvement of Citywide traffic signals.
- c. The CIP budget and the Agency's Budget were developed in accordance with City and Council Policy, and each project activity was evaluated and incorporated in the respective budgets. Projects are funded based on need and the availability of appropriate funding sources. The City's CIP Proposed for Fiscal Year 2003 Budget totals \$373.4 million, a decrease of \$309.3 million over Fiscal Year 2002.
- d. Although sustained growth is anticipated in Fiscal Year 2003, local property tax apportionments have been permanently diminished as a result of the Fiscal Year 1993 and 1994 California state budget actions. Despite the state's ongoing economic recovery, the magnitude of property tax revenue loss to the City — over \$311.2 million since Fiscal Year 1991 — has severely impacted the City's ability to fund needed improvements to General Fund departments such as the Library Department and the Park and Recreation Department. The City continues efforts to change traditional ways of conducting business and generating revenues, however these strategies are long term commitments and do not provide immediate revenue sources for current requirements.

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- e. Maintaining and enhancing the services that the City provides to citizens, residents, and visitors continues as one of the City's primary core values. However, until new and alternative funding sources are provided, a variety of capital needs will remain unfunded.
- f. The City will accept an estimated \$3.2 million land (air rights parcel and parking easement) donation from International Gateway Associates, LLC for the construction of the Branch Library per the schematic design by KMA Architecture and Engineering for a 28,880 square foot (25,500 square feet of interior space) library building. The land will be deeded to the City for purposes of developing the Branch Library, contingent on City and Agency acquiring and/or providing complete funding resources for the Branch Library.
- g. The Agency proposes to issue Tax Allocation Bonds for the San Ysidro Redevelopment Project Area. These tax-exempt bonds will be issued for the purpose of financing improvements in the Project Area, including publicly owned facility improvements.
- h. The City is making best efforts to secure State Proposition 14 Library Grant funds to fund project costs in the amount of approximately \$9,546,000, or 65% of the total project costs.

3. FINDINGS OF ELIMINATION OF BLIGHT

The Agency's contribution of funds for the acquisition of land or the cost of buildings, facilities, structures or other improvements for the Branch Library will assist in the elimination of one or more blighting conditions inside the San Ysidro Redevelopment Project area, in that:

- a. The existing San Ysidro Library, built in 1924 (partially remodeled in 1984), is partially air conditioned; its major building systems are old and not energy efficient; it has an electronic infrastructure that cannot support more computer/electronic equipment; it has no onsite parking; and it is not in total compliance with American with Disabilities Act (ADA) codes. Further, based upon library building size and design standards provided by the City of San Diego Library Department, the current facility provides 0.13 square feet per capita, far below the recommended American Library Association Standard for Small Libraries of 0.60 square feet per capita, which could be satisfied with the development of the Branch Library. The development of the Branch Library will replace the outdated structure with a new facility and new parking.

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- b. The Branch Library will assist in eliminating factors that prevent or substantially hinder the economically viable use or capacity of nearby properties by replacing an existing structure of substandard design and capacity with a building to exceed the recommended standard, adding parking, adding conference rooms and facilities that can be rented to private business, and adding computer lab facilities and other library resources in a setting that will effectively accommodate their use.
- c. The Branch Library will assist in eliminating factors that prevent or substantially hinder the economically viable use or capacity of nearby properties by increasing the available public parking in the immediate area by 152 additional spaces.
- d. The Branch Library will assist in eliminating factors that prevent or substantially hinder the economically viable use or capacity of properties within the Redevelopment Project area by upgrading improvements in the neighborhood including landscaping, library, parking, and other public improvements.
- e. The Branch Library will assist in eliminating blight that prevents or substantially hinders economic development by creating a destination for consumers in the Shops at Las Americas and San Diego Factory Outlet Center, based on the increased library patronage described in Exhibit A-1. Based on visitor statistics for the recently completed Weingart/City Heights Branch Library (located within the City Heights Redevelopment Project Area), the estimated annual patronage at the San Ysidro Library will increase from approximately 80,000 to 194,000, an increase of 114,000 visits to the library per year, increasing shopping patronage. This projection is based upon the assumption that Library patronage will increase by approximately one-third the percentage increase in the size of the facility. The library's hours (Monday – Thursday, 9:30 a.m. to 8:00 p.m.; Friday – Saturday, 9:30 a.m. to 5:30 p.m.; Sunday, 1:00 p.m. to 5:00 p.m.) will complement the hours of businesses and shops within the Shops at Las Americas and San Diego Factory Outlet Center. In addition, the proposed 100-seat community room will serve as a multi-purpose room available for both day and night events.

4. FINDINGS OF CONSISTENCY WITH IMPLEMENTATION PLAN

The Agency's contribution of funds for the acquisition of land or the cost of buildings, facilities, structures or other improvements for the Branch Library is consistent with the Second Five-Year Implementation Plan [Implementation Plan] for the San Ysidro Redevelopment Project Area adopted by the Agency on July 10, 2001, pursuant to Health and Safety Code section 33490, in that:

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- a. The Branch Library will assist in meeting the goal and objective stated in the Implementation Plan to "improve, promote and preserve the positive neighborhood characteristics in San Ysidro, while correcting physical and economic deficiencies."
- b. The Branch Library will assist in the elimination of blighting conditions, all of which further the objectives of the Implementation Plan.
- c. The Branch Library will assist in meeting the goal and objective stated in the Implementation Plan to "improve, support, and promote the growth and vitality of the Project Area's business environment and address the commercial, service, and employment needs of the Project Area" by providing computer facilities to individuals seeking training, employment, or business information, by providing meeting and event facilities, and by attracting additional consumers to the Shops at Las Americas and San Diego Factory Outlet Center.
- d. The Branch Library will assist in meeting the goal and objective stated in the Implementation Plan to "enhance infrastructure facilities" by developing a new public facility, which improves the community and supports public safety, health, and local vitality.
- e. The Branch Library will assist in meeting the goal and objective stated in the Implementation Plan to "Promote San Ysidro's international gateway" by attracting library patronage to the Las Americas project site at the border.

Exhibit A-1

**Proposed San Ysidro Library
Projected Library Patronage**

	Weingart/City Heights Branch Library		Proposed San Ysidro Library	
	Library Square Feet	Actual Annual Patrons	Library Square Feet	Annual Patrons
Before Expansion	3, 875	151, 600	4,089	80,111 ⁽¹⁾
After Expansion	14, 850	295,289	25,500	193,660 ⁽²⁾
Difference	10,975	143,689	21,411	113,549
% Change	283.23%	94.78%	423.62%	141.74%

(1) Actual Patronage

(2) Projected Patronage

Source: San Diego Library: San Diego City Redevelopment Program

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**COOPERATION AGREEMENT BETWEEN THE
REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO
AND THE CITY OF SAN DIEGO
FOR THE
SAN YSIDRO BRANCH LIBRARY**

This Cooperation Agreement for the San Ysidro Branch Library [Agreement], effective May 28, 2002, is entered into by and between the Redevelopment Agency of the City of San Diego, a public body corporate and politic [Agency] and the City of San Diego, a municipal corporation [City] regarding the funding for construction of a branch library facility in the San Ysidro Redevelopment Project Area [the Branch Library].

RECITALS

Agency and City enter into this Agreement in acknowledgment of the following facts:

- A. The Redevelopment Plan for the San Ysidro Redevelopment Project Area [the Project] was approved and adopted by the City Council by Ordinance No. O-18295 (New Series) on April 16, 1996.
- B. Agency approved and adopted the Second Five-Year Implementation Plan for the Project by Resolution number R-03352 adopted on July 10, 2001, providing for the implementation of certain activities necessary or appropriate to carry out the Redevelopment Plan.
- C. One of the projects proposed in the Project is the expansion and improvement of library and library services within the San Ysidro Redevelopment Project Area [the Project Area].
- D. City and Agency desire to implement the expansion and construction of the Branch Library through funds to be contributed by City, International Gateway Associates, LLC [Donor], and Agency. Donor has agreed to donate air rights and associated parking for a new 28,880 square foot (25,500 square feet of interior space) second-floor library within the Las Americas project. Donor has conditioned its contribution of approximately \$3.2 million worth of land and parking toward the development of the proposed library upon acquiring all other funding resources required for the proposed library. The interior schematic design includes space for a formal education and support center for children; a family literacy program; a "Door to Learning Program" for preschoolers; a computer lab

with computers and Internet access available for use; community meeting room space for public programs, meetings, and workshops, or private use; audiovisual facilities; and other related areas. Also, the proposed library project contemplates the expansion of special collections including a Business Career and College Exploration Center, foreign language materials, and resources relating to San Ysidro and the Border region's history.

- E. The estimated cost of the project is \$14,686,000. Donor, through a Grant Deed to City, has agreed to contribute \$3.2 million worth of land and parking for the Branch Library, with a reversionary clause included in the event City does not acquire sufficient funding resources for the Branch Library. City has previously authorized the expenditure of \$316,000 of CIP funds for the Branch Library. Agency proposes to contribute up to \$2.5 million for the Branch Library.
- F. City is making best efforts to secure State Proposition 14 Library Grant funds to fund project costs in the amount of approximately \$9,546,000, or 65% of the total project costs.
- G. Agency is taking all necessary actions to issue tax allocation bonds for the Project Area, a portion of which proceeds will be used to satisfy the Agency's obligation under this cooperation agreement. Agency's obligation under this agreement is subject to the successful completion of the bond issuance process, and receipt of bond proceeds.
- H. Pursuant to section 33679 of the California Community Redevelopment Law (Health & Safety Code §§ 33000 et seq.), Agency and the City Council each held a public hearing on the proposed payment by Agency toward the cost of design and construction of the Branch Library, after having duly noticed the hearing and having made copies of this Agreement and a summary of the facts supporting the proposed transaction available for public inspection and comment.
- I. Pursuant to section 33445 of the Community Redevelopment Law, Agency is authorized to pay for all or part of the costs for land acquisition, installation, and construction of a publicly owned facility in the Project area if the City Council finds that the construction is of benefit to the Project area or to the immediate neighborhood, that no other reasonable means of financing the improvements is available to the community, that payment of funds for the costs of the project will assist in the elimination of one or more blighting conditions inside the Project area, and that the project is consistent with the implementation plan adopted pursuant to Section 33490. Following the public hearings by Agency and City Council and through their respective resolutions, Agency and City Council made the required determinations and findings and approved this Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference.

- J. Agency and City desire to enter into this Agreement to provide for the contribution of up to \$2.5 million by Agency to City for the Branch Library.

In consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Agency and City agree as follows:

ARTICLE 1: SCOPE OF AGREEMENT

- 1.1 **Purpose.** The purpose of this Agreement is to effectuate the Project by providing funding for building the proposed San Ysidro Branch Library.
- 1.2 **Agency's Contribution.** Agency agrees to provide funds in an amount not to exceed \$2.5 million for the design and construction costs for the Branch Library. Agency and City agree that Agency funds will not be used for the operation or management of the library, and will only be used for project design and construction costs for the Branch Library, and only for those purposes that are eligible to be funded with tax-exempt bond proceeds. Agency contribution is subject to the successful receipt by the City of all other sources of funding for the Branch Library. No contribution by the Agency is required until the City and Agency each have reasonable evidence that all sources of project funding have been approved and received by City.
- 1.3 **City's Obligation.** City agrees to secure all other funding for the Branch Library project costs.
- 1.4 **Scope of Participation.** The parties acknowledge and agree that City bears sole responsibility for the design, land acquisition, construction, construction management, and operation of the Branch Library. Agency's participation in the Branch Library is limited to the contribution of funds as set forth in this Agreement. This contribution by Agency does not create any obligation on the part of Agency to participate in any additional funding, construction, development, or operations for the Branch Library.

ARTICLE 2: AGENCY CONTRIBUTION OF FUNDS

- 2.1 **Funding Schedule.** Agency agrees to disburse funds to City for the Branch Library, in an amount not to exceed \$2.5 Million, based on a funding schedule to be provided to Agency by City. City agrees to provide Agency with revised funding schedules as new information becomes available.
- 2.2 **Funding Notification.** City acknowledges that access to Agency funding may

require notice of up to three days to allow for invested bond proceeds to be made available to City for eligible project expenditures.

- 2.3 **Total Contribution Not To Exceed \$2.5 Million.** The total amount of Agency's contribution shall not exceed \$2.5 million.
- 2.4 **Funding Sources.** Agency is taking all actions to issue tax allocation bonds for the Project Area, proceeds of which are anticipated to fund the obligation stated in this Agreement. The Agency reserves the right to substitute other available and appropriate sources of funding to make best use of resources at its disposal. The Agency's obligation under this agreement is contingent on the issuance of tax allocation bonds in the Project Area, and the receipt by City of all other sources of the Branch Library project funding.
- 2.5 **Progress Reports.** City agrees to regularly communicate with Agency regarding the progress of the funding sources for and the construction of the Branch Library. City agrees to provide Agency with any documentation requested by Agency regarding the expenditure of funds for the Branch Library.

ARTICLE 3: INDEMNIFICATION

3.1 **Indemnification.** City agrees to defend, indemnify, protect, and hold Agency and all of its officers, agents, and employees harmless from any and all actions, suits, proceedings, liability, claims, demands for, damages or injuries to any person, including injury to City's officers, agents, and employees, and all claims which arise from or are directly connected with the negligence or failure to perform services or other obligations of this Agreement or any agreement entered into to implement this Agreement, or are caused or claimed to be caused by the negligence of City, its officers, agents, or employees, and all expenses of investigating and defending against same; provided, however, that this indemnification and hold harmless shall not include any claim arising from the established sole negligence or willful misconduct of Agency, its officers, agents, or employees.

3.2 **No Joint and Several Liability.** The parties acknowledge and agree that as stated in Government Code section 895, this Agreement is an agreement between public entities designed to implement the disbursement or subvention of public funds from one entity to the other and, as such, is not subject to the joint and several liability provisions of Government Code sections 895 to 895.8.

ARTICLE 4: GENERAL PROVISIONS

4.1 **Default.** If either party fails to perform or adequately perform an obligation required by this Agreement, that party's failure constitutes a default. If the defaulting party fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from the

non-defaulting party specifying the nature of the default, the non-defaulting party may immediately cancel and/or terminate this Agreement, and terminate each and every right of the defaulting party, and any person claiming any rights by or through the defaulting party under this Agreement. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

4.2 Entire Agreement. This Agreement constitutes the entire Agreement between Agency and City.

4.3 No Waiver. No failure of either City or Agency to insist upon strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach, shall constitute a waiver of any such breach of such covenant, term, or condition.

4.4 No Third Party Beneficiary. The parties agree that this Agreement is made solely for the benefit of Agency and City, and no third person or entity shall be deemed to have any rights or remedies hereunder.

4.5 Amendments. All amendments or modifications to this Agreement shall be in writing and executed by both parties.

4.6 California Law. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

4.7 Institution of Legal Actions. In addition to any other legal rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in a court of competent jurisdiction in the County of San Diego, California.

4.8 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

4.9 Signing Authority. The representative signing on behalf of each party represents that authority has been obtained to sign on behalf of the party.

IN WITNESS WHEREOF, this Agreement is executed by the Redevelopment Agency of the City of San Diego by and through its Executive Director, or designee, pursuant to the Agency's delegation of authority in Resolution No. _____ authorizing such execution, and

this Agreement is executed by the City of San Diego by its Manager or designee, pursuant to the City's delegation of authority in Resolution No. _____ authorizing such execution, and provided that the City Auditor first furnishes a certificate demonstrating that sufficient funds are on deposit in the City Treasury for both City and Agency obligations for this purpose.

Dated this _____ day of _____, 2002.

THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

By _____
Hank Cunningham
Assistant Executive Director

Dated this _____ day of _____, 2002.

THE CITY OF SAN DIEGO

By _____
Bruce Herring
Deputy City Manager

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2002.

CASEY GWINN, General Counsel
Redevelopment Agency of
The City of San Diego

By _____
Doug Humphreys
Deputy General Counsel

CASEY GWINN, City Attorney
The City of San Diego

By _____
Kelly Salt
Deputy City Attorney