

**COOPERATION AGREEMENT
FOR PAYMENT OF COSTS ASSOCIATED WITH
CERTAIN REDEVELOPMENT AGENCY FUNDED PROJECTS**

THIS COOPERATION AGREEMENT (this “**Agreement**”) is entered into this _____ day of _____, 2011, by and between the CITY OF SAN DIEGO, a municipal corporation (the “**City**”), and the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic (the “**Agency**”, as further defined in Section I of this Agreement).

RECITALS

The City and the Agency (individually, a “**Party**” and collectively, the “**Parties**”) enter into this Agreement with reference to certain defined terms set forth in Section I of this Agreement, and with reference to the following facts and circumstances:

A. The City Council of the City of San Diego (the “**City Council**”) has adopted a redevelopment plan, as amended from time to time (individually, a “**Redevelopment Plan**” and collectively, the “**Redevelopment Plans**”), for each of the seventeen (17) redevelopment project areas (individually, a “**Project Area**” and collectively, the “**Project Areas**”) presently existing within the City. The City’s Redevelopment Department administers redevelopment activities within eleven (11) of the Project Areas, as follows: Barrio Logan, City Heights, College Community, College Grove, Crossroads, Grantville, Linda Vista, Naval Training Center, North Bay, North Park and San Ysidro. The Centre City Development Corporation, Inc. (“**CCDC**”) administers redevelopment activities within two (2) of the Project Areas, as follows: Centre City and Horton Plaza. The Southeastern Economic Development Corporation, Inc. (“**SEDC**”) administers redevelopment activities within four (4) of the Project Areas, as follows: Central Imperial, Gateway Center West, Mount Hope and Southcrest (each of which is subject to the pending merger into a single project area, to be known as the Southeastern San Diego Merged Project Area).

B. The adoption of the Redevelopment Plans has resulted, and will continue to result, in the allocation to the Agency of certain property-based taxes generated from the Project Areas (the “**tax increment**”) in accordance with the California Community Redevelopment Law, set forth at California Health and Safety Code Section 33000 et seq. (the “**Community Redevelopment Law**”). The Agency has used, and will continue to use, tax increment for the purpose of “redevelopment” as defined in the Community Redevelopment Law.

C. The Redevelopment Plans are intended, among other things, (i) to provide for the construction and installation of necessary public infrastructure and facilities, (ii) to facilitate the repair, restoration and replacement of existing public facilities, (iii) to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Areas, (iv) to increase, improve and preserve the supply of low and moderate income housing in the community (i.e., the City), some of which may be located or implemented outside the Project

Areas, and (v) to enable the Agency to take all other necessary actions to implement the Redevelopment Plans for the respective Project Areas and to use tax increment to accomplish the goals and objectives of the respective redevelopment projects.

D. The Agency has adopted a Five-Year Implementation Plan for each of the Project Areas, as amended from time to time (individually, an “**Implementation Plan**” and collectively, the “**Implementation Plans**”), with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization. To implement the programs and activities associated with each goal, the Agency has made redevelopment funding commitments and budget allocations based on estimated net available tax increment and debt financing structures.

E. Pursuant to California Health and Safety Code Section 33220, certain public bodies, including the City, may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. The projects associated with this Agreement (individually, a “**Project**” and collectively, the “**Projects**”) are listed in the Schedule of Projects (as defined below). The programs and activities that comprise the Projects include, but are not limited to, administration, acquisition and disposition of property, development of design criteria, design, planning, feasibility studies, permitting, preparation of construction bid documents, financial and economic analysis, financing, new construction, rehabilitation of existing improvements and structures, remediation of hazardous materials, elimination or removal of blighting conditions, and monitoring and enforcement of affordable housing covenants and other requirements pursuant to applicable law. To carry out the Projects in accordance with the objectives and purposes of the Redevelopment Plans and the Implementation Plans, the Agency desires the City’s assistance and cooperation in the implementation and completion of the Projects. The City agrees to aid the Agency and cooperate with the Agency to implement the Projects expeditiously in accordance with the Redevelopment Plans and the Implementation Plans and to undertake and complete all actions necessary or appropriate to ensure that the objectives of the Redevelopment Plans and the Implementation Plans are fulfilled expeditiously, and in any event within the time effectiveness of the Project Areas.

F. By approving and entering into this Agreement, the Agency has approved certain obligations, including the pledge of Net Tax Increment (as defined below) from the Project Areas, to pay for the Projects. In the event that Net Tax Increment is insufficient and additional funds are required in order to make the Agency payments to the City required by this Agreement, the Agency, by approving and entering into this Agreement, also has approved the pledge of, and shall make payments from, (i) Other Revenues (as defined below) received by the Agency and (ii) Available Fund Balances (as defined below). The Agency’s pledge of Net Tax Increment, Other Revenues and Available Fund Balances, in the aggregate, pursuant to this Agreement shall constitute obligations to make payments authorized and incurred pursuant to the Community Redevelopment Law, including, without limitation, California Health and Safety Code Sections 33334.2, 33445 and 33679 and other applicable statutes.

G. The purpose of this Agreement is to facilitate the timely implementation and completion of the Projects and to provide a funding mechanism necessary to effectuate the

completion of the Projects with Net Tax Increment, and if required because Net Tax Increment is insufficient, then Other Revenues received by the Agency and Available Fund Balances, in this current fiscal year and forthcoming fiscal years. The Agency desires to utilize the City's substantial capital project-related resources and staff to deliver the Projects.

H. The City Council and the Agency have adopted resolutions determining that the use of Agency redevelopment funding for land acquisition costs and installation and construction costs involved in the publicly-owned buildings, facilities, structures, or other improvements included in the Projects is in accordance with California Health and Safety Code Section 33445 and other applicable law. Such resolutions are based on the authority of the Agency, with the consent of the City Council, to pay all or part of the value of the land for, and the cost of the installation and construction of, any building, facility, structure, or other improvements which are publicly owned and located within a Project Area.

I. The City Council and the Agency also have adopted resolutions finding that the use of the Agency's low and moderate income housing funds for the Projects that include low and moderate income housing and are located outside of the Project Areas is in accordance with California Health and Safety Code Section 33334.2(g)(1) because the use of such funds will be of benefit to the Project Areas from which such funds are derived.

J. The obligations of the Agency under this Agreement shall constitute a current, unconditional indebtedness of the Agency for the purpose of carrying out the Redevelopment Plans for the Project Areas.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, including the mutual promises and covenants contained herein, the Parties mutually agree as follows:

I. INTRODUCTORY PROVISIONS; DEFINITIONS

1. The Recitals set forth above (a) are an integral part of this Agreement, (b) set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement, and (c) are hereby incorporated by reference into this Agreement.

2. Except as otherwise expressly set forth in this Agreement, the term "**Agency**" as used in this Agreement shall refer to (i) the Agency, and (ii) any lawful successor entity or entities of the Agency or to any of the Agency's powers and rights pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, including without limitation any entity or entities established by law to carry out any of the Redevelopment Plans for the Project Areas or to expend tax increment or pay indebtedness of the Agency to be repaid in whole or part with tax increment pursuant to California Health and Safety Code Section 33670 et seq. or any applicable constitutional provision, statute or other provision of law now existing or adopted in the future.

3. In addition to terms defined elsewhere in the Recitals and this Agreement, the following phrases shall be defined as follows:

(1) **“Net Tax Increment”** shall mean and include tax increment as defined or provided for in any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, and allocated to the Agency.

(2) **“Other Revenues”** shall mean any revenue source other than tax increment generated from the Project Areas, programs or assets of the Agency pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future.

(3) **“Available Fund Balances”** shall mean any equity, not legally or contractually restricted, in the Agency’s funds.

(4) **“Schedule of Projects”** shall mean the schedule of Projects intended to be carried out in accordance with and subject to the provisions of this Agreement, which schedule is attached hereto as Exhibit 1 and incorporated herein by this reference.

(5) **“Payment Schedule”** shall mean the schedule of payments for the Projects that are intended to be carried out in accordance with and subject to the provisions of this Agreement, which schedule is attached hereto as Exhibit 2 and incorporated herein by this reference.

II. AGENCY’S OBLIGATIONS

1. The Agency agrees to pay to the City an amount equal to the cost to the City to carry out the Projects listed in Schedule of Projects, including without limitation all costs incurred by the City for administration, planning, design, permitting, site testing, environmental review, remediation of hazardous material, acquisition and disposition of interests in real property and personal property, financing, development, bidding, construction, construction management, elimination or removal of blighting conditions, and monitoring and enforcement of affordable housing covenants and other requirements pursuant to applicable law in connection with the Projects. The Agency’s obligations under this Agreement, including without limitation the Agency’s obligation to make the payments to the City required by this Agreement, shall constitute a current, unconditional indebtedness of the Agency for the purpose of carrying out the redevelopment of the Project Areas and are obligations to make payments authorized and incurred pursuant to the Community Redevelopment Law, including, without limitation, California Health and Safety Code Sections 33334.2, 33445 and 33679 and other applicable statutes. The obligations of the Agency set forth in this Agreement are present contractual obligations of the Agency that, if breached by the Agency, will subject the Agency to damages and other liabilities or remedies.

2. The obligations of the Agency under this Agreement shall be payable out of Net Tax Increment in amounts not less than those set forth in the Payment Schedule. In the event

that Net Tax Increment is insufficient and additional funds are required in order to make the Agency payments to the City required by this Agreement, the Agency shall make such payments from (i) Other Revenues received by the Agency and (ii) Available Fund Balances.

3. The indebtedness of the Agency under this Agreement shall be subordinate to the rights of the holder or holders of any existing bonds, notes or other instruments of indebtedness of the Agency incurred or issued to finance redevelopment activities and projects pursuant to the Redevelopment Plans and the Implementation Plans, including without limitation any pledge of tax increment generated from the Project Areas to pay any portion of the principal and interest (and otherwise comply with the obligations and covenants) of any bond or bonds issued or sold by the Agency with respect to any or all of the Project Areas.

4. All payments due to be made by the Agency to the City under this Agreement shall be made by the Agency in accordance with the Payment Schedule and as otherwise necessary to advance funds to the City for the costs to be incurred by the City in performing its obligations hereunder.

III. CITY'S OBLIGATIONS

1. The City shall accept any funds received from the Agency pursuant to this Agreement and shall deposit such funds into one or more special funds of the City to be held and expended only for the purpose of satisfying the obligations of the City hereunder.

2. The City shall devote those funds to completion of the Projects by (i) paying the City for its Project-related costs; (ii) using such funds to pay for the work required to carry out and complete the Projects; and (iii) utilizing such funds to pay debt service on bonds or other indebtedness or obligations that the City has incurred or may incur for such purposes. All employee and contractual services of the City or other local governmental agency proposed to be funded by Agency funds pursuant to this Agreement shall be directly related to redevelopment purposes set forth in California Health and Safety Code Sections 33020 and 33021 and the powers established in the Community Redevelopment Law.

3. The City shall timely complete the work required for each Project in accordance with the "Schedule of Performance" column set forth in the Schedule of Projects, subject to the City's compliance with all applicable laws, statutes and regulations as described below.

4. The City shall provide the Agency with a quarterly report accompanied by evidence, reasonably satisfactory to the Agency's Executive Director or designee, substantiating that the City has progressed in the development and construction of the Project for which payment is made by the Agency commensurate with such payments and has incurred costs or obligations to make payments equal to or greater than such amount.

5. The City's obligations hereunder are expressly contingent on timely receipt of sufficient funds from the Agency to complete the Projects and contingent on subsequent approvals of the Mayor and City Council as required by the San Diego City Charter and

Municipal Code. This Agreement does not obligate the City to expend any funds other than Agency funds toward completion of the Projects.

6. The City shall perform its obligations under this Agreement in accordance with the applicable provisions of federal, state and local laws, statutes and regulations, including the obligation to comply with environmental laws such as the California Environmental Quality Act (“CEQA”), set forth at California Public Resources Code Section 21000 et seq., and the State CEQA Guidelines (“CEQA Guidelines”), set forth at California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq., and related local regulations and guidelines adopted pursuant thereto. The Parties acknowledge and agree that the approval and execution of this Agreement is not a “project” for purposes of CEQA because this Agreement creates a governmental funding mechanism that does not involve any absolute commitment to any specific project on the City’s part. To the extent, however, that this Agreement is deemed to be a “project” for purposes of CEQA, the Parties acknowledge and agree that various Projects already have undergone environmental review in compliance with CEQA, and that consistent with CEQA Guidelines Section 15004, approval of this Agreement is not the appropriate time to conduct environmental review of the balance of the Projects because (a) the development concept for such Projects has not been formulated to a sufficient level of detail to enable meaningful environmental review at this juncture and (b) environmental review of such Projects is thus unripe and too premature at this stage. Moreover, consistent with CEQA Guidelines Section 15352, by entering into this Agreement, the Agency is presently committing to provide funds for the Projects, but the City is not committing to a definite course of action in regard to any Project intended to be carried out. The City shall not be obligated to complete any individual Project identified in the Schedule of Projects, or in accordance with the “Schedule of Performance” column therein, if the City later determines that such Project is not exempt from CEQA, has not already undergone complete CEQA review, and requires the preparation of a mitigated negative declaration, environmental impact report (“EIR”) or supplemental or subsequent EIR. In that regard, the City shall retain the discretion to impose mitigation measures and to adopt project alternatives, consistent with the requirements of CEQA, that may be identified during future environmental review of any specific Project. As reflected in the “CEQA Review” column of the Schedule of Projects, it is presently anticipated that various Projects will be determined to be exempt from CEQA due to the nature of the proposed development and construction involved in such Projects and consistent with prior CEQA protocol used with respect to similar types of redevelopment projects and activities. The City reserves the right, however, to evaluate whether each Project is exempt from CEQA based on the prevailing facts and circumstances at such time as the development concept for each Project has been formulated to a sufficient level of detail to enable meaningful environmental review.

IV. LIABILITY AND INDEMNIFICATION

In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code Section 895, each of the Parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall assume the full liability imposed upon it, or any of its officers, agents or

employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each Party indemnifies, defends and holds harmless the other Party from and against any liability, losses, cost or expenses that may be incurred by such other Party solely by reason of Government Code Section 895.2.

V. FURTHER ASSURANCES; PERIODIC CONSULTATION

1. The Parties agree to take such further actions, and to execute and deliver such additional documents, as may be reasonably necessary or appropriate to effectuate the provisions and intent of this Agreement. Without limiting the foregoing, the Agency's Executive Director or designee, on behalf of the Agency, and the Mayor or designee, on behalf of the City, are hereby authorized to execute and deliver, and file and record against Agency-owned property, any documents, including without limitation promissory notes, pledge agreements, and security instruments, and any subsequent amendments thereto, deemed by them to be reasonably necessary to evidence further the Agency's indebtedness obligations under this Agreement and to secure the Agency's future payment to the City of any and all indebtedness obligations under this Agreement from Net Tax Increment, and if required because Net Tax Increment is insufficient, then from (i) Other Revenues received by the Agency and (ii) Available Fund Balances.

2. The Parties shall confer periodically with each other to establish priorities for completion of the Projects and to evaluate whether Projects are being initiated and completed within the time frames set forth in the "Schedule of Performance" column of the Schedule of Projects.

VI. GENERAL PROVISIONS

1. This Agreement shall be executed in triplicate originals, each of which is deemed to be an original. This Agreement, including the exhibits attached hereto, constitutes the entire understanding and agreement of the Parties.

2. 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.

3. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

4. This Agreement is intended solely for the benefit of the City and the Agency (which, for purposes of this paragraph only, shall refer collectively to the Agency, CCDC and SEDC and their respective successors in interest). Notwithstanding any reference in this Agreement to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this Agreement.

5. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the Parties. If an amendment to this Agreement will not result in an increase in the total amount of funds payable by the Agency to the City under the Payment Schedule and will not require the adoption of any resolution or ordinance pursuant to the Community Redevelopment Law or other applicable law, then such amendment may be agreed to and executed by the Mayor or designee on behalf of the City and the Executive Director or designee on behalf of the Agency. All other amendments must be approved by the respective governing bodies of the Parties.

VII. SEVERABILITY

If any term, provision, covenant or condition of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such judicial determination.

VIII. DEFAULT

1. If either Party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days after receiving written notice from the non-defaulting Party, the Party failing to perform shall be in default hereunder. Such written notice shall clearly describe the nature of the alleged failure to perform any obligation under this Agreement. In the event of default, the non-defaulting Party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this Agreement, including without limitation the right to sue for damages for breach of contract. 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 the Agreement or hereinafter enacted or established, that may be available to the non-defaulting Party against the defaulting Party.

2. In the event the performance of any obligation is delayed due to causes which are outside the control of both Parties and their agents, and could not be avoided by the exercise of due care, which causes may include, but are not limited to, delays by regulatory agencies, wars, terrorism, floods, adverse weather conditions, labor disputes, earthquakes, fires, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions, riots, civil commotion or other unavoidable casualties, both Parties will be entitled to an extension in time for performance equivalent to the length of delay. Neither Party is entitled to compensation from the other Party for such *force majeure* events.

IX. BINDING ON SUCCESSORS

This Agreement shall be binding on and shall inure to the benefit of the Parties and all of their respective successors and assigns, whether by agreement or operation of law. The Parties acknowledge that it is their mutual intent to make this Agreement fully binding and valid even if

the City becomes the successor entity of the Agency in the future. In such event, the City shall cause the respective obligations of the Agency and the City hereunder to be fulfilled by the appropriate City department(s).

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY OF SAN DIEGO

By: _____
Jay M. Goldstone
Chief Operating Officer

APPROVED AS TO FORM:

JAN I. GOLDSMITH
City Attorney

By: _____
Thomas C. Zeleny
Chief Deputy City Attorney

[Signatures continue on the following page]

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

By: _____
Jerry Sanders
Executive Director

APPROVED AS TO FORM:

JAN I. GOLDSMITH
General Counsel

By: _____
Kevin Reisch
Deputy General Counsel

APPROVED AS TO FORM:

KANE BALLMER & BERKMAN

By: _____
Agency Special Counsel