

(O-2003-91 COR. COPY)

ORDINANCE NUMBER O-19141 (NEW SERIES)

ADOPTED JANUARY 7, 2003

AN ORDINANCE APPROVING THE SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE UNITED STATES OF AMERICA ADOPTING A DEVELOPMENT PLAN AND URBAN DESIGN GUIDELINES FOR THE REDEVELOPMENT OF THE NAVY BROADWAY COMPLEX.

WHEREAS, UNITED STATES OF AMERICA [Navy] is the owner of that certain real property consisting of approximately 16 acres located within the Centre City community planning area; and

WHEREAS, the City of San Diego [City], a charter city, is authorized by its charter and its home rule power to enter into agreements with persons and entities having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process; and

WHEREAS, the parties entered into the Agreement Between the City of San Diego and the United States of America Adopting a Development Plan and Urban Design Guidelines for the Redevelopment of the Navy Broadway Complex [Agreement] on December 2, 1992, on file in the office of the City Clerk as Document No. OO-17858, relating to the above-described real property in order to achieve the development of private land uses together with the provision of public services, public uses, and urban infrastructure all in the promotion of the health, safety, and general welfare of the City of San Diego; and

WHEREAS, subsequent to 1992, the City of San Diego, Centre City Development Corporation, County of San Diego, San Diego Unified Port District and Navy prepared and endorsed the North Embarcadero Alliance Visionary Plan dated December 1998 [Visionary Plan]; and

WHEREAS, on December 3, 2001, the Council of the City of San Diego approved an amendment to section 4.3 of the Agreement [First Amendment], on file in the office of the City Clerk as Document No. O-19016, that extended the expiration date of the Agreement for one year, until January 1, 2003; and

WHEREAS, the parties desire to further amend section 4.3 of the Agreement [proposed Second Amendment] to keep the Agreement in full force and effect for a period of time deemed appropriate to prepare and consider a third Amendment to Agreement which would bring the Agreement into consistency, if and as necessary, with the Visionary Plan; and

WHEREAS, on November 21, 2002, the Planning Commission of the City of San Diego, held a public hearing on the proposed Second Amendment to the Agreement; and

WHEREAS, the Planning Commission of the City of San Diego, after holding the hearing in which all persons desiring to be heard were heard, and pursuant to the public hearing, the Planning Commission found that the Second Amendment is consistent with the Progress Guide and General Plan and the Centre City Community Plan and recommended approval of the Second Amendment to the Agreement; and

WHEREAS, the Council of the City of San Diego held a public hearing on the proposed Second Amendment to the Agreement in which all persons desiring to be heard were heard;

NOW, THEREFORE,

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

Section 1. That Council finds and determines the facts stated above to be true.

Section 2. The Council further finds with respect to the Second Amendment to the Agreement that:

A. It is consistent with the objectives, policies, programs and uses specified in the Progress Guide and General Plan and the Centre City Community Plan, as well as other applicable policies and regulations of the City of San Diego.


B. It will not be detrimental to the public health, safety and general welfare.

C. It will promote the orderly development of property or the preservation of property values in accordance with good land use practice.

Section 3. The Council approves the Second Amendment to the Agreement between the United States of America and the City of San Diego and authorizes and directs the City Manager to execute the Second Amendment in the name of the City of San Diego not later than fifteen days following the effective date of this ordinance. The City Clerk is directed to record the Second Amendment to the Agreement and this ordinance with the County Recorder of San Diego County within ten days after its final execution.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

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11/18/02
5/27/03 COR.COPY
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SECOND AMENDMENT TO AGREEMENT
BETWEEN THE CITY OF SAN DIEGO AND
THE UNITED STATES OF AMERICA
ADOPTING A DEVELOPMENT PLAN AND URBAN
DESIGN GUIDELINES FOR THE REDEVELOPMENT
OF THE NAVY BROADWAY COMPLEX

THIS SECOND AMENDMENT is entered into between THE CITY OF SAN DIEGO, a municipal corporation [City], and the UNITED STATES OF AMERICA by and through the Southwest Division, Naval Facilities Engineering Command, acting through its Executive Director, Broadway Complex [Real Estate Contracting Officer], hereinafter referred to as the "Navy".

1. RECITALS. This Second Amendment to Agreement [Second Amendment] is entered into with reference to the following facts:

1.1 On December 2, 1992, City and Navy entered into the Agreement Between the City of San Diego and the United States of America Adopting a Development Plan and Urban Design Guidelines for the Redevelopment of the Navy Broadway Complex [Agreement].

1.2 Section 4.3 of the Agreement provides, in part, that, "In the event that no Developer Lease is recorded by January 1, 2002, then this Agreement shall be of no force and effect."

1.3 On December 3, 2001, the City Council of the City of San Diego approved an amendment to the Agreement [First Amendment] that extended the expiration date of the Agreement for one year. As approved by the First Amendment to the Agreement, section 4.3 of the Agreement reads, "In the event that no Developer Lease is recorded by January 1, 2003, then this Agreement shall be of no force and effect."

1.4 Navy has not yet entered into any Developer Lease with respect to the Agreement.

1.5 Subsequent to December 2, 1992, City, Centre City Development Corporation, County of San Diego, San Diego Unified Port District and Navy prepared and endorsed the North Embarcadero Alliance Visionary Plan dated December 1998 [Visionary Plan].

2. PURPOSE OF SECOND AMENDMENT. The purpose of the Second Amendment is to amend section 4.3 of the Agreement to keep the Agreement in full force and effect for a period of time deemed adequate to bring the Agreement into consistency with the Visionary Plan, if and as necessary.

3. CONTENT OF SECOND AMENDMENT. Section 4.3 of the Agreement, with respect to the sentence recited in Section 1.2 of this Second Amendment, is amended to read as

follows, "In the event that no Developer Lease is recorded by January 1, 2007, then this Agreement shall be of no force and effect."

IN WITNESS WHEREOF, this Second Amendment has been executed by City and Navy.

THE CITY OF SAN DIEGO

THE UNITED STATES OF AMERICA

By _____

By _____

Title City Manager

Title _____

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

Elisa A. Cusato
Deputy City Attorney

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