

**Centre City
Development
Corporation**

REPORT NO. CCDC-07-02
CCDC-07-02

DATE ISSUED: January 31, 2007

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Council President and City Council
Docket of February 6, 2007

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: North Embarcadero Visionary Plan Joint Powers Authority
Agreement – Columbia and Marina Sub Areas and Little Italy
Redevelopment District of the Expansion Sub Area of the Centre
City Redevelopment Project

COUNCIL DISTRICT(S): District 2

REFERENCE: Proposed Joint Exercise of Powers Agreement

STAFF CONTACT: Alexandra Elias, Senior Planner, 619-533-7117

REQUESTED ACTION: Approve and authorize execution of the proposed Joint Exercise of Powers Agreement (JPA) as contained in Attachment 1 to implement the North Embarcadero Visionary Plan (NEVP).

STAFF RECOMMENDATION: That the Redevelopment Agency and City Council approve and authorize staff to execute the proposed JPA between the Redevelopment Agency of the City of San Diego (Agency) acting through the Centre City Development Corporation (CCDC), the City of San Diego (City), and the San Diego Unified Port District (District).

SUMMARY: The proposed action continues progress toward implementation of the North Embarcadero Visionary Plan, which the agencies have worked collectively on since 1997. A JPA was executed in 2003 between the District and the Agency (acting through CCDC) to complete schematic design for the entire North Embarcadero Project Area and to recommend a first phase of the project for implementation. Schematic design was successfully completed and approved by the JPA Board of Directors in April 2005, and having successfully completed schematic design, the original JPA expired in September 2005. The proposed JPA on which the Agency and City Council would take action with this item is to complete construction documents for the first phase of the project, as described below.

On October 11, 2005, at a joint meeting of the Board of Port Commissioners (BPC) and CCDC, the Boards 1) approved the schematic design of the North Embarcadero; 2) approved a recommended first phase of the project, and 3) directed staff to develop a new JPA. Phase 1 improvements will include the roadway relocation and esplanade on Harbor Drive between Broadway and "B" Street and is estimated to cost approximately \$20 million. Improvements on the east side of Harbor Drive, Broadway, the view corridor down the prolongation of "C" Street, and Pacific Highway will be provided by the developer of Lane Field.

On July 24, 2006, the BPC and CCDC Boards met in a joint meeting and approved the proposed JPA agreement, in which the agencies agreed to fund, in equal shares, the cost of construction documents for the first phase of the project. The proposed JPA obligates CCDC and the District to share equally in the cost to prepare construction documents for Phase 1. The District and CCDC's share of consultant costs to complete construction documents is budgeted at \$1 million each, not including internal staff costs. Funding for construction of Phase 1 and each subsequent phase will occur through amendments to the JPA. The proposed resolution(s) approving the JPA name District 2 Councilmember Kevin Faulconer as the City and the Agency's representative to the JPA Board.

The proposed JPA sets the framework for future financing of the NEVP project and provides that each member will use its best efforts to procure available funding from sources such as transient occupancy tax revenue, tax increment, lease revenues, capital development programs, grants, and federal and state funds, but the JPA does not obligate the agencies to construct the project. The JPA would need to be amended if the agencies wish to pursue any activities beyond the funding of construction documents (an estimated \$2 million commitment) for Phase 1.

If the Agency and Council approve the JPA, staff plans to issue a Request for Qualifications/Proposals to prepare construction documents for Phase 1. Approval of contract funding for the selected design team will be the subject of future action by the Agency and Council.

FISCAL CONSIDERATIONS: The JPA provides for preparation of construction documents to implement Phase 1 of the NEVP at a cost of approximately \$2 million. Funds are available in CCDC's FY2007 Budget. The District's share of costs is approved in the *Port of San Diego Capital Development Program, Fiscal Years 2008 – 2012*.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION: On July 25, 2006, the Centre City Development Corporation Board voted unanimously to approve and authorize staff to execute the proposed JPA.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

CCDC and District staff collectively manage the North Embarcadero project and the consultant team, including: successful completion of schematic design, contract management, outreach to stakeholders, and coordination with other agencies. The schematic design was completed in cooperation with numerous stakeholders to understand operational needs, use requirements and community desires for the future. Throughout this process, staff has consulted with various

District and City departments, cruise ship operations, individual District tenants, and other agencies to understand and accommodate their activities. Progress made includes:

- Outreach to more than 20 interested organizations and over 60 related meetings;
- Attendance of over 200 people to two Open Houses (one in March 2004 and the second in December 2004) to review and comment on the proposed design;
- Distribution, review and successful negotiation of a schematic design with City and District departments and stakeholders;
- Completion of four, full-day work sessions by staff at both the 60% and 95% milestones to review and comment on the design and to resolve issues;
- Individual work sessions with District Tenants, City and District Departments and interested parties to receive input and resolve issues;
- Four meetings of the North Embarcadero JPA Board during 2004 and 2005 along with various individual meetings of the CCDC and District governing boards; and
- Two joint meetings of the Boards of Directors of the District and CCDC in 2005 and 2006.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Tenants and the City and District departments spent a great deal of time with staff, and offered creative and innovative solutions toward schematic design. Virtually without exception, these issues have been resolved. Staff will continue to work with stakeholders during design development of future phases to ensure continuing consensus on future phases of the project.

Staff and the consultant team have resolved a number of issues of concern to stakeholders:

- Maximizing (and quantifying) the number of buses and trucks that can be accommodated in designated staging areas;
- Design of the Esplanade in front of Anthony's restaurant;
- Coordination of existing and future utility infrastructure;
- Accommodation of a large, tree-planted median, on-street parking, three lanes of traffic, dual left-turn lanes in some areas and a bike lane on Pacific Highway;
- Width and layout of Harbor Drive (three lanes of traffic and diagonal parking on both sides of the street);
- Operational requirements of cruise ship operations at the Broadway Pier and Cruise Ship Terminal;
- Locations for waterfront businesses' ticketing and trash collection; and
- Crosswalk areas to the east/west connections through the proposed County Waterfront Park.

BACKGROUND

The proposed JPA advances the Visions and Goals of the Downtown Community Plan and the Objectives of the Centre City Redevelopment Project by providing a mechanism and funding to continue progress on the North Embarcadero Visionary Plan.

When the original JPA was formed between the Redevelopment Agency, CCDC, and the District in August 2003, the sole purpose of the agreement was to complete schematic design for the North Embarcadero project. The JPA Board directed staff to work with the architect Ehrenkrantz, Eckstut & Kuhn (EE&K) to complete schematic design and resolve technical issues of utilities and physical conflicts. The schematic design was completed in cooperation with numerous stakeholders to understand operational needs and use requirements. Staff consulted with various District and City departments, cruise ship operations, individual District tenants, and other agencies to understand and accommodate their activities.

PROPOSED JOINT EXERCISE OF POWERS AGREEMENT

The proposed JPA authorizes CCDC and the District to fund costs for construction documents of the first phase of the project only, although the document does provide for broader responsibilities should the JPA proceed with construction on any phase of the project. The participating agencies must amend the JPA in the future to do anything other than fund completion of construction documents for Phase 1, which is defined specifically in the JPA. The scope, finding and governance issues included in the JPA are summarized as follows:

Scope & Funding:

- Complete construction documents for Phase 1 of the NEVP. Phase 1 includes the roadway and esplanade on Harbor Drive between Broadway and "B" Street, and the necessary utility relocations.
- CCDC may provide a portion of funding for the cost of CDs of Phase 1 in advance. The District would reimburse CCDC for funds "fronted" by CCDC, with interest, in fiscal year 2008.
- There is no obligation to fund the capital cost for Phase 1 of the project at this time or through this Agreement. Consistent with the original JPA agreement, the members agree to use their best efforts to provide funding from a variety of sources including TOT revenues, tax increment, lease revenue, Capital Development Programs, federal and state funds, grants, fee waivers, etc.
- Consistent with all previous agreements, senior staff and project management time is donated by each participating agency. Each member will be reimbursed for the project costs of administrative services and performance of duties by the agency that would otherwise require an outside contract.
- The proposed Agreement defines the scope of the First Phase of the project as adopted by the JPA Board, CCDC and BPC, with an estimated total project cost of \$20 million. The balance of the project will be phased to allow completion based on available funding.
- The Agreement requires that the value of incremental maintenance costs be determined prior to the completion of construction documents for the first phase, and provides that those costs be included in the analysis of each member's respective funding obligation.

- If NEVP improvements are made by private developers that are not on, or adjacent to, the private development parcel, then the member causing the additional improvements to be made will receive a credit for the cost of construction.
- Any member advancing funds to pay for another member's share of costs will be repaid with interest.

Governance:

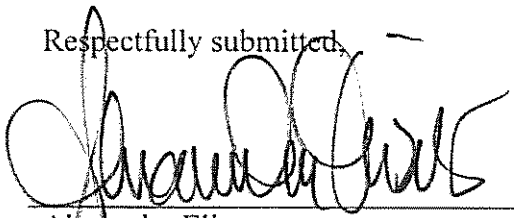
- A three-member Board of Directors, consisting of one representative of each member agency, will govern the JPA. The City and the Agency are represented by a single member.
- The term of the Agreement is forty (40) years with a minimum of two (2) meetings of the Board annually. The longer term ensures that the Agreement can be amended rather than starting from scratch with each new phase of the project. If any of the parties withdraw from the JPA, it will terminate.
- In accordance with the original JPA and the proposed new JPA, all decisions of the JPA Board are required to be unanimous. All three JPA members must be present for any vote (i.e., a quorum constitutes no less than three members).
- The Agreement can be amended to provide for future phases.

Environmental Impact - This activity is not a project, and therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(3).

CONCLUSION

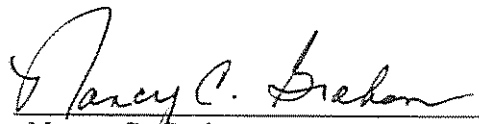
Staff recommends that the Redevelopment Agency and City Council approve and authorize the execution of the proposed Joint Exercise of Powers Agreement as contained in Attachment 1.

Respectfully submitted,



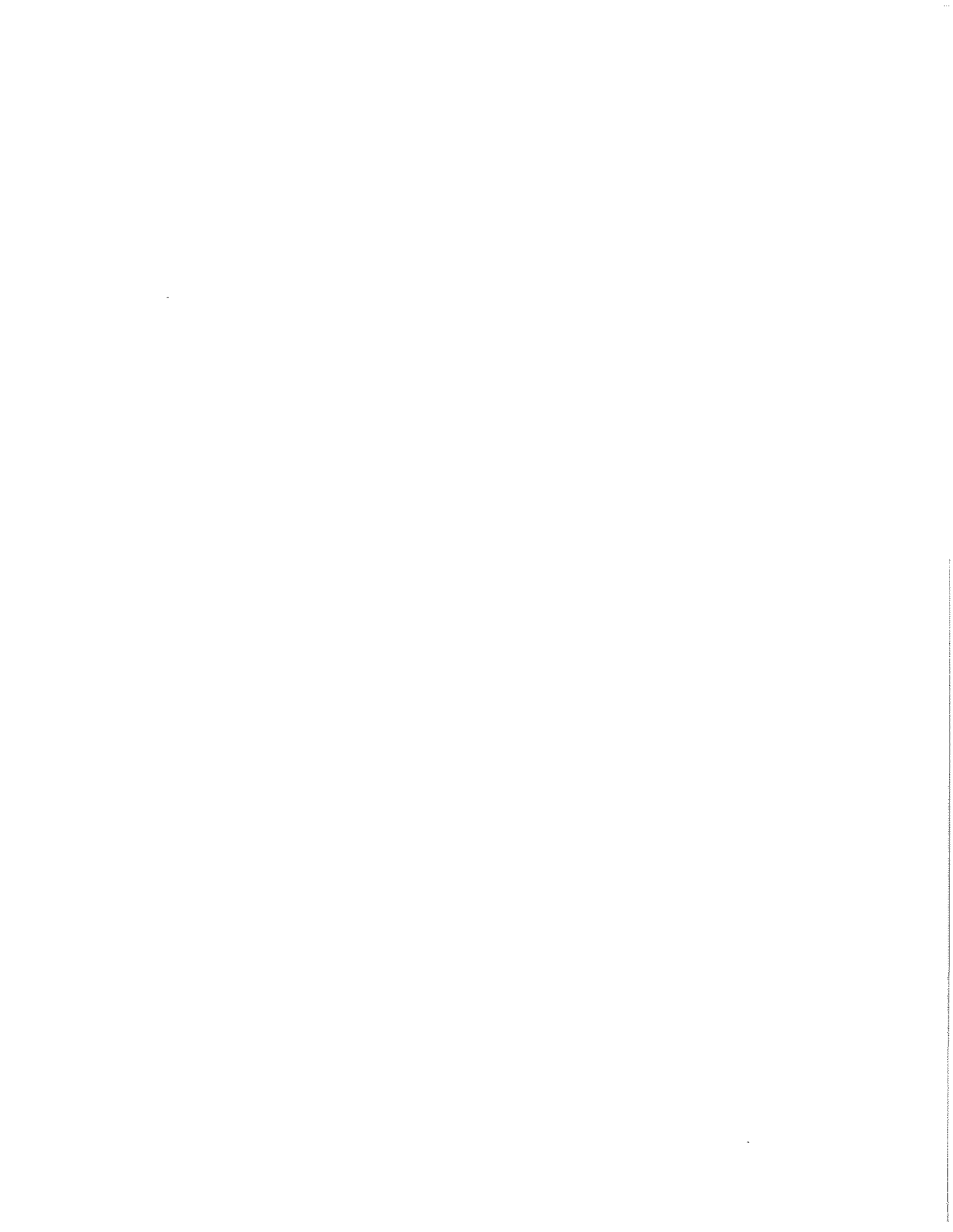
Alexandra Elias
Senior Planner

Concurred by:



Nancy C. Graham
President

Attachment: Attachment 1 - Joint Exercise of Powers Agreement



JOINT EXERCISE OF POWERS AGREEMENT

Between
the City of San Diego, the Redevelopment Agency of the City of San Diego acting through the
Centre City Development Corporation,
and
the San Diego Unified Port District

THIS JOINT EXERCISE OF POWERS AGREEMENT, dated as of _____ (this "Agreement"), is made by and between the City of San Diego, a municipal corporation and charter city organized and existing under the laws of the State of California ("City"), the Redevelopment Agency of the City of San Diego, a public body, corporate and politic duly organized and existing under the laws of the State of California (the "Agency") acting through the Centre City Development Corporation, a non-profit public benefit corporation ("CCDC"), and the San Diego Unified Port District, a public entity duly organized and existing as a port district under and by virtue of the laws of the State of California (the "Port").

RECITALS

A. Pursuant to Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (as more fully defined in Section 1 hereof, the "Act"), two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties.

B. The City, the Agency acting through CCDC and the Port are each empowered by law to exercise certain common powers with respect to the use and development of the of the area outlined in the boundary map attached hereto as Attachment A (such area being hereinafter referred to as the "North Embarcadero area").

C. On September 3, 1997, CCDC, as designated agent for the Agency, the Port, the City of San Diego, the County of San Diego (the "County"), and the United States Navy (the "Navy") entered into a Memorandum of Understanding (the "MOU") that created the North Embarcadero Alliance (the "Alliance").

D. The goal of the Alliance, as stated in the MOU, was to formalize the voluntary commitment of each member of the Alliance identified in Recital C above to working together to plan and facilitate the future use and development of the North Embarcadero area.

E. The Alliance members agreed that each member of the Alliance would pay to coordinate the planning and future development according to its asset share in the North Embarcadero area.

To implement this decision, the Alliance established an asset base concept and cost sharing to provide for funding of obligations by each member in a proportion equal to its share of the total asset base of the North Embarcadero area.

F. The asset base allocation excluding the Navy was established as: CCDC 10.6%, County 14.4%, City 32.7%, and Port 42.3%. The asset base allocation including the Navy was established as: CCDC 8.9%, County 12.2%, Navy 15.5%, City 27.6%, and Port 35.8%.

G. In 1997, the Port, on behalf of the Alliance, hired Sasaki Associates to draft a waterfront redevelopment plan for the North Embarcadero area.

H. In December 1998, the North Embarcadero Alliance voted unanimously to endorse the North Embarcadero Alliance Visionary Plan developed by Sasaki Associates (herein referred to as the "Visionary Plan").

I. In 2002, the County, on behalf of the Alliance, entered into two agreements (herein referred to as the "Alliance Agreements") for Project Management and Architecture & Engineering Services with GafCon, Inc., and Ehrenkrantz, Eckstut & Kuhn, respectively, for the completion of pre-schematic design of the Visionary Plan. Pre-schematic design was completed pursuant to the Alliance Agreements.

J. On April 10, 2003, the North Embarcadero Alliance voted unanimously to disband the Alliance in favor of creating a joint exercise of powers entity pursuant to the Act.

K. On April 10, 2003 and May 22, 2003, respectively, the CCDC Board of Directors (the "CCDC Board") and the Board of Port Commissioners (the "Port Board") approved the creation of an initial joint exercise of powers entity, between the Agency, acting through CCDC, and the Port to cover the schematic design ("Initial JPA"). The Initial JPA was approved by the Redevelopment Agency on July 29, 2003.

L. In August 2003, the JPA Members authorized staff to enter into agreement with Ehrenkrantz, Eckstut & Kuhn for the completion of schematic design. CCDC, on behalf of the JPA, entered into an agreement with Ehrenkrantz, Eckstut & Kuhn for completion of schematic design.

M. On October 11, 2005, the CCDC Board and the Port Board approved the schematic design and recommended first phase, thereby fulfilling the purpose of the Initial JPA. With this approval, the Initial JPA expired. In addition, each of the CCDC Board and the Port Board voted unanimously to enter into a subsequent joint exercise of powers agreement to create a joint exercise of powers entity to provide for the phasing of the North Embarcadero area project (the "Project"), with the first phase being Harbor Drive between Broadway and B Street.

N. The Act authorizes the City, the Agency, and the Port to create a joint exercise of powers entity, which entity may jointly exercise any power common to the City, the Agency and the Port, and which entity may exercise the additional powers granted to it pursuant to the Act.

O. By this Agreement, the City, the Agency acting through CCDC, and the Port desire to create and establish the North Embarcadero Alliance Joint Powers Authority for the purposes set forth herein and to exercise the powers described herein.

NOW, THEREFORE, in consideration of the Recitals, mutual obligations, and desires of the parties expressed above, the Agency, acting through CCDC, and the Port agree as follows:

SECTION 1. DEFINITIONS

Unless the context clearly requires otherwise, for the purpose of this Agreement, the following words shall have the following meanings:

"Act" means Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with Section 6500), including the Marks-Roos Act, as now in effect or as it may from time to time hereafter be amended or supplemented.

"Administrative Services" means performance of duties to provide assistance in the management of operational functions, including, but not limited to, record keeping, invoicing, word processing, bill paying, and other actions directly related to the Authority. Costs of Administrative Services may include administrative support staff costs as provided in the definition of Project Costs below.

"Agency" means the Redevelopment Agency of the City of San Diego.

"Agreement" means this joint exercise of powers agreement, as it may, from time to time, be amended in accordance with its terms.

"Authority" means the North Embarcadero Alliance Joint Powers Authority created by this Agreement.

"Board" means the governing body of the Authority.

"CCDC" means the Centre City Development Corporation.

"City" means the City of San Diego.

"Construction" means the process beginning at advertisement of [a phase of] the Project to the filing of the certificate of completion for that [phase] of the Project.

"Construction Management" means performance of duties and expertise in construction project monitoring, and construction drawings and specifications. Construction management entails the enforcement, in the field, of approved construction drawings and specifications. Services encompass the review and response to contractor submittals, requests for information, change orders, and shop drawings, site monitoring, materials testing and special inspection and labor compliance monitoring, and surveying. Costs of Construction Management may include internal staff costs as provided in the definition of Project Costs below.

"Design" means engineering drawings (civil, structural, architectural, landscape and irrigation, and electrical) for improvements within the right-of-way. Such drawings and specifications shall be a complete biddable set of public works contract documents.

"Financing/phasing plan" means the identification of the means to fund the implementation of the Visionary Plan, including a general assessment of when Port, City, CCDC and Agency funds might become available, and the identification of possible ways to phase the implementation of the Visionary Plan over time.

"First Phase" means the North Embarcadero area bordered by Broadway, the right-of-way boundary on the east side of Harbor Drive, B Street and the Bay and all road improvements required to make the transition between the realigned and existing Harbor Drive, attached to this Agreement as Attachment B and incorporated by this reference.

"Incremental Maintenance" means the increase in activity from current maintenance requirements to future requirements needed to keep all Visionary Plan improvements in an acceptable state of repair and preserve from failure or decline. Incremental Maintenance may include but not be limited to additional landscaping, architectural elements, hardscape improvements, roadways, fixtures, lighting, drainage, and trash collection.

"Incremental Maintenance Cost" means the increase in cost to maintain the Visionary Plan Improvements, less the cost of current maintenance requirements.

"Marks-Roos Act" means Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with Section 6584), as now in effect or as it may from time to time hereafter be amended or supplemented.

"Member" or "Members" shall mean the City, the Agency, acting through CCDC, and the Port and any other Public Agency added as a Member pursuant to the provisions of Section 19 hereof, excluding any Public Agency which has withdrawn as a Member pursuant to the provisions of Section 19 hereof.

"Port" means San Diego Unified Port District.

"Project" means the development of the North Embarcadero area.

"Project Costs" means total costs to complete the Design and Construction of a specified [phase] of the Project. Specifically such costs include, but are not limited to, consultant design agreements, all associated fees, permits, City work orders, water and sewer capacity charges, construction contracts, Administrative Services, construction administration, project advertisement and all associated expenses. Internal staff time of the parties may be included as a Project Cost only if the party elects to utilize internal staff rather than retaining outside consultants and other parties concur for such services. Examples of such services include, but are not limited to, inspections, surveying, and Construction Management.

"Public Agency" shall have the meaning assigned to such term in the Act.

"Schematic design" means drawings (civil, structural, architectural, landscape and irrigation, and electrical) dated June 1, 2005 for improvements within the right-of-way. Such drawings will generally define site improvements, pedestrian and vehicular movement patterns,

parking areas, bus stops, access points, surface treatments, landscaping, signage, lighting, street furniture, and architectural features such as trellis and water features.

SECTION 2. PURPOSE

This Agreement is made pursuant to the Act relating to the joint exercise of powers common to Public Agencies. Each Member possesses the common powers referred to in the recitals hereof. This Agreement is entered into by each Member in order to provide for the exercise by the Authority of such common powers and to provide for the exercise of all additional powers given to a joint powers entity under the Act, including, but not limited to, the Marks-Roos Act, or any other applicable law, for the purpose of the funding, designing and constructing of the Project, pursuant to the approved schematic design described on the North Embarcadero area boundary map, attached to this Agreement as Attachment A and incorporated by this reference, and schematic design documents dated January 31, 2005 and approved as described in Recital N above on October 11, 2005, in each case as permitted by the Act and in order to provide enhanced services to the public.

SECTION 3. TERM

This Agreement shall become effective immediately upon execution by the last of the signatories hereto, and shall continue in full force and effect for 40 (Forty) years or until completion of the Project, whichever occurs first. As provided in Section 11 hereof, the Members may act to amend this Agreement to complete phases of work on the North Embarcadero area pursuant to this Agreement or for other purposes.

SECTION 4. AUTHORITY

A. CREATION OF AUTHORITY

Pursuant to the Act, there is hereby created an agency and public entity to be known as the "North Embarcadero Alliance Joint Powers Authority" ("NEAJPA"). As provided in the Act, the Authority shall be an entity separate and apart from the Members. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the Members.

Within thirty (30) days after the effective date of this Agreement or any amendment hereto, the Authority shall cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Act.

Within seventy (70) days after the effective date of this Agreement, and within ten (10) days after any change of facts required to be stated pursuant to Section 53051(b) of the Government Code of the State of California, the Authority shall cause a notice to be prepared and filed with the office of the Secretary of State of the State, and with the County Clerk of each county in which the Authority maintains an office, in the manner set forth in Section 53051 of the Government Code of the State of California.

B. BOUNDARIES

The boundaries of the territory within which Authority shall exercise its powers shall be those described in the North Embarcadero area map attached hereto as Attachment A.

C. GOVERNING BOARD

The Authority shall be governed by the Board, which shall consist of:

- One elected member of the governing body of the City; and
- The chairperson of the CCDC Board, or designee (representing the Agency); and
- The chairperson of the Port Board, or designee.

Each member of the Board shall serve in his/her individual capacity as a member of the Board and each member of the Board may designate an alternate to act as a member of the Board in the member's absence. All references in this Agreement to any member of the Board shall be deemed to refer to and include the designee of such member when so acting in place of a regularly appointed member.

The Board shall select its own Chairperson from among the three members.

D. MEETINGS OF THE BOARD

(1) Legal Notice.

All meetings of the Board, including, without limitation, regular, adjourned regular, and special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code) or any successor legislation hereinafter enacted.

(2) Regular Meetings.

The Board shall conduct at least two regular meetings per year over the period of this Agreement.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California.

(4) Quorum.

Three members of the Board shall constitute a quorum for the transaction of business. The affirmative vote of all members shall be required for any act of the Board other than adjournment.

(5) Meeting Minutes

The staffs of the Members shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the Members of the Authority.

E. COUNSEL AND OFFICERS

(1) Counsel.

The City Attorney, pursuant to Charter Section 40, shall serve as General Counsel to the City in its capacity as a party to the Authority. The Agency acting through CCDC, and the Port shall each appoint counsel to serve as General Counsel for each party to the Authority.

(2) Officers.

(a) The officers of the Authority shall be the Chairperson, the Secretary, who may, but need not, be a member of the Board, and the Treasurer/Controller, who may, but need not, be a member of the Board.

(b) Except as may otherwise be specified by resolution of the Board, the Treasurer/Controller of the Authority is designated as the depositary of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 and 6509.5 of the Act. The Treasurer/Controller of the Authority shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(c) The Board shall determine the charges, if any, to be made against the Authority for the services of the Treasurer/Controller.

(d) The Treasurer/Controller of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond as required by Section 6505.1 of the Act, such official bond to be in the amount of \$100,000; provided, that such bond shall not be required if the Authority does not possess or own property or funds with an aggregate value of greater than \$500.

(e) The Treasurer/Controller of the Authority is hereby authorized and directed to prepare or cause to be prepared such audits and reports as are required pursuant to Section 6505 and Section 6505.5 of the Act.

(f) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants. Employees of the Port and CCDC may act as officers and staff to the NEAJPA.

(g) All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activities of officers, agents or employees of the Members shall apply to them

to the same degree and extent while engaged in the performance of any of their functions and duties under the provisions of this Agreement.

F. STAFF, EXPERTS, AND CONSULTANTS

(1) Staff.

The Members agree to provide senior and professional staff time and other in-kind resources on an as-needed basis to help reduce outside costs and bring the Design and Construction of the First Phase (and if the Members should amend this Agreement to include future phases, each other phase) and development of the Financing/phasing plan to a timely and successful conclusion. Reimbursable staff time during a Construction phase shall include inspection, construction contract management, and survey related activities, as agreed by the senior staff of the Members. The Members shall equally share costs for all Administrative Services.

(2) Experts and Consultants

The Authority may arrange for services necessary to complete Design and Construction of the First Phase of the Project (and if the Members should amend this Agreement to include future phases, each other phase) by using one of the Members as a "lead agency" for contracting purposes for the services of other consultants, advisors and independent contractors as the Board may determine necessary, and as authorized and approved, and funding provided, by the governing bodies of the Members of the Authority.

SECTION 5. POWERS; RESTRICTIONS UPON THE EXERCISE OF POWERS

The Authority shall have the power, in its own name, to exercise the common powers of the Members referred to in Section 2 hereof and to exercise all additional powers given to a joint powers entity under the Act, including, but not limited to, the Marks-Roos Act, for any purpose authorized under this Agreement. The Authority shall have the power to make and enter into contracts, to employ agents and employees, to establish bank accounts, to acquire, construct, manage, maintain or operate any building, works or improvements, or to acquire, hold or dispose of property or to incur debts, liabilities or obligations and sue and be sued in its own name.

The Authority is authorized, in its own name; to do all acts necessary for the exercise of said powers for said purposes.

Such powers shall be exercised subject only to such restrictions upon the manner of exercising such powers as are imposed upon any member in the exercise of similar powers, as provided in Section 6509 of the Act, except, however, nothing herein shall limit the powers of the Authority under the Marks-Roos Act.

Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Act or under applicable law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof.

Specifically, the Authority shall have the power to direct staff work as it relates to the completion of Design, Construction and the development of a Financing/phasing plan necessary to implement the Visionary Plan.

The Authority shall have the power to hire consultants and to direct those consultants to accomplish the completion of Design, Construction and the development of a Financing/phasing plan necessary to implement the Visionary Plan. The Authority shall have the power to approve design concepts, and establish design guidelines and policies to be used in the completion of Design and Construction for the North Embarcadero area.

The Authority shall have the power to direct staff to present as necessary each Design phase for the North Embarcadero area, approved by the Authority, to the Agency Board, the CCDC Board, the Port Board, and the City Council of the City of San Diego for the final approval.

All of the exercise of the powers of the Authority referenced above are subject to the funding available determined by the Members of the Authority.

SECTION 6. FUNDING

The Authority shall fund all costs related to the completion of the design, construction, and the development of a Financing/phasing plan.

The Members agree to use their respective best efforts to procure available funds from a variety of sources, including, but not limited to, the following: transient occupancy tax revenue, tax increment, lease revenues, capital development programs, federal and state funds and/or available grants, donations, waiver of fees, including, but not limited to, plan check and building permit fees and development fees, and other sources subject to the approval of the Authority.

To the extent that private development provides improvements that are within the boundary of the Project scope, as shown in the North Embarcadero area boundary map, attached hereto as Attachment A, and are immediately adjacent to and/or through the private development parcel(s), these improvements and their value will be accounted towards funding of the total Project Costs. To the extent that a Member causes a private development to construct improvements, as shown in the North Embarcadero area boundary map, attached hereto as Attachment A, and that are not immediately adjacent to and/or through the private development parcel(s), that Agency receives credit for the value of the improvements as agreed to by the Members. In the event a Member advances funds to pay another Member's share of Project Costs of the First Phase (and if the Members should amend this Agreement to include future phases, each other phase), the Member advancing such funds shall be repaid such amount by the other Member, including interest at the advancing parties cost of funds. The timing for repayment shall be agreed upon at the time any advances are made to a Member.

For the purposes of implementing Design, Construction and Financing/phasing plan, funds shall be authorized by the governing bodies of the Agency acting through CCDC, and the Port in advance of direction for work to be completed, and prior to the commencement of work by staff and/or consultants.

Authority shared costs shall include but not be limited to: development fees, plan check fees, Design agreements, Construction contracts, Administrative Services, construction administration, project advertisement, printing, and park and infrastructure maintenance costs.

Costs for the First Phase Design shall be divided equally between the Agency, acting through CCDC, and the Port. Costs for subsequent Phases shall be agreed to between the parties to this Agreement in the form of an Amendment to be approved by the governing body of each party.

Nothing herein shall be construed to create any indebtedness of any Member and neither the faith and credit nor the tax revenue nor any other revenue of any Member are pledged or encumbered by this Agreement.

SECTION 7. MAINTENANCE

Maintenance will be estimated for the First Phase of the Project and the overall Project area to determine annual costs within each Member's jurisdiction. At such a time, the parties shall agree to the value of the Incremental Maintenance costs and costs sharing of the increased costs.

SECTION 8. PHASING

The Project will be phased to allow completion based on funding.

The First Phase of the Project shall consist of all improvements bordered by Broadway, the leasehold line on the east side of Harbor Drive, B Street and the Bay. The First Phase will also include temporary road improvements within the right-of-way to transition between the realigned and existing Harbor Drive outside of the First Phase boundary. The First Phase has an estimated total project cost of \$20 million. Concurrent with the initiation of the First Phase Design, an estimate of the annual maintenance costs and value engineering analysis for the First Phase shall be completed.

The First Phase will create a standard consultant selection process and Design contract tasks that are intended to be used for the First Phase and all future phases shall provide for a world class waterfront, balancing: (1) cost management while maintaining quality; (2) acceptable traffic loads and adequate parking; (3) continuous Cruise Terminal access; and (4) flexibility to accommodate future infrastructure improvement needs and public access to the waterfront.

SECTION 9. RECORDS

Depending on the nature of the documents, the Members shall decide which Member shall be the repository for files, documents, maps, drawings, and meeting files related to the Visionary Plan and specifically related to Design, Construction and the Financing/phasing plan. In the event, this Agreement is amended to include additional phases, the Members will determine at each phase the appropriate location for the records relating to each additional phase.

SECTION 10. AGREEMENT NOT EXCLUSIVE; OPERATING AGREEMENTS

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the Members, if any, except as the terms of this Agreement shall conflict therewith, in which case the terms of this Agreement shall prevail.

It is understood that the Members may enter into operating agreement(s) that may further define their rights and obligations with respect to the subject matter of this Agreement.

SECTION 11. AMENDMENTS

This Agreement may be amended, modified, or altered by supplemental written agreement executed by the Members at any time.

SECTION 12. FISCAL YEAR

Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the effective date of this Agreement to the following June 30.

SECTION 13. DISPOSITION OF ASSETS

After termination of this Agreement pursuant to Section 3 hereof, any surplus money in possession of the Authority or on deposit in any fund or account of the Authority shall be returned in proportion to any contributions made as required by Section 6512 of the Act. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. After rescission or termination of this Agreement pursuant to Section 3 hereof, all property of the Authority, both real and personal, shall be divided among the Members in such manner as shall be determined by the Board.

SECTION 14. CONTRIBUTIONS AND ADVANCES

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the Members for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such purposes. Any such advance shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the contributing Member and the Authority at the time of making such advance.

SECTION 15. ACCOUNTS AND REPORTS

The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and there shall be strict accountability of all funds and reports of all receipts and disbursements as required by Section 6505(a) of the Government Code of the State of California. The books and records of the Authority shall be open to inspection at all reasonable times by the Members and their representatives and the public.

SECTION 16. CONFLICT OF INTEREST CODE

The Authority shall adopt a Conflict of Interest Code to the extent required by law.

SECTION 17. BREACH

If default shall be made by a Member in any covenant contained in this Agreement, such default shall not excuse such Member from fulfilling its obligations under this Agreement and the Members shall continue to be liable for the performance of all conditions herein contained. The Members hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the Members hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

SECTION 18. FORM OF APPROVALS

Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of each Member, by authorization of the governing body of such Member, and, in the case of the Authority, by authorization of the Members. Unless otherwise specifically provided in this Agreement, the Agency shall act through CCDC, and any approval required shall be given by authorization of the CCDC Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

SECTION 19. WITHDRAWAL AND ADDITION OF PARTIES

The Authority will stay in effect as long as there is an existing obligation in place. If there are no existing obligations, a Member may withdraw from this Agreement upon written notice to the Board. Any such withdrawal shall be effective only upon receipt of written notice of such withdrawal by the Board, provided, however, that if withdrawal of a party would result in the dissolution of the Authority, such withdrawal shall not take effect until six (6) months (or such shorter period as shall be approved by resolution of the Board) from the date of receipt of such written notice of withdrawal by the Board, which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement, which amendment to this Agreement shall be effective upon filing with the office of the Secretary of State of the State in accordance with Section 4.A. hereof.

Additional Public Agencies may be added to this Agreement and become Members, subject to the terms and conditions imposed by the Members, upon: (i) the filing by such Public Agency of an executed counterpart of this Agreement, together with a certified copy of the resolution of the governing body of such Public Agency approving this Agreement and the execution and delivery hereof; and (ii) adoption of a resolution of the Board approving the addition of such Public Agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon filing with the office of the Secretary of State of the State in accordance with Section 4.A. hereof.

SECTION 20. SUCCESSORS

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members. No Member may assign any right or obligation under this Agreement without the written consent of the other Members.

SECTION 21. WAIVER OF PERSONAL LIABILITY

No member, officer or employee of the Authority or of any Member shall be individually or personally liable for any claims, losses, damages, costs, injury and liability of every kind, nature and description arising from the actions of the Authority or the actions undertaken pursuant to this Agreement.

SECTION 22. NOTICES

For all notices or other communication pursuant to this Agreement, service shall be deemed sufficient if the notice or other communication is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City, the Agency acting through CCDC and the Port shall be addressed as follows:

Deputy Chief Operating Officer for
Land Use & Economic Development
202 "C" Street, 9th Floor
San Diego, California 92101

With a copy to:

City Attorney
City of San Diego
1200 Third Ave., Suite 1100, MS 59
San Diego, California 92101

President and Chief Operating Officer
Centre City Development Corporation
225 Broadway, Suite 1100
San Diego, California 92101

with a copy to:

General Counsel
Redevelopment Agency of the City of San Diego
1200 Third Ave., Suite 1100, MS 59
San Diego, California 92101

notice to the Port shall be addressed to:

Executive Director
San Diego Unified Port District
3165 Pacific Highway
P.O. Box 120488
San Diego, California 92112-0488

with a copy to:

Port Attorney
San Diego Unified Port District
3165 Pacific Highway
P.O. Box 120488
San Diego, California 92112-0488

SECTION 23. MISCELLANEOUS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

The section headings are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

This Agreement is made in the State of California, under the Constitution and laws of such state and is to be so construed.

This Agreement is the complete and exclusive statement of the agreement between the Agency, CCDC, and the Port, which supercedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the City, the Agency acting through the CCDC, and the Port, pursuant to resolution numbers _____ and _____, respectively, authorizing the execution.

Date: _____ SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Bruce Hollingsworth
Executive Director

Date: _____ CITY OF SAN DIEGO

By: _____
Jim Waring
Deputy Chief Operating Officer for
Land Use & Economic Development

Date: _____ REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Jim Waring
Assistant Executive Director

Date: _____ CENTRE CITY DEVELOPMENT
CORPORATION

By: _____
Nancy Graham
President

APPROVED AS TO FORM AND CONTENT:

Date: _____ SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Ellen Corey Born
Assistant Port Attorney

Date: _____ CITY OF SAN DIEGO

By: _____
Michael Aguirre
City Attorney

Date: _____ CITY OF SAN DIEGO REDEVELOPMENT AGENCY

By: _____
Michael Aguirre
General Counsel

Date: _____ CENTRE CITY DEVELOPMENT CORPORATION

By: _____
Helen Holmes Peak
Corporate Counsel