COUNTY OF SAN DIEGO
COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD

REGULAR MEETING
July 16 2026, 10:00 A.M.
AT 1600 PACIFIC HIGHWAY, SAN DIEGO, ROOM 402A
AGENDA
Attendance by Virtual Meeting made available.
Zoom Link
Phone Option: 1-669-444-9171; Meeting ID: 87893548493; Passcode (if prompted): 135246

Request to Speak Instructions: Public comments on items on the agenda will be taken as each item is considered. Each speaker is limited to two minutes. If in person, please indicate your request to speak when the public comment period is called for the item you wish to speak on. If virtual (Zoom), please indicate your request to speak by selecting "React" or "Reactions" on your screen then select "Raise Hand" when the public comment period is called for the item you wish to speak on. You will then be directed to unmute and speak on the item.

A. Call to Order

B. Roll Call/Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) pursuant to Assembly Bill 2449 by an Oversight Board Member (*if necessary and applicable*)

C. Pledge of Allegiance

D. Approval of Statement of Proceedings / Minutes of January 15, 2025 Regular Meeting

E. Formation of Consent Calendar – Under this item, the Oversight Board may place action items under Section G on the consent calendar to be voted on in one motion.

F. Non-Agenda Public Communication: Members of the public may address the Oversight Board at this time on subject matters within the Board's jurisdiction, but not an item on this agenda.

G. Action Item(s)
   1. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING A CONTRACT BETWEEN THE CITY OF SAN DIEGO ACTING IN ITS

CAPACITY AS THE SUCCESSOR AGENCY AND CIVIC SAN DIEGO FOR THE B STREET PEDESTRIAN CORRIDOR PROJECT

H. Communications Received: *"Offer to Purchase Ground Leased Fee Positions at the Former NTC (Liberty Station)",* from Joe Haeussler, 2/26/2026.

I. Future Agenda Item(s):
   1. August 20th, 2026 (tentative): City of Oceanside Successor Agency dissolution.
   2. September 17th, 2026: Annual renewal of Oversight Board's Special Liability Insurance Policy (SLIP).
   3. Future date to be determined: City of Carlsbad Successor Agency dissolution.

J. Set Future Meeting Date(s): August 20th, 2026 10:00 a.m., September 17^{th}, 2026 10:00 a.m., October 15^{th}, 2026 10:00 a.m.

K. Adjournment

Supporting documentation and attachments for items listed on this agenda can be viewed online at http://www.sdcounty.ca.gov/community/san-diego-county-oversight-board.html or in the Office of Economic Development & Government Affairs, 1600 Pacific Highway, Room 152, San Diego, CA 92101.

ASSISTANCE FOR THE DISABLED:
Agendas and records are available in alternative formats upon request. Contact the Office of Economic Development & Government Affairs at (619) 531-5198 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619) 531-4908. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An area in the front of the room is designated for individuals requiring the use of wheelchair or other accessible devices.

COUNTY OF SAN DIEGO
COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD

REGULAR MEETING
January 15, 2026, 10:00 A.M.
AT 1600 PACIFIC HIGHWAY, SAN DIEGO, ROOM 302
MINUTES

A. Call to Order **10:00am**

B. Roll Call/Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) pursuant to Assembly Bill 2449 by an Oversight Board Member (*if necessary and applicable*)

   PRESENT: Steve Lockett, Rebecca Jones, Jesse Robles, Scott Buxbaum, Daniel Troy, Samuel Merrill, Corinne Wilson
   ABSENT: None

C. Pledge of Allegiance

D. Approval of Statement of Proceedings / Minutes of November 20, 2025

   On motion of Buxbaum and seconded by Jones, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the minutes of November 20, 2025 Regular Meeting. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

   AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

E. Public Communication Speakers: Members of the public may address the Oversight Board on subject matters within the Board's jurisdiction, but not an item on this agenda. Comments on items on the agenda will be taken as each item comes up. Each speaker is limited to three minutes. ***No comments were received by the Board or were presented at the meeting.***

F. Consent Item(s): Under this item, the Oversight Board may place Consent Item(s) under Section G's Action Item(s) for further discussion and an individual vote of the item. The remaining balance of Consent Item(s) will be voted on in one motion.

1. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR CARLSBAD REDEVELOPMENT SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.
   Chair Buxbaum moved item to Section G Action Item(s) for further discussion.

2. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

3. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF CORONADO FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.
   Chair Buxbaum moved item to Section G Action Item(s) for further discussion.

4. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR CITY OF EL CAJON SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

5. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE SUCCESSOR AGENCY TO THE CITY OF ESCONDIDO FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

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6. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE SUCCESSOR AGENCY TO THE LA MESA COMMUNITY REDEVELOPMENT AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

7. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE SUCCESSOR AGENCY TO THE LEMON GROVE COMMUNITY DEVELOPMENT AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

8. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE POWAY REDEVELOPMENT AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.
   Chair Buxbaum moved item to Section G Action Item(s) for further discussion.

9. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR CITY OF SAN DIEGO SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.
   Chair Buxbaum moved item to Section G Action Item(s) for further discussion.

10. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR COUNTY OF SAN DIEGO SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

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11. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE CITY OF SAN MARCOS SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.
    Chair Buxbaum moved item to Section G Action Item(s) for further discussion.

12. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR CDC SUCCESSOR AGENCY OF THE CITY OF SANTEE FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

13. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SOLANA BEACH SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.
    Chair Buxbaum moved item to Section G Action Item(s) for further discussion.

14. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE VISTA REDEVELOPMENT AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.
    Chair Buxbaum moved item to Section G Action Item(s) for further discussion.

    On motion of Buxbaum and seconded by Lockett, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD moved Section F Consent Item(s): 1, 3, 8, 9, 11, 13, 14 to Section G Action Item(s) and approved the remainder of Section F Consent Item(s): 2, 4, 5, 6, 7, 10, 12. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

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AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

G. Action Item(s)

1. **(Moved from Section F)** APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR CARLSBAD REDEVELOPMENT SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

   Chair Buxbaum inquired if the Carlsbad Redevelopment Successor Agency had previously submitted a Last & Final ROPS. Oversight Board staff explained that the Carlsbad Redevelopment Successor Agency seemingly had no enforceable obligations on their ROPS and that the Carlsbad Redevelopment Successor Agency had indicated they're working towards dissolution of the Carlsbad Redevelopment Successor Agency.

   On motion of Buxbaum and seconded by Troy, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR CARLSBAD REDEVELOPMENT SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

   AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

3. **(Moved from Section F)** APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF CORONADO FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

   Chair Buxbaum inquired about the Successor Agency to the Community Development Agency of the City of Coronado's proposed administrative fees by indicating they were only allotted during one period instead of both periods available and that the fees appeared excessive.

The Countywide Redevelopment Successor Agency Oversight Board agreed to then pause consideration of this item and return for consideration later in the meeting to allow sufficient time for representative staff of the Successor Agency to the Community Development Agency of the City of Coronado to join the meeting and provide clarification.

This item was then continued following Item 11:

Chair Buxbaum again inquired about the Successor Agency to the Community Development Agency of the City of Coronado's proposed administrative fees by indicating they were only allotted during one period instead of both periods available and that the fees appeared excessive. Staff of the Successor Agency to the Community Development Agency of the City of Coronado clarified that a single period allotment of the fees has worked historically, and the higher amount of the fees correlates to increased staff time and costs. Chair Buxbaum further inquired whether amounts on the Recognized Obligation Payment Schedule would decrease and maturing over time. Staff of the Successor Agency to the Community Development Agency of the City of Coronado confirmed that the amounts would decrease and mature.

On motion of Buxbaum and seconded by Lockett, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF CORONADO FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

8. **(Moved from Section F)** APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE POWAY REDEVELOPMENT AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

Chair Buxbaum inquired about the Successor Agency to the Poway Redevelopment Agency's proposed administrative fees by requesting a detailed breakdown.
The Countywide Redevelopment Successor Agency Oversight Board agreed to pause consideration of this item and return for consideration later in the meeting to allow sufficient time for representative staff of the Poway Redevelopment Agency to join the meeting and provide clarification.

This item was then continued following Item 14:

Staff from the Successor Agency to the Poway Redevelopment Agency clarified their proposed administrative fees in further detail.

On motion of Buxbaum and seconded by Jones, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE POWAY REDEVELOPMENT AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

9. **(Moved from Section F)** APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR CITY OF SAN DIEGO SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

Chair Buxbaum inquired about the City of San Diego Successor Agency's line items on their proposed ROPS that were either highlighted pink or had certain termination dates provided. City of San Diego Successor Agency staff provided clarification. Oversight Board outside counsel Stephanie Downs provided further clarification on highlighted items indicating that those items may be under dispute with the State of California. City of San Diego Successor Agency staff provided

further clarification on the line item's intended use and that the termination date(s) were subject to litigation and could not be changed at this time.
Chair Buxbaum further inquired about the closure and balance of certain revenue bonds. City of San Diego Successor Agency staff clarified the balance is closed when reaching zero.
Chair Buxbaum further inquired about a Recognized Obligation Payment Schedule item that may need removal. City of San Diego Successor Agency staff clarified the item will likely be removed next year.
Chair Buxbaum further inquired about a Recognized Obligation Payment Schedule item amount that seemingly increased. City of San Diego Successor Agency staff clarified the amount was calculated appropriately.

On motion of Buxbaum and seconded by Jones, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR CITY OF SAN DIEGO SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

11. **(Moved from Section F)** APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE CITY OF SAN MARCOS SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

    Chair Buxbaum inquired about the City of San Marcos Successor Agency's notes and what involvement the San Marcos School District may have financially as indicated. City of San Marcos Successor Agency staff spoke to clarify the item.

    On motion of Buxbaum and seconded by Troy, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT

SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE CITY OF SAN MARCOS SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

13. **(Moved from Section F)** APROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SOLANA BEACH SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

    Chair Buxbaum commented that he was okay with Solana Beach Successor Agency's proposed administrative fees being only allotted during one period.

    On motion of Buxbaum and seconded by Troy, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SOLANA BEACH SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

    AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

14. **(Moved from Section F)** APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE VISTA REDEVELOPMENT AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

    Chair Buxbaum inquired about the payments related to a promissory note and its final maturity payment. Staff of the Successor Agency to the Vista Redevelopment

Agency indicated that the calculation of the promissory note had been updated and the final maturity payment is anticipated to be completed accordingly.

On motion of Buxbaum and seconded by Jones, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR SUCCESSOR AGENCY TO THE VISTA REDEVELOPMENT AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

15. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE LOAN AGREEMENT BETWEEN THE CITY OF IMPERIAL BEACH AND THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY IN ORDER FOR THE SUCCESSOR AGENCY TO PAY CERTAIN ENFORCEABLE OBLIGATIONS AND ADMINISTRATIVE COSTS.

Staff from the Imperial Beach Redevelopment Agency Successor Agency provided further detail on the loan's intended use.

On motion of Buxbaum and seconded by Jones, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE LOAN AGREEMENT BETWEEN THE CITY OF IMPERIAL BEACH AND THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY IN ORDER FOR THE SUCCESSOR AGENCY TO PAY CERTAIN ENFORCEABLE OBLIGATIONS AND ADMINISTRATIVE COSTS. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

16. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND

ADMINISTRATIVE BUDGET FOR THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027.

Chair Buxbaum inquired about the perceived long-term duration indicated by one of the Recognized Obligation Payment Schedule's items. Staff from the Imperial Beach Redevelopment Agency Successor Agency provided further clarification on the item and its expected expiration.
Chair Buxbaum further inquired about the amortization schedule related to bonds. Staff from the Imperial Beach Redevelopment Agency Successor Agency provided clarification on the bonds' amortization.

On motion of Buxbaum and seconded by Troy, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY FOR THE PERIOD OF JULY 1, 2026 - JUNE 30, 2027. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed***.

AYES: Lockett, Jones, Robles, Buxbaum, Troy, Merrill, Wilson

H. Communications Received: Letter dated 12/19/25 from California Department of Finance approving National City's Last & Final ROPS that was previously approved by the Oversight Board on 11/20/25. ***Oversight Board staff indicated that a document for the Oversight Board was additionally received prior to the meeting from the City of San Marcos Successor Agency.***
I. Future Agenda Item(s): ***None***
J. Set Future Meeting Date(s): February 19, 2026, 10:00 a.m., March 19, 2026, 10:00 a.m., April 16, 2026, 10 a.m.
K. Adjournment **at 10:42am**

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COUNTY OF SAN DIEGO

AGENDA ITEM

COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD

DATE: July 16, 2026

01

TO: Countywide Redevelopment Successor Agency Oversight Board

SUBJECT: APPROVAL OF A CONTRACT BETWEEN THE CITY OF SAN DIEGO ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY AND CIVIC SAN DIEGO FOR THE B STREET PEDESTRIAN CORRIDOR PROJECT

SUMMARY:

Overview

Under this Agreement (Attachment A) between Civic San Diego ("Civic"), and the City of San Diego ("City") acting in its capacity as the Successor Agency, Civic will provide oversight and implementation of the B Street Pedestrian Corridor Project ("Project"). The Project is an enforceable obligation by the Successor Agency through Developer/Owner Participation Agreements. It is composed of a streetscape enhancement project at the western terminus of B Street on the north end of the Santa Fe Depot in downtown San Diego. Under the terms of the Compensation Agreement, Civic will manage the Project by executing the necessary contracts to complete the Project. This Agreement is necessary to allow the Successor Agency to fulfill its contractual obligations under the Developer/Owner Participation Agreements, which qualifies and has been previously approved, as an enforceable obligation.

Recommendation(s)

1. Adopt the resolution entitled, A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING A CONTRACT BETWEEN THE CITY OF SAN DIEGO ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY AND CIVIC SAN DIEGO FOR THE B STREET PEDESTRIAN CORRIDOR PROJECT

Fiscal Impact

Funding from line item 164 in the Redevelopment Obligation Payment Schedule (ROPS) is available in the amount of $3,000,000. The current ROPS 20 period "A" that ends December 31, 2026, has $1,500,000 programmed to cover this agreement, along with $1,500,000 programmed for period "B" that ends June 30, 2027. The Project has been previously recognized as an enforceable obligation and there are sufficient funds programmed in the current ROPS periods to cover the contract.

BACKGROUND:

In 1993, the Redevelopment Agency of the City of San Diego (the "Former RDA") executed an Amended and Restated Development Agreement and an Amended and Restated Owner Participation Agreement with Catellus Development Corporation (including its affiliates, "Catellus") which revised development entitlements first granted in 1983 to Catellus' predecessor for the approximate 17 acres in the environs of the Santa Fe Depot (together, the "Development/Owner Participation Agreements").

Under the terms of these Development/Owner Participation Agreements, Catellus was required to retrofit and complete base building improvements to the Santa Fe Depot Baggage Building ("Baggage Building") and to transfer title of the Baggage Building to the City, or any other governmental agency or non-profit entity designated by the City, for use as a museum or other cultural use.

In December 2002, the Former RDA entered into an agreement with Catellus and the Museum of Contemporary Art, San Diego ("Museum") in which Catellus transferred title of the Santa Fe Depot Baggage Building to the Museum, with an option for the Former RDA to acquire title through a Transfer Agreement (Attachment B). Section 10.22 of the Transfer Agreement, states "it is a goal of the [Former RDA] to install a public pathway and landscaping between Kettner Boulevard and the Transit Courtyard within the vacated B Street right of way". Also under Section 10.22, the Museum obligated itself to "pay to [the Former RDA] $150,000 to assist [the Former RDA] in the funding of the improvements as contemplated on Exhibit K …" (i.e., the B Street Pedestrian Corridor or "Project".

Pursuant to the Transfer Agreement, the Museum entered into a lease with AMTRAK in February 2006 for the use of an approximately 2,755-square foot portion of the Baggage Building ("AMTRAK Lease") (Attachment C). The AMTRAK Lease was amended on or about September 8, 2006. Section 4 of the AMTRAK Lease states that the "Museum will install a driveway and walkway…for pedestrian purposes; such driveway and walkway shall be deemed to and shall constitute the Public Pedestrian Pathway until the one desired by the [Former RDA], as above described is constructed."

In October 2024, the City, the Museum, and The Regents of the University of California (the "Regents") entered into an Agreement Satisfying and Terminating Obligations Under the 2004 Transfer Agreement and Amending the 2004 City Option ("2024 Agreement") as a condition precedent to the City's consent to the Museum's proposed sale of the Baggage Building to the Regents. The 2024 Agreement, among other things, transferred all obligations of the Museum under the Transfer Agreement to the Regents, including payment of the $150,000 Project Contribution. The Successor Agency has received the Project Contribution, which is currently being held in a dedicated account for the Project (Attachment D).

The Successor Agency is responsible for the remaining funds to administer the Project, and the Transfer Agreement specifically states that the Former RDA "shall fund all amounts required to construct and install such improvements." Furthermore, the Transfer Agreement states that "[i]t shall be the responsibility of the [Former RDA] to develop the final construction drawings for the improvements and landscaping implementing" the B Street Pedestrian Corridor.

The Development/Owner Participation Agreements, the Transfer Agreement, and the AMTRAK Lease (collectively, the Controlling Documents) obligate the Successor Agency to pay for the design, development and construction of the Project.

The proposed Compensation Agreement between the City and Civic represents the final step necessary to complete the Project and fulfill the Agency's obligation.

Pursuant to Assembly Bill x1 26 ("AB 26") and Assembly Bill 1484, the Former RDA dissolved on February 1, 2012, at which time the Successor Agency assumed all of the Former RDA's assets, rights, and obligations under the California Community Redevelopment Law. In addition, CivicSD, formerly Centre City Development Corporation ("CCDC"), has replaced CCDC as the Successor Agency's representative for, among other duties, many aspects of the winding down of redevelopment in the City.

Section 34177.3(a) of California Health and Safety Code, as recently amended, states that successor agencies "shall lack the authority to, and shall not, create new enforceable obligations or begin redevelopment work, except in compliance with an enforceable obligation . . . that existed prior to June 28, 2011." Section 34177.3(b) permits successor agencies to "create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance." Section 34171(d)(1)(E) defines "enforceable obligation" to include "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." Section 34171(d)(1)(F) further defines "enforceable obligation" to include "[c]ontracts or agreements for the administration or operation of the successor agency, in accordance with this part . . . ." Section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and Section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation.

Under Section 34177.3(b), a post-AB 26 contract or amendment thereto is warranted if it allows the Successor Agency to fulfill a pre-AB 26 enforceable obligation. The DOF issued a letter dated November 8, 2013 that requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond.

This Agreement should be permitted under Sections 34171(d)(1)(E), 34171(d)(1)(F), 34177(a), 34177(c), and 34177.3(b) as it will allow Successor Agency, through CivicSD, to utilize the Consultant to fulfill an enforceable obligation that existed prior to June 28, 2011. The enforceable obligation was created through the Controlling Documents that obligate the Former RDA to design, develop, and construct the B Street Pedestrian Corridor. To fulfill this pre-AB 26 enforceable obligation, the City, on the Successor Agency's behalf, will enter into a Compensation Agreement with Civic to oversee an implement the Project.

Project Budget – The Estimated Cost Exhibit (Exhibit E) of the Compensation Agreement for the Project is $2,162,288 million. ROPS line 164 has $3,000,000 programmed for ROPS 20 which ends June 30th, 2027.

Project Schedule of Performance – The following is a preliminary schedule for the proposed Project work.

Action	Dates
Agency Approvals	August 2026
Begin Construction Phase	September 2026
Completion	Summer 2027

Environmental Impact: This activity is not a "Project" for purposes of the California Environmental Quality Act (CEQA) because it does not fit within the definition of a "Project" set forth in Public Resources Code Section 21065 or State CEQA Guidelines Section 15378. Therefore, this activity is not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

Respectfully submitted,

STEVE LOCKETT
Deputy Director, EDGA

ATTACHMENT(S):
A – COMPENSATION AGREEMENT BETWEEN CITY OF SAN DIEGO AND CIVIC SAN DIEGO
B – TRANSFER AGREEMENT
C – AMTRAK LEASE
D – CITY RESOLUTION FOR $150,000 PROJECT CONTRIBUTION
E – OVERSIGHT BOARD RESOLUTION OB-2026-17

SUBJECT: APPROVAL OF A CONTRACT BETWEEN THE CITY OF SAN DIEGO ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY AND CIVIC SAN DIEGO FOR THE B STREET PEDESTRIAN CORRIDOR PROJECT

AGENDA ITEM INFORMATION SHEET

PREVIOUS RELEVANT BOARD ACTIONS:
On September 19, 2019, the Successor Agency Oversight Board approved a contract for consulting services with Kimley-Horn to prepare schematic design drawings and preliminary cost estimate for the B Street Pedestrian Corridor project.

On August 29, 2021, the Successor Agency Oversight Board approved the First Amendment for consulting services with Kimley-Horn to prepare construction documents for the subject Project.

On October 16, 2025, the Successor Agency Oversight Board approved the Second Amendment for consulting services with Kimley-Horn to obtain permit ready construction documents for bidding the Project.

MANDATORY COMPLIANCE:
Per the Controlling Documents, the Successor Agency is required and monetarily responsible for the completion of the B Street Pedestrian Corridor and associated activities to complete the subject Project.

CONTACT PERSON(S):

Steve Lockett	Matthew Ostlund
Name	Name
619-984-0697	619-929-6662
Phone	Phone
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E-mail	E-mail

COMPENSATION AGREEMENT
(B STREET PEDESTRIAN CORRIDOR)

This Compensation Agreement for the B Street Pedestrian Corridor ("Agreement") is made and entered into on _____________, 2026 ("Effective Date") between the City of San Diego, a municipal corporation ("City") and Civic San Diego, a California non-profit public benefit corporation ("Civic"), (collectively, the "Parties"), to allocate funding for the design and construction of the project generally known as the B Street Pedestrian Corridor.

RECITALS

A. Civic provides consulting services to the City under that certain Operating Agreement between the City of San Diego and Civic San Diego to provide Successor Agency and Housing Successor services, dated June 18, 2019 ("Operating Agreement"), and extended per Ordinance number O-21788, in April 2024.

B. Civic will manage the construction and completion of the B Street Pedestrian Corridor ("Project") under section 2.1.1.3 of the Operating Agreement (**Exhibit A**). The project makes improvements to the western terminus of B Street in downtown San Diego on the north side of the Santa Fe Depot and adjacent to the MTS and railroad tracks (**Exhibit B)**. The improvements generally consist of installing new paving, lighting, and hardscape elements to improve the pedestrian promenade (**Exhibit C)**.

C. The Project is funded from line item 164 of the Redevelopment Obligation Payment Schedule (ROPS). The total Project budget is subject to approval by the California State Department of Finance (CA DOF). The Project is recognized as an enforceable obligation by CA DOF and the current approved ROPS 20 period, ending ends June 30, 2027. The total funding available from ROPS is $3,000,000, also known as the Maximum Funds.

D. The B Street Pedestrian Corridor Maximum Funds are the total and maximum funds available for reimbursement to Civic; any amount in excess of the Maximum Funds may not be reimbursed through this Agreement and shall constitute a Non-Reimbursable Cost. Civic is not automatically entitled to the Maximum Funds or any other reimbursement. Civic must satisfy all terms of this Agreement to become eligible for any portion of the Maximum Funds if and as they are collected and become available for reimbursement.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties, and for other good and valuable consideration, City and Civic agree as follows:

ARTICLE I.
SUBJECT OF THE AGREEMENT

1.1 **<u>Design and Construction of Project</u>**. Civic agrees to design and construct the Project fully complete and operational and suited to the purpose for which they are designed and under this Agreement, the Plans and Specifications, and within the timeframe established in each Project Schedule attached as **Exhibit D,** and for the Estimated Costs attached as **Exhibit E**.

1.2 **Substantial and Final Completion**. City's acceptance of the Project shall occur upon Civic's receipt of a letter of Substantial Completion from City (as defined in Section 15.1). Final Completion of the Project shall not occur until after approval of the as-built plans, an acceptable capitalization form, and any required certificate of occupancy and/or property transfers (as defined in Section 16.1).

1.3 **Reimbursement**. City agrees to reimburse Civic for the Project subject to the terms and conditions of this Agreement.

1.4 **Advance**. City agrees to provide a Working Capital Advance (as defined in the Operating Agreement) to Civic for the Project in the amount not to exceed $350,000 under section 4.3 of the Operating Agreement.

ARTICLE II.
PROJECT SCHEDULE

2.1 **Project Schedule**. Civic shall perform and complete the work under this Agreement according to the Project Schedule**,** the Project Schedule Obligations and Components attached as **Exhibit F**, the Meeting Requirements in **Exhibit G**, and Preconstruction, Progress, and Special Meeting Agendas in **Exhibit H**.

2.2 **Project Completion**. Civic agrees that all work on each Project under this Agreement must be complete and ready for operational use according to the Project Schedule and the Project Schedule Obligations and Components.

2.3 **Changes in Project Schedule**.

2.3.1 Changes in the Project Schedule that increase the Estimated Cost must be approved by City in writing under Section 3.3.3.

2.3.2 Changes in the Project Schedule that do not increase the Estimated Cost may be approved by the engineer designated by the City's Engineering Capital Projects (Responsible Department), which shall be responsible for review and approval of the progress of, and changes to, the Project (Resident Engineer).

2.4 **Notification of Delay**. If Civic anticipates or has reason to believe that performance of work under this Agreement will be delayed, Civic shall immediately notify the representative designated by the City's Engineering Capital Projects to manage the Project on behalf of City (Project Manager). Unless City grants Civic additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to the delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Civic needs as a result of the cause of the delay. If Civic anticipates or has reason to believe the delay will increase the Estimated Cost, Civic shall also give notice to City in accordance with Section 3.4.

2.5 **Delay**. If delay in the performance of work required under this Agreement is caused by unforeseen events beyond the control of the Parties, such delay may entitle Civic to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. A delay in the performance of work or any activity by City or Civic that affects a deadline to perform imposed on the other party by this Agreement will entitle the other party to the number of days City or Civic failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on the Project: war; changes in law or government regulation; pandemics; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Civic's work; concealed conditions encountered in the completion of the Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Civic. Any delay claimed to be caused by Civic's inability to obtain materials, equipment, labor, or additional required services shall not entitle Civic to an extension of time unless Civic furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Civic's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Civic shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Civic, its consultants, contractors, subcontractors, employees, or other agents (collectively, "Civic's agents"). A change in the Project Schedule does not automatically entitle Civic to an increase in Reimbursable Costs (as defined in Section 3.2). If City determines that the delay materially affects the Project, City may exercise its rights under Section 2.7 of this Agreement.

2.6 **Costs of Delay**. City and Civic acknowledge construction delays may increase the cost of the Project. Unless Civic informs City under Sections 2.4 and 3.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through collected fees under the FAR fund, funding will be insufficient to cover the cost increase. Therefore, Civic agrees to absorb any increase in Estimated Costs because Civic failed to timely notify the City in writing as required under Sections 2.4 and 3.4.

2.7 **City's Right to Terminate for Default**.

2.7.1 If Civic fails to adequately perform any obligation required by this Agreement, Civic's failure shall constitute a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Civic undertakes all reasonable efforts to ensure that the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement including all rights of Civic and any person or entity claiming any rights by or through Civic under this Agreement. A delay shall not constitute a Default if Civic has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 2.4, and such delay was caused by unforeseen events that justify the delay as set forth in Section 2.5.

2.7.2 If City terminates the Agreement due to Civic's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Civic or Civic's agents for the construction of the Project. Civic shall include, and require its contractors and subcontractors to include provisions in their contracts and subcontracts, that City is a third-party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express.

2.7.3 The rights and remedies of City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Civic, including any claims for damages against Civic that City may assert as a result of the Default.

2.8 **City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors**. If Civic files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Civic immediately terminate this Agreement, and terminate all rights of Civic and any person or entity claiming any rights by or through Civic. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

ARTICLE III.
PROJECT COSTS AND CHANGE ORDERS

3.1 **Project Costs**. Project Costs are Civic's reasonable costs of construction materials and design necessary for the Project as approved by the City and depicted in **Exhibit E**. Project Costs do not include Civic's Administrative costs (as defined in Section 3.3.1).

3.2 **Reimbursable Costs**. Civic may seek reimbursement only for Reimbursable Costs. Reimbursable Costs shall consist only of the Estimated Costs (as defined in Section 3.3) reasonably expended by Civic, approved for reimbursement.

3.2.1 ***Non-Reimbursable Costs***. Non-Reimbursable Costs include: (i) Any cost in excess of the Maximum Funds; (ii) any cost in excess of the Estimated Costs not approved in accordance with Section 3.3.3; (iii) any cost identified in this Agreement as a Non-Reimbursable Cost; (iv) any cost to remedy Defective Work (as defined in Section 21.1); (v) any cost incurred as a result of Civic's or Civic's agents' negligence, omissions, delay, or Default; (vi) any cost of substituted products, work, or services not necessary for completion of the Project, unless requested and approved by City in writing; (vii) any cost not approved by City in the manner required by this Agreement and/or the Charter of the City of San Diego (Charter) and rules, regulations, or laws promulgated thereunder; and (viii) any cost not supported by proper invoicing or other documentation as reasonable and necessary. Additionally, the fair value as reasonably determined by City of any property that is destroyed, lost, stolen, or damaged rendering it undeliverable, unusable, or inoperable for City constitutes a Non-Reimbursable Cost. Refundable deposits, such as utility deposits, also constitute a Non-Reimbursable Cost.

3.3 **Estimated Cost(s)**. Civic's Estimated Costs shall consist only of: (i) Project Costs, (ii) Civic's Administrative Costs (as defined in Section 3.3.1), and (iii) the Project Contingency (as defined in Section 3.3.2).

3.3.1 ***Civic's Administrative Costs***. Civic's Administrative Costs are reasonably incurred by the Project-related administration and supervision expenditures totaling a flat 10 percent of Total Project Costs.

3.3.2 ***Project Contingency***. A Project Contingency of 15 percent of estimated total project costs is included in the Estimated Cost. The Project Contingency shall not be available for: (i) work required due to Civic's or Civic's agents' failure to perform work or services according to the terms of this Agreement or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of Civic or Civic's agents.

3.3.3 ***Change Orders and Adjustments to Estimated Cost***. Estimated Costs may be increased only through properly processed and approved Change Orders under **Exhibit I**. The Estimated Cost may only be increased if Civic provides documentation showing that the increase is reasonable in nature and amount, and is due to causes beyond Civic's or Civic's agents control or otherwise not the result of unreasonable conduct by Civic or Civic's agents which may, based on actual impact on each Project, include: war; pandemics; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Civic's work; concealed conditions encountered in the completion of the Project; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Civic. Civic shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order.

3.4 **<u>Notification of Increased Estimated Costs</u>**. If Civic anticipates or has reason to believe that the cost of the Project will exceed the Estimated Cost, Civic shall notify the City in writing within fourteen (14) calendar days of becoming aware of the potential increase. If Civic fails to timely notify City in writing, Civic agrees to absorb any increase in Estimated Costs. This written notification shall include an itemized cost estimate and a list of recommended revisions Civic believes will bring the construction cost to an amount within the Estimated Cost. In accordance with Section 3.3.3, City may approve an increase in Estimated Costs and/or delineate a project which may be constructed within Estimated Costs. If City chooses not to pursue the above options, Civic may elect to construct the Project and forgo any reimbursement in excess of the Estimated Cost.

ARTICLE IV.
COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

4.1 **<u>Compliance</u>**. Civic shall bid and award contracts to complete the Project in accordance with the Charter and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code ("Municipal Code"), the Operating Agreement, and City Council resolutions and policies, as well as any expressly applicable public contract laws, rules, and regulations (Required Contracting Procedures). Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's Small and Local Business Enterprise Program ("SLBE") for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Project, Civic shall ensure that the bidding documents are in compliance with all Required Contracting Procedures. Civic understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of this Agreement, and any contract awarded without the Required Contracting Procedures shall be ineligible for reimbursement.

4.2 **Bidding Documents**. Civic shall prepare final Construction Documents to be submitted to City for review, in accordance with City's standard review procedures.

4.2.1 ***Submission of Construction Documents***. Civic may elect to prepare bidding documents requesting bids based on Lump Sum or Firm-Fixed prices or unit costs as applicable for the Project. City retains the right to notify Civic of necessary corrections and will notify Civic of corrections within fifteen (15) Working Days of submittal date.

4.2.2 ***Obtain all Permits and Approvals***. Civic shall obtain all necessary permits, including, but not limited to, environmental, grading, building, mechanical, electrical, and plumbing. Approval of Construction Documents will be evidenced by City's issuance of a letter indicating Civic may proceed with competitive bidding.

4.3 **Solicitation of Bids**. Civic shall solicit sealed bids for construction of the Project in accordance with all Required Contracting Procedures. Civic shall work with City's Engineering and Capital Projects to ensure that bids were solicited under the Required Contracting Procedures.

4.4 **Bid Opening and Award of Contract**. Civic shall utilize its own electronic online bidding platform to open and receive bids and shall work with City's Engineering and Capital Projects to award contracts under the Required Contracting Procedures. At the City's request, the City shall be provided with copies of all bids received after the bid opening and with a copy of the tabulation of bid results upon Civic's completion. Contract(s) for the construction of the Project shall be awarded by Civic to the lowest responsible and reliable bidder in accordance with the Required Contracting Procedures.

4.4.1 In the event that the lowest responsible and reliable bid exceeds the Estimated Cost, any reimbursement for such an increase shall be subject to approval by Change Order under Section 3.3.3, following award of the contract.

4.4.1.1 In the event the City Council does not approve the increased cost, at City's option:

4.4.1.1.1 City may terminate this Agreement. In the event the Agreement is terminated, Civic's obligations under this Agreement for the construction of the Project shall be released without further liability. This release shall in no way affect the obligations of Civic with respect to any terms or conditions or other approvals and agreements with City. However, prior to termination of this Agreement, City shall reimburse Civic for the engineering and design costs reasonably incurred and expended by Civic in accordance with this Agreement and within the Estimated Cost in accordance with Section 3.3. Civic shall provide City with copies of all executed contracts; or

4.4.1.1.2 City may work with Civic to rebid and/or redesign the Project.

4.4.1.1.3 With City's consent, Civic may award the bid and assume responsibility for the costs in excess of Estimated Cost.

4.5 **Nondiscrimination Requirements**.

4.5.1 ***Compliance with the City's Equal Opportunity Contracting Program***. Civic shall comply with City's Equal Opportunity Contracting Program. Civic shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Civic shall provide equal opportunity in all employment practices. Civic shall ensure its consultants, contractors, and their subcontractors comply with the City's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold Civic liable for any discriminatory practice of its consultants, contractors or their subcontractors.

4.5.2 ***Nondiscrimination Ordinance***. Civic shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Civic shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Civic understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between Civic and any consultants, contractors, subcontractors, vendors and suppliers.

4.5.3 ***Compliance Investigations***. Upon City's request, Civic agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Civic used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Civic for each contract, subcontract or supply contract. Civic further agrees to fully cooperate in any investigation conducted by City under City's Nondiscrimination in Contracting Ordinance (Municipal Code sections 22.3501-22.3517). Civic understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against Civic up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Civic further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.6 **Equal Benefits**. Under section 7.1 of the Operating Agreement, Civic is subject to the City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the Municipal Code. The Equal Benefits Ordinance is also applicable to contracts that Civic enters into with respect to the Project. Therefore, Civic shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Civic shall include in each of its contracts with its contractor(s) and consultant(s) provisions: (i) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (ii) stating that failure to maintain equal benefits is a material breach of those agreements; and (iii) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. Municipal Code § 22.4304(e)-(f). In addition, Civic's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notifies employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. Municipal Code § 22.4304(a)-(b). Civic's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the Equal Benefits Ordinance requirements. Municipal Code § 22.4304(c). Additionally, Civic's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the Equal Benefits Ordinance. Municipal Code § 22.4304(d). Civic shall ensure that its contractor(s) and consultant(s) complete the Equal Benefits Ordinance Certification of Compliance, attached by example at **Exhibit J**.

ARTICLE V.
PREVAILING WAGE

5.1 **Prevailing Wage**. Prevailing wages apply to the Project. Under San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed on the Project is subject to State prevailing wage laws, and Civic shall require that its contractors and consultants comply with all applicable prevailing wage laws and requirements. For construction work performed on the Project that cumulatively exceeds $25,000 and for alteration, demolition, repair and maintenance work performed on the Project that cumulatively exceeds $15,000, Civic shall require that its contractors and subcontractors comply with State prevailing wage laws including, but not limited to, the requirements listed below.

5.1.1 ***Compliance with Prevailing Wage Requirements***. Under sections 1720 through 1861 of the California Labor Code, Civic shall require that its contractors and subcontractors ensure that all workers who perform work on the Project are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations ("DIR"). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. Civic shall immediately notify City of any known violations of this Article.

5.1.1.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Civic shall require that its contractors and subcontractors post a copy of the prevailing rate of per diem wages determination at the job site and make them available to any interested party upon request.

5.1.1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of contract for the Project. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

5.1.2 ***Penalties for Violations***. Civic shall requires its contractor and subcontractors comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

5.1.3 ***Payroll Records***. Civic shall require its contractor and subcontractors comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Civic shall require its contractor to require its subcontractors to also comply with section 1776. Civic shall require its contractor and subcontractors submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Civic shall require its contractor requires its subcontractors submit certified payroll records to the City.

5.1.3.1 For contracts entered into on or after April 1, 2015, Civic shall ensure that its contractor and subcontractors furnish records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4.

5.1.4 ***Apprentices***. Civic shall require its contractors and its subcontractors comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Civic shall require its contractors are held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5.1.5 ***Working Hours***. Civic shall require its contractors and subcontractors comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than $1^{1}/_{2}$ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

5.1.6 ***Required Provisions for Subcontracts***. Civic shall require its contractors include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

5.1.7 ***Labor Code Section 1861 Certification***. In accordance with California Labor Code section 3700, Civic shall require that its contractors are required to secure the payment of compensation of its employees and by signing the contract, the contractors certify as follows: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this [agreement or contract].”

5.1.8 ***Labor Compliance Program***. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.

5.1.9 ***Department of Industrial Relations Registration***. The Project is subject to compliance monitoring and enforcement by the DIR. Civic shall register with the DIR under Labor Code section 1725.5. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR under California Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work under California Labor Code section 1725.5. Civic shall ensure that its calls for bids and contract documents include the following provisions: “No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations under Labor Code section 1725.5”; “No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations under Labor Code section 1725.5”; “This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations”; and “By submitting a bid or proposal, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.

5.1.9.1 A contractor’s inadvertent error in listing a subcontractor who is not registered under California Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor under Public Contract Code section 4107.

ARTICLE VI.
CONSULTANTS

6.1 **Selection of Consultant**. Civic’s hiring of a consultant is subject to City’s approval. Civic’s consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Civic shall cause the provisions in **Exhibit K** “Consultant Provisions” to be included in its consultant contract(s) for the Project. The selection of any consultant is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the City Charter, the Municipal Code (excluding Municipal Code Chapter 2, Article 2, Division 32 under Municipal Code Chapter 14, Article 2, Division 6), Council

Policies, and the City's Administrative Regulations. Failure to adhere to the applicable consultant selection procedures is a material breach of this Agreement, and any contract awarded not in accordance with applicable consultant selection procedures shall be ineligible for reimbursement.

6.2 **Equal Benefits and Nondiscrimination**. The requirements of City's Equal Benefits Ordinance apply to Civic's consultant contracts. *See* Section 4.6. The nondiscrimination requirements in Section 4.5 apply to Civic's consultant contracts.

6.3 **Estimated Budget**. Civic shall require its consultant to prepare an estimated budget for the Project.

6.4 **Schematic Drawings**. If the schematic drawings have not yet been completed, Civic shall require its consultant to prepare schematic drawings for the Project for City approval.

ARTICLE VII.
DESIGN AND CONSTRUCTION STANDARDS

7.1 **Standard of Care**. Civic agrees that the professional services provided under this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional design, architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

7.2 **Compliance with all Laws, Design Standards, and Construction Standards**. In all aspects of the design and construction of the Project, Civic shall comply with all laws and the most current editions of the Green Book, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit L.** It shall be Civic's sole responsibility to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. Civic shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit M,** "Certification for Title 24/ADA Compliance."

7.3 **Imputed Knowledge**. Civic shall be responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge will be imputed to Civic to the fullest extent allowed by law.

7.4 **City Approval**. Civic shall be required to obtain City approval of design, plans, and specifications in the manner required in **Exhibit N.** Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the duly authorized City representative designated by this Agreement.

7.5 **City Approval Not a Waiver of Obligations**. Where approval by City, the Mayor, or other representatives of City is required, it is understood to be general approval only and does not relieve Civic of responsibility for complying with all applicable laws, codes, regulations, and standard consulting, design, or construction practices.

ARTICLE VIII.
CONSTRUCTION AND DRUG-FREE WORKPLACE

8.1 **Compliance with Project Schedule and Construction Requirements**. Civic shall commence construction of the Project in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in **Exhibit O,** "Construction Obligations." Civic shall diligently pursue such construction to completion. Failure to maintain the Project Schedule constitutes a Default subject to Section 2.7. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under any other provision of this Agreement or those available at law or in equity.

8.2 **Drug-Free Workplace**. Civic agrees to comply with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. Civic shall certify to City that it will provide a drug-free workplace by submitting a Civic Certification for a Drug-Free Workplace in the form and content of **Exhibit P.** Civic shall ensure that its contractors comply with the requirements of City's Council Policy 100-17.

ARTICLE IX.
PRODUCTS

9.1 **Product Submittal and Substitution**. To the extent product specification is not addressed by the most recent edition of the Standard Specifications for Public Works Construction (including the City of San Diego's standard special provisions) (Green Book) or the Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Civic shall obtain City approval of products and substitution of products in the manner provided in **Exhibit Q,** "Product Submittal and Substitution."

9.1.1 ***Not a Release of Liability***. City's review of samples in no way relieves Civic of Civic's responsibility for construction of the Project in full compliance with all Construction Documents.

ARTICLE X.
EXTRA WORK

10.1 **City Authority to Order Extra Work**. Any City additions or modifications to work or Civic obligations under this Agreement not described within City-approved Construction Documents (Extra Work) may be ordered by City prior to completion under the terms and conditions listed in **Exhibit R**, "Extra Work Provisions."

ARTICLE XI.
CHANGED CONDITIONS

11.1 **Changed Conditions**. Changed Conditions shall have the meaning as defined in the Green Book. The Parties acknowledge and agree that even if Changed Conditions are found to be present, the Project shall not exceed the Estimated Cost without City Council approval of an increase to the Estimated Cost in accordance with Section 3.3.3. Absent such express approval of additional funds, Civic shall provide City with value engineering and the Parties shall return the Project to within the Estimated Cost.

ARTICLE XII.
REIMBURSEMENT

12.1 Reimbursement to Civic

12.1.1 ***Notification of Reimbursable Project***. Prior to commencement of any work on the Project, Civic shall submit to the City's Engineering and Capital Projects a "Notification of Reimbursable Project" form (attached as **Exhibit S**) together with the Project's construction permit application.

12.1.2 ***Type of Reimbursement***. Civic shall be entitled to cash reimbursement for the Reimbursable Costs expended by Civic and approved by City in accordance with this Agreement.

12.1.3 ***Funds for Reimbursement***. Civic shall only be entitled to reimbursement as set forth in this Agreement, in the amount set forth in this Agreement, and only as allocated for the Project, if and as such funds become available for the Project, after the appropriate deductions and expenditures are made, under the method of reimbursement described in Section 12.1.7.

12.1.4 ***Amount of Reimbursement***. Civic shall be eligible for reimbursement for Reimbursable Costs in accordance with Section 3.2 in an amount not to exceed Estimated Costs in accordance with Section 3.3.

12.1.5 ***City's Administrative Costs***. City's Administrative Costs shall be paid prior to any reimbursement to Civic and shall consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Project, (ii) review contractor/subcontractor compliance with the City's Required Contracting Procedures, (iii) approve reimbursable costs for work performed during design/construction through Final Completion of the Project, and (iv) review project documentation to verify all costs related to the Project, inclusive of construction bid tabulations, contracts, and review of any cost allocation methods (City's Administrative Costs).

12.1.6 ***Method and Timing of Reimbursement***. As Reimbursable Costs are incurred, Civic shall submit to City a monthly written request for reimbursement for all Reimbursable Costs incurred or advanced for the Project in the preceding month for which Civic was not previously reimbursed under section 4.3.2 of the Operating Agreement (Reimbursement Request). The Reimbursement Request must also include all relevant documents in accordance with this Section. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete and shall notify Civic of such deficiencies within seven (7) calendar days of Civic's Reimbursement Request submittal. Civic shall provide additional documentation within seven (7) calendar days of City's notification and request. After all appropriate cost documentation has been received, City shall approve the Reimbursement Request (Reimbursement Request Approval) within thirty (30) calendar days. City shall reimburse Civic for those Reimbursable Costs within fifteen (15) calendar days of the date of Reimbursement Request Approval.

12.1.7 ***Initial Advance***. Notwithstanding the foregoing, upon execution of this Agreement, City shall provide Civic with a Working Capital Advance, under section 4.3 of the Operating Agreement, of $500,000 which accounts for approximately four (4) months of Reimbursable Costs.

12.1.8 ***Verification of Reimbursement Request***. Civic shall on a monthly basis, or as otherwise required by the City in writing, provide reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:

12.1.8.1 Civic shall submit one (1) copy of a Reimbursement Request Form (**Exhibit T**) with supporting documentation for work completed in accordance with this Agreement and the Plans and Specifications and/or Extra Work.

12.1.8.2 Prior to the approval of the Reimbursement Request, the RE shall verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented. The RE shall review the Project on-site for quality of material and assurance and adherence to the bid list, contract estimates, and the Plans and Specifications. The RE shall also review as-builts and Best Management Practices ("BMPs"), and verify that a lien release has been prepared.

12.1.8.3 The RE shall initial the reimbursement Request, noting any disallowed costs, maintain a copy, and forward the original to the City Senior Civil Engineer or City designee for review and approval.

12.1.8.4 The City Senior Civil Engineer or City designee shall review the Reimbursement Request, as well as supporting cost documentation received from Civic, including soft costs related to the Project, as well as monitor the RE' s expenses charged to the Project, and other City Administrative Costs. The City Senior Civil Engineer or City designee shall also serve as the liaison between the RE, and Economic Development Project Manager ("ED Project Manager").

12.1.8.5 The City Senior Civil Engineer or City designee shall prepare a memorandum, including a summary schedule of budgeted and actual approved costs, to the ED Project Manager, if necessary, recommending the reimbursement amount including all construction invoices and change orders previously approved, and soft costs incurred to date, noting any costs to be disallowed and the reason for the disallowance. A copy of the memorandum shall be forwarded to Civic.

12.1.8.6 Civic shall then submit an invoice to the City for the reimbursement amount approved by City.

ARTICLE XIII.
PUBLIC RELATIONS

13.1 **Presentations**. Civic and Civic's agents shall be available for all presentations required to be made to City Council, Council Committees, any other related committees, and citizen groups to provide them with information about the Project as well as presentations to any governing or regulatory body or agency for other approvals as may be required.

13.2 **City as Primary Contact**. Civic agrees that City is the primary contact with the media regarding the Project and Civic shall forward all questions regarding the status of the Project to the Responsible Department's Senior Public Information Officer.

13.3 **Advertising**. Civic acknowledges that advertising referring to City as a user of a product, material, or service by Civic and/or Civic's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval.

13.4 **Cleanup**. Civic shall be responsible for the cleanup of the Project site and the restoration and repair of any damage to the Project site attributable to any Civic sponsored ceremony.

ARTICLE XIV.
INSPECTION

14.1 **Inspection Team**. The Project shall be inspected by a team composed of representatives from (i) the City's Resident Engineer, (ii) the Responsible Department, (iii) City's Development Services Department, (iv) Civic's consultant(s), and (v) Civic's construction superintendent (Inspection Team).

ARTICLE XV.
SUBSTANTIAL COMPLETION

15.1 **Substantial Completion Letter**. When Civic determines that the Project is substantially complete, Civic shall request an operational inspection and a Substantial Completion Letter from the Resident Engineer. The Substantial Completion Letter shall include the Field Engineering Division's inspection of the improvements. The Substantial Completion Letter only authorizes public utilization of the Project in accordance with Sections 6-8 "Completion, Acceptance, and Warranty," and 6-10 "Use of Improvements during Construction" of the Greenbook. The Substantial Completion Letter does not constitute City approval for Final Completion of the punch list or as-built plans.

ARTICLE XVI.
FINAL COMPLETION

16.1 **Final Completion**. Final Completion shall not occur until each of the following is satisfied. Approval for the Final Completion for the work required to complete the Project shall occur upon the later of the following:

16.1.1 ***Documents and Approvals***. Submission and approval of all documents required to be supplied by Civic to City under this Agreement, including As-Built Drawings, As-Graded Reports, warranties, operating and maintenance manuals and other Project Deliverables identified in **Exhibit U;** City signature and sign off as final approval on all grading or public right-of-way permits; and if applicable, the issuance of a final Certificate of Occupancy for the Project.

16.1.2 ***Capitalization***. Civic shall submit a capitalization form with respect to the Project in a form acceptable to the FF Project Manager. An example is provided as **Exhibit V**.

16.1.3 ***Lien and Material Releases***. Civic shall ensure that all contractors and subcontractors provide lien and material releases for the Project and provide copies of such lien and material releases to the City Engineer. Alternatively, with City's approval, which shall not be unreasonably withheld, Civic may ensure that bonds are provided in a form reasonably acceptable to City in lieu of the lien and material releases.

16.2 **No Waiver**. Civic's obligation to perform and complete the Project in accordance with this Agreement and Construction Documents shall be absolute. Neither recommendation of any progress payment or acceptance of the work, nor any payment by City to Civic under this Agreement, nor any use or occupancy of the Project or any part thereof by City, nor any act of acceptance by City, nor any failure to act, nor any review of a shop drawing or sample submittal will constitute an acceptance of work which is not in accordance with the Construction Documents.

16.3 **Assignment of Rights**. Upon Final Completion of the Project, Civic shall assign its rights under its contracts with all contractors, subcontractors, design professionals, engineers, and material suppliers associated with the Project to City. Civic shall be required to obtain written approval and acknowledgement, whether in the form of a contract provision or separate document, of such assignment from its contractors, subcontractors, design professionals, engineers, and material suppliers. This assignment of rights shall not relieve Civic of its obligations under this Agreement, and such obligations shall be joint and several.

16.4 **Ownership of Project Deliverables**. Upon Final Completion or termination, Project Deliverables shall become City's property. Civic and City mutually agree that this Agreement, Construction Documents, and Project Deliverables for the Project shall not be used on any other work without the consent of each Party.

ARTICLE XVII.
BONDS AND OTHER ACCEPTABLE SECURITIES

17.1 **Payment Bond**. Civic shall provide or require its construction contractor to provide City with a payment bond, letter of credit ("LOC"), cash or other acceptable security for material and labor in favor of City for 100 percent of the proposed construction costs, as determined by competitive bidding ("Payment Bond").

17.2 **Performance Bond**. Civic shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the performance in favor of City for 100 percent of the proposed construction costs, as determined by competitive bidding ("Performance Bond").

17.3 **Warranty Bond**. Civic shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the Project during the warranty period in favor of City ("Warranty Bond"). Civic shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.

17.4 **Term**. The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until Operational Acceptance of the Project by City. Upon Operational Acceptance, City shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.

17.5 **Certificate of Agency**. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

17.6 **Licensing and Rating**. The bonds shall be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed 10 percent of its capital and surplus.

17.7 **Insolvency or Bankruptcy**. If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Civic shall within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to City.

ARTICLE XVIII.
INDEMNIFICATION

18.1 **Indemnification and Hold Harmless Agreement**. Other than in the performance of design professional services which shall be solely as addressed in Sections 18.2 and 18.3 below, to the fullest extent permitted by law, Civic shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Civic or Civic's agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Civic or Civic's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Civic's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

18.2 Indemnification for Design Professional Services. To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Civic shall require its design professional to indemnify and hold harmless the City, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Civic's design professional or design professional's officers or employees.

18.3 Design Professional Services Defense. The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of design professional or design professional's officers or employees.

18.4 Insurance. The provisions of this Article are not limited by the requirements of Article XIX related to insurance.

18.5 Enforcement Costs. Civic agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.

18.6 Indemnification for Liens and Stop Notices. Civic shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Civic shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Civic shall be responsible for payment of all persons entitled to assert liens and stop notices.

ARTICLE XIX.
INSURANCE

19.1 General. Civic shall not begin work on the Project under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this. Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City under this Article.

19.2 Type and Amount of Insurance. The dollar amount and type of insurance required for the Project, including any endorsements or specific clauses, is attached as **Exhibit W** (Required Insurance).

19.3 Written Notice. Except as provided for under California law, the Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Civic to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days' notice shall be provided.

19.3.1 Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" are present on a certificate, they shall be deleted.

19.4 Rating Requirements. Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an “A” or “A-” and “VI” rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

19.5 Non-Admitted Carriers. City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.

19.6 Additional Insurance. Civic may obtain additional insurance not required by this Agreement.

19.7 Obligation to Provide Documents. Prior to performing any work on the Project, Civic shall provide copies of documents including, but not limited to, certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete and certified copies of all insurance policies.

19.8 Deductibles/Self Insured Retentions. All deductibles and self-insurance retentions on any policy shall be the responsibility of Civic. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.

19.9 Policy Changes. Civic shall not modify any policy or endorsement thereto which increases City’s exposure to loss for the duration of this Agreement.

19.10 Reservation of Rights. City reserves the right, from time to time, to review Civic’s insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to City. City will reimburse Civic for the cost of the additional premium for any coverage-requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.

19.11 Not a Limitation of Other Obligations. Insurance provisions under this Article shall not be construed to limit Civic’s obligations under this Agreement, including indemnity.

19.12 Material Breach. Failure to maintain, renew, or provide evidence of renewal of required insurance during the term of this Agreement, and for a period of ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

ARTICLE XX.
WARRANTIES

20.1 Warranties Required. Civic shall require the construction contractor and its subcontractors and agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warrantees shall be enforceable by and inure to the benefit of City.

20.1.1 ***Materials and Workmanship***. All work on the Project shall be guaranteed against defective workmanship and all materials furnished by the construction contractor or its agents shall be guaranteed against defects for a period of one (1) year from the date of the Project's Final Completion. Construction contractor shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.

20.1.2 ***New Materials and Equipment***. Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all materials and equipment incorporated into the Project is new unless otherwise specified.

20.1.3 ***Design, Construction, and Other Defects***. Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction, or otherwise.

20.2 Form and Content. Except manufacturer's standard printed warranties, all warranties shall be on Civic's and Civic's agents, material supplier's, installers or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in the format specified in this Section.

20.2.1 ***Durable Binder***. Obtain warranties, executed in triplicate by Civic, Civic's agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.

20.2.2 ***Table of Contents***. All warranties shall be listed and typewritten in the sequence of the table of contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.

20.2.3 ***Index Tabs***. Each warranty shall be separated with index tab sheets keyed to the table of contents listing.

20.2.4 ***Detail***. Provide full information, using separate typewritten sheets, as necessary. List Civic's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.

20.2.5 ***Warranty Start Date***. This date shall be left blank until the date of Final Completion.

20.2.6 ***Signature and Notarization***. All warranties shall be signed and notarized. Signatures shall be required from Civic's construction contractor and where appropriate, the responsible subcontractor.

20.3 Term of Warranties. Unless otherwise specified or provided by law, all warranties, including those pertaining to plants, trees, shrubs and ground cover, shall extend for a term of one (1) year from the date of Final Completion.

20.4 **Meetings**. During the one (1) year warranty period described in Section 20.3, Civic shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Public Works Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the one (1) year warranty period.

ARTICLE XXI.
DEFECTIVE WORK

21.1 **Correction, Removal, or Replacement**. All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Construction Documents is defective (Defective Work). If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, Civic shall promptly and in accordance with City's written instructions and within the reasonable time limits, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.

21.2 **City's Right to Correct**. If circumstances warrant, including an emergency or Civic's failure to adhere to Section 21.1, City may correct, remove, or replace the Defective Work. In such circumstances, Civic shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.

21.3 **Defects Constitute Non-Reimbursable Costs**. All costs incurred by Civic or Civic's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Civic for Defective Work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Civic's or the construction contractor's bond if Civic has been paid in full.

21.4 **Extension of Warranty**. When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, shall be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.

21.5 **No Limitation on other Remedies**. Exercise of the remedies for Defective Work under this Article shall not limit the remedies City may pursue under this Agreement, at law, or in equity.

21.6 **Resolution of Disputes**. If Civic and City are unable to reach agreement on disputed work, City may direct Civic to proceed with the work and compensate Civic for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. Civic shall maintain and keep all records relating to disputed work in accordance with Article XXIII.

21.7 **Prior to Final Acceptance and Reimbursement to Civic**. Where Defective Work has been identified prior to the Final Completion of the Project, Civic shall promptly, and in accordance with City's written instructions and within the reasonable time limits, either correct the Defective Work, or if it has been ‘rejected by City, remove it from the site and replace it with non-defective and conforming work. Costs incurred to remedy Defective Work are Non-Reimbursable Costs. Where Defective Work is not remedied, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount paid, or make a claim against Civic’s or construction contractor’s bond.

ARTICLE XXII.
MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

22.1 **Maintenance Period**. If the construction contractor is required to install or maintain landscaping and/or irrigation, Civic shall require the construction contractor to provide a maintenance period to begin on the first day after all landscape and irrigation work on the Project is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and shall continue until ninety (90) calendar days after the date of Final Completion or ninety (90) calendar days after the date the landscaping and irrigation is accepted, whichever is longer. The maintenance period shall be 120 calendar days if turf is seeded.

22.2 **Maintenance Area**. Civic shall require the construction contractor to maintain all areas of the Project, including areas impacted or disturbed by the Project.

22.3 **Maintenance Required**. Civic shall require the construction contractor to conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Construction contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days from the date the condition is first detected. Maintenance shall also include the following: (i) filling and replanting of any low areas that may cause standing water (ii) adjusting of sprinkler head height and watering pattern, (iii) filling and recompaction of eroded areas, (iv) weekly removal of trash, litter, clippings and foreign debris, (v) inspecting plants at least twice per week, and (vi) protecting all planting areas against traffic or other potential causes of damage.

22.4 **Landscape and Irrigation Inspection**. At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled with two (2) weeks’ notice, a minimum of eighty (80) calendar days after the plant maintenance period commencement, or when Civic or Civic’s contractor notifies City they are ready for the final Landscape and Irrigation Inspection, whichever comes last. The City will notify Civic of all deficiencies revealed by the inspection before acceptance.

22.5 **Extension of Maintenance Period**. Civic shall require the construction contractor to extend completion of the maintenance period when in City’s opinion improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. Civic shall require the construction contractor to accept responsibility for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the maintenance period are Non-Reimbursable Costs.

22.6 **Replacement**. Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, shall be replaced within fourteen (14) calendar days of notification by City. Civic shall require the construction contractor to include, at construction contractor's expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report shall indicate the reason for lack of vigor, potential remedies, if any, and an estimate of the time required to regain vigor and specified size. Plants used for replacement shall be of the same kind and size as specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. Civic shall require the cost of all repair work to existing improvements damaged during replacements be borne by the construction contractor. Costs of replacement are Non-Reimbursable Costs.

ARTICLE XXIII.
RECORDS AND AUDITS

23.1 **Retention of Records**. Civic and Civic's agents shall maintain data and records related to the Project and this Agreement for a period of not less than five (5) years following the Effective Date of this Agreement.

23.2 **Audit of Records**. At any time during normal business hours and as often as City deems necessary, Civic and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Civic and all contractors or subcontractors shall permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Civic shall pay all City's travel-related costs to audit the records associated with this Agreement at the location where the records are maintained. All such costs are Non-Reimbursable Costs.

23.2.1 ***Costs***. Civic and Civic's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Agreement.

ARTICLE XXIV.
NOTICES

24.1 **Writing**. Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.

24.2 **Effective Date of Notice**. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (i) on personal delivery, (ii) on the second business day after mailing by certified or registered U.S. Mail, Return Receipt Requested, (iii) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (iv) upon documented successful transmission of facsimile

24.3 **<u>Recipients</u>**. All demands or notices required or permitted to be given to City or Civic shall be delivered to all of the following:

24.3.1 Director, Economic Development Department
City of San Diego
1200 Third Avenue, Suite 1400
San Diego, California 92101

24.3.2 Director, Engineering Capital Projects
City of San Diego
101 Ash Street
San Diego, California 92101
Facsimile: (619) 533-5176

24.3.3 Executive Vice President, Engineering & Construction
Civic San Diego
8989 Rio San Diego Drive, Ste 100
San Diego, California 92108

24.4 **<u>Change of Address(es)</u>**. Notice of change of address shall be given in the manner set forth in Article XXIV.

ARTICLE XXV.
MEDIATION

25.1 **<u>Mandatory Mediation</u>**. If dispute arises out of, or relates to the Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association ("AAA") or any other neutral organization agreed upon before having recourse in a court of law.

25.2 **<u>Mandatory Mediation Costs</u>**. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator ("Mediator"), and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

25.3 **<u>Selection of Mediator</u>**. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

25.3.1 If AAA is selected to coordinate the mediation (Administrator), within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

25.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

25.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

25.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

25.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

25.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE XXVI.
MISCELLANEOUS PROVISIONS

26.1 Term of Agreement. Following the final passage of the City Council Resolution or Ordinance authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by the City Attorney in accordance with Charter section 40 (Effective Date). Unless otherwise terminated, the Agreement shall be effective until (i) the final reimbursement payment is made; or (ii) one year after the Warranty Bond terminates, whichever is later, but not to exceed five years unless approved by City ordinance.

26.2 **Construction Documents**. Construction documents include, but are not limited to: construction contract, contract addenda, notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from other agencies, the special provisions, the plans, standard plans, standard specifications, reference specifications, and all modifications issued after the execution of the construction contract. Plans and Specifications include, but are not limited to: building, mechanical, and electrical drawings, including instructions for materials, workmanship, style, color, and finishes.

26.3 **Headings**. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

26.4 **Gender & Number**. Whenever the context requires, the use of (i) the neuter gender includes the masculine and the feminine genders, and (ii) the singular number includes the plural number.

26.5 **Reference to Paragraphs**. Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.

26.6 **Incorporation of Recitals**. All Recitals are true and correct to the Parties' best knowledge and belief, and are fully incorporated into this Agreement by reference and are made a part hereof.

26.7 **Covenants and Conditions**. All provisions of this Agreement expressed as either covenants or conditions on the part of City or Civic shall be deemed to be both covenants and conditions.

26.8 **Integration**. This Agreement and all Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

26.9 **Severability**. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

26.10 **Drafting Ambiguities**. The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26.11 **Conflicts Between Terms**. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

26.12 Prompt Performance. Time is of the essence of each covenant and condition set forth in this Agreement.

26.13 Good Faith Performance. The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

26.14 Further Assurances. City and Civic each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.

26.15 Exhibits. Each of the Exhibits referenced and attached to this Agreement are fully incorporated by reference.

26.16 Compliance with Controlling Law. Civic shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code sections 1720 through 1861 relating to the payment of prevailing wages, including, but not limited to, the design, preconstruction, and construction phases of the Project. In addition, Civic shall require its consultants, contractors, subcontractors, agents, and employees comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, resolutions, ordinances, rules, regulations or policies.

26.17 Hazardous Materials. Hazardous Materials constitute any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 96019675), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25). Civic agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

26.18 Jurisdiction, Venue, and Choice of Law. The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

26.19 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

26.20 Third-Party Relationships. Nothing in this Agreement shall create a contractual relationship between City and any third-party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third-party beneficiary of all Civic's contracts, purchase orders and other contracts between Civic and third-party services. Civic shall incorporate this provision into its contracts, supply agreements and purchase orders.

26.21 Non-Assignment. Civic shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this Section shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

26.22 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

26.23 Independent Contractors. Civic, any consultants, contractors, subcontractors, and any other individuals employed by Civic shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Civic concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, shall mean only that Civic shall follow the direction of City concerning the end results of the performance.

26.24 Approval. Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld; however, nothing in this Section shall in any way bind or limit any future action of the City Council pertaining to this Agreement or the Project.

26.25 No Waiver. No failure of either City or Civic to insist upon the 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 of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

26.26 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been duly obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

26.27 Remedies. Notwithstanding any other remedies available to City at law or in equity, Civic understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Civic complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.

IN WITNESS WHEREOF, City and Civic have signed and entered into this Agreement by and through the signatures of their respective authorized representative(s).

THE CITY OF SAN DIEGO, a municipal corporation

Dated: ________________________ By: ________________________

Name: ________________________

Title: ________________________

APPROVED AS TO FORM:

Heather Ferbert, City Attorney

Dated: ________________________ By: ________________________

Katherine A. Malcolm

Senior Deputy City Attorney

CIVIC SAN DIEGO, a California non-profit public benefit corporation

Dated: ________________________ By: ________________________

APPROVED AS TO FORM

BEST BEST & KRIEGER LLP

Dated: ________________________ By: ________________________

Shawn Hagerty, Esq.
Corporate Counsel

EXHIBIT A
Operating Agreement

EXHIBIT A

ORIGINAL

OPERATING AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND CIVIC SAN DIEGO TO PROVIDE SUCCESSOR AGENCY AND HOUSING SUCCESSOR SERVICES

This Operating Agreement (Operating Agreement)[1] is made by the City of San Diego, a municipal corporation (City) and Civic San Diego, a California nonprofit public benefit corporation (Civic) (collectively, the Parties). This Agreement is made with reference to and in light of the following recited facts.

RECITALS

A. Civic is a nonprofit public benefit corporation formed by City in 1975 under the California Nonprofit Corporation Law (California Nonprofit Law). Civic was formerly known as the Centre City Development Corporation (CCDC), and Civic is also the successor to the former Southeastern Economic Development Corporation (SEDC).

B. CCDC and SEDC were originally formed by City to provide redevelopment and economic development services under contract with City's former Redevelopment Agency (Former Agency). Over their more than 30-year history, these corporations and Civic, as their successor, provided operational functions to City and to Former Agency, and now to City as both the Successor Agency to the Former Agency (Successor Agency) and the City acting in its capacity as housing successor to the Former Agency (Housing Successor) through various agreements, including the following:

1. The January 1975 Operating. Agreement Between the Redevelopment Agency of the City of San Diego and Centre City Development Corporation, Inc. For Certain Services to Implement the Redevelopment of Centre City Area (Redevelopment Agency (RA) Doc. No. 312), as amended on August 3, 1976 (RA Doc. No. 377), on April 19, 1977 (RA Doc. No. 406) and October 23, 1978 (RA Doc. No. 484).

2. The January 1975 Agreement Between the City of San Diego and Centre City Development Corporation, Inc. for Staff Services Concerning the Centre City Redevelopment Area (RA Doc. No. 313).

3. The December 1981 Operating Agreement Between the Redevelopment Agency of the City of San Diego and Centre City Development Corporation, Inc. For Certain Services to Implement the Redevelopment of the Centre City Area (RA Doc. No. 862). as amended October 14, 1986 (RA Doc. No. 1400).

4. The July 2010 Amended and Restated Operating Agreement Between the Redevelopment Agency of the City of San Diego and Centre City Development Corporation, Inc. (RA Doc. No. D04498). The July 2010 Amended and Restated Operating Agreement added significant new City oversight and transparency provisions that were based in part on a performance audit of CCDC.

[1]Capitalized terms are defined in Section 6 of this Agreement.

form of:
DOCUMENT NO. 00-21082-3
FILED JUN 18 2019
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

EXHIBIT A

5. The June 2012 Agreement for Consulting Services by and Between the City of San Diego and Civic San Diego for Successor Agency and Housing Successor Agency Services (City Clerk (CC) Doc. No. RR 307537-1), as amended on November 26, 2012 (CC Doc. No. RR-307849) (Successor Agency Agreement).

6. The June 2012 Agreement for Consulting Services by and Between the City of San Diego and Civic San Diego for Administration of Certain Planned Districts, the Downtown Community Parking District and Economic Development Services (CC Doc. No. RR-307537-2) (Downtown Services Agreement).

7. The annual Memoranda of Understanding (MOU) Between City and Civic Regarding the Downtown Community Parking District, most recently, the FY 2015-FY 2020 MOU (CC Doc. No. RR-309837-8) (Downtown Parking District MOU) and other agreements pertaining to administration or management of parking garages and facilities.

8. The December 2016 Operating Agreement Between the City of San Diego and Civic San Diego (CC Doc. No. RR-310809) and the December 2016 Agency Agreement Between the City of San Diego and Civic San Diego to Administer Certain Legislative Enactments of the City of San Diego (CC Doc. No. RR-310810).

C. Consistent with the agreements listed above, Civic provided City and Former Agency with a range of services that included, among other things: redevelopment and affordable housing project management functions within the Centre City and Horton Plaza project areas; plan implementation and permitting functions in specified areas in accordance with City-approved regulations, plans, and policies including the Centre City Community Plan, the Centre City, Gaslamp and Marina Planned District Ordinances and related documents; parking management functions for the Downtown Community Parking District in accordance with the Comprehensive Downtown Parking Plan; economic development functions; and special projects as assigned by City or Former Agency. As described in more detail below, the services Civic has provided City include services related to the elimination of redevelopment agencies in California.

D. After the State Legislature's adoption of legislation dissolving redevelopment agencies across the state (the Dissolution Law), City elected to serve as successor to the Former Agency for the purpose of carrying out the wind-down and reporting activities required by the Dissolution Law for redevelopment and affordable housing. (City Council Resolution No. R-307238, Jan. 12, 2012.) City, in its role as Successor Agency, entered into the June 2012 Successor Agency Agreement with Civic for Civic to perform the activities required by the Dissolution Law. City entered into the June 2012 Downtown Services Agreement with Civic for Civic to continue providing plan implementation, permitting, parking management, and economic development functions.

E. Following the direction of the Oversight Board and approval of the California Department of Finance, on January 28, 2013, the Successor Agency transferred the Former Agency's affordable housing assets to City as Housing Successor to be held in the Low and Moderate Income Housing Asset Fund created for that purpose. Revenue generated by the housing assets, including the sale of any assets, is deposited to the Low and Moderate Income Housing Asset Fund. On May 30, 2013 by Resolution R-308142, the City Council approved and authorized

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the Affordable Housing Master Plan, outlining the strategy for the use and disposition of the housing assets to maximize continued affordable housing production and promote affordable housing goals in the City, and authorizing Civic to implement the plan.

F. In 2016, City and Civic updated and clarified the agreements under which Civic provides services to the City through the 2016 Operating Agreement, and the separate 2016 Agency Agreement.

G. City and Civic desire to enter into this Operating Agreement to limit the services provided by Civic to the City to Successor Agency and Housing Successor services, as described in this Operating Agreement.

H. As of the Effective Date, City and Civic intend for this Operating Agreement to replace and supersede both the 2016 Operating Agreement and the 2016 Agency Agreement. City and Civic also intend that this Operating Agreement not assume or take over any services currently being performed by City employees.

NOW, THEREFORE, in consideration of the Recitals, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. TERM

1.1 Effective Date and Term. This Operating Agreement shall become effective as of the date that the last party has signed (Effective Date) and continue in effect for five years, unless extended by City at its option described below.

1.2 City's Option to Extend. In its sole and absolute discretion, City shall have the option to extend the Term by one additional five-year period by giving Civic at least ninety (90) days' prior written notice of such extension, which extension may be renewed only by a vote of the City Council, and only if certain external triggers are met, such as unforeseen delays. The revival of redevelopment in California, if it were to occur, does not permit the City to exercise its option to extend the Term.

1.3 Termination.

1.3.1 **City's Right to Terminate for Convenience**. City may, at its sole option and for its convenience, terminate this Operating Agreement by giving at least one hundred eighty (180) days prior written notice of such termination to Civic.

1.3.2 **City's Right to Terminate for Default**. If Civic fails to satisfactorily perform any obligation required by this Operating Agreement, Civic's failure constitutes a Default. If Civic fails to satisfactorily cure a Default within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default or, for defaults that cannot be cured in thirty (30) calendar days, fails to satisfactorily commence cure, then City may terminate this Operating Agreement, and terminate each and every right of Civic to performance of this Operating Agreement, and those of any person claiming any rights by or through Civic under this Operating

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Agreement. The rights and remedies of City enumerated in this Section are cumulative and City does not limit, waive, or deny any of its rights under any other provision of this Operating Agreement, nor any right or remedy, at law or in equity, existing as of the date of this Operating Agreement or hereinafter enacted or established, that may be available to City.

1.3.3 **Partial Termination of Services**. In addition to the Parties' ability to amend this Operating Agreement through a written amendment, City may, at its sole option and for its convenience, unilaterally terminate a material part of the services to be provided by Civic under this Agreement, by giving at least one hundred eighty (180) days prior written notice of such termination. Such authorization and approval may take place as part of the Mayor's approvals of the annual Operating Budget and Work Plan. In that case, the partial termination of services shall be effective on July 1 of the new fiscal year, unless the Approved Operating Budget contains funding for the continuation of services until a later date.

1.3.4 **Completion of Performance**. In the event City chooses to terminate or partially terminate this Operating Agreement for its convenience, then at City's discretion, Civic shall accomplish a complete transition of the services being terminated from Civic and Civic's subcontractors to City, or to any replacement provider designated by City, without any unreasonable interruption of or adverse impact on the services being performed. Civic shall fully cooperate with City and any new service provider and otherwise promptly take all steps, including, but not limited to providing to City or any new service provider all requested information or documentation required to affect a complete transfer of the affected services, Civic shall provide all information or documentation needed including, but not limited to, data conversion, files, training staff assuming responsibility, and related professional services. Civic shall provide for the prompt and orderly conclusion of all work required under the Operating Agreement, as City may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to City or City's designee. All services requested by City and performed by Civic shall be paid by City pursuant to the terms of this Operating Agreement.

2. CIVIC'S RIGHTS, DUTIES AND OBLIGATIONS

2.1 Performance of Work and Annual Work Plan. Civic shall take all steps necessary to perform or exercise the rights, duties and obligations described below in accordance with a City-approved annual work plan (Work Plan) and operating budget (Operating Budget), applicable state and local laws, regulations, and applicable policies. Commencing with the Fiscal Year 2019-2020 budget process, and annually thereafter, Civic shall prepare and submit a proposed Work Plan for City's review and approval by the Mayor in conjunction with review and approval of the Operating Budget, and pursuant to the process and requirements set forth in more detail below. Civic's approved Work Plan shall list the Successor Agency and Housing Successor functions and services to be performed by Civic for that fiscal year. Civic shall work closely with City staff to develop its proposed Work Plan for the subject fiscal year:

2.1.1 **Successor Agency and Housing Successor Functions**. Pursuant to the Work Plan and Operating Budget, Civic shall provide staffing and other services to support and carry out the necessary functions of City in its role as Successor Agency and Housing Successor. Civic shall take all steps necessary and desirable by City to perform the functions required to

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implement the winding down of redevelopment including but not limited to (a) completing projects of the Former Agency and (b) managing the assets of the Former Agency in accordance with (i) the Dissolution Law, (ii) the decisions of the Oversight Board, (iii) the direction of City as Successor Agency and Housing Successor, and (iv) approved funding. Civic's services shall include the following:

2.1.1.1 Administration. Performing the administrative functions required by the Dissolution Law or desired by City as Successor Agency and as Housing Successor for implementation of the Dissolution Law, including, for example, supporting the Oversight Board, financial accounting, reporting, and coordinating with other local agencies and with the State.

2.1.1.2 Asset Management. Managing the assets of the Successor Agency consistent with the Dissolution Law, including but not limited to collecting all revenue, paying all expenses, and enforcing all obligations.

2.1.1.3 Project Completion. Managing the completion of projects for the Successor Agency or the Housing Successor Entity as identified in the ROPS as enforceable obligations, through the Long Range Property Management Plan, Affordable Housing Master Plan, as otherwise required by the Dissolution Law, or as specified in this Operating Agreement. Such project completion work includes, but is not limited to, the following projects: Park Blvd. At-Grade Crossing, East Village Green, 14th Street Green Streets Blocks 1, 2 and 3, Children's Park Improvements, Wayfinding Signage, E Street Greenway Master Plan and St. Joseph's Park GDP. Civic's work would include providing Program Management and Public Works Management.

2.1.1.4 Long Range Property Management Plan. Administering and managing the property identified in the approved Long Range Property Management Plan, including but not limited to providing all services necessary for acquiring and disposing of property, entering into, managing, and enforcing rental agreements, and supervising maintenance and security.

2.1.1.5 Affordable Housing Master Plan and Housing Assets. Managing the affordable housing assets of the Housing Successor consistent with the Dissolution Law, and administering and managing the approved Affordable Housing Master Plan to maintain and create affordable housing, including but not limited to: administering loans, bond proceeds, financial obligations, leases, affordability covenants, and other agreements related to the program; providing all services necessary for acquiring and disposing of property for projects that will meet Affordable Housing Master Plan goals; on behalf of the City, negotiate and present to City Council agreements that facilitate the development of the housing assets included in the Affordable Housing Master Plan, tracking and reporting units created and other obligations as required by the Dissolution Law; entering into, managing, and enforcing rental agreements; supervising maintenance and security; collecting all revenue, paying all expenses, and enforcing all obligations.

2.1.2 **Ancillary Services**. Civic shall provide the ancillary services necessary to support its work and functions such as, for example, finance, accounting, audit, IT, marketing, and communications services.

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2.2 Manner of Performance.

2.2.1 **Best Practices**. Civic shall take all steps necessary to perform the services and functions required by this Operating Agreement in the most cost-effective, efficient, and professional manner and in accordance with Civic's Articles of Incorporation, Civic's Bylaws, the California Nonprofit Law, applicable policies, and applicable local, state and federal law, and in accordance with the standard of care and skill that would be used by a reputable, experienced and competent professional practicing in the same field in California. Approval by City to Civic's use of any practice or procedure does not relieve Civic of responsibility for complying with all applicable laws, codes, and best practices.

2.2.2 **Compliance with Policies**. Civic and City agree that Civic will comply with applicable City policies in performing its obligations under this Operating Agreement.

2.2.3 **Subcontracting**. Civic may hire and retain third parties in its own name as appropriate and necessary to perform the functions required by this Operating Agreement in an efficient, cost-effective, and professional manner. This may include, for example, retaining consultants with expertise not held by Civic staff, contractors to construct projects or to meet other specific project needs, and contracts for the purchasing of goods, equipment, and materials. Civic shall enter into such contracts in accordance with Civic's Purchasing and Contracting Policy.

2.2.4 **Maintenance of Records**. Civic shall maintain pursuant to a Board-approved records retention policy, and shall require its subcontractors to maintain, complete and accurate records in accordance with generally accepted accounting practices in the industry, and shall make such records, documents and other financial data, as it relates to services performed under this Operating Agreement, available to City upon City's request, including exact duplicates of originals if requested.

2.3 No Expansion. It is specifically agreed to by the Parties that the work included in the annual Work Plan to be performed pursuant to this Operating Agreement is work that has been performed by Civic for City and included in prior agreements between Civic and City or Civic and the Former Agency. This Operating Agreement is not an expansion of the work or services to be provided, and the scope of Civic's services shall not be expanded beyond what is set forth in this Operating Agreement without the prior written consent of the Parties.

3. CITY'S RIGHTS, DUTIES AND OBLIGATIONS

3.1 Funding. City shall reimburse or advance funds to Civic to allow Civic to perform the functions required by this Operating Agreement in accordance with the Approved Operating Budget and Work Plan.

3.2 City's Oversight. City shall have the right to oversee and supervise Civic's performance of this Operating Agreement. City's oversight and supervision shall include:

3.2.1 **Approval and Oversight of Operating Budget and Work Plan**.

3.2.1.1 City, through the Mayor or Mayor's designee, shall consider and approve the Operating Budget and Work Plan annually.

EXHIBIT A

3.2.2 **Review and Approval of Funding**. All funding provided by City to Civic shall be provided in accordance with the applicable Approved Operating Budget. In addition to City's role in the annual process for preparation, review, and approval of Civic's Operating Budget, City shall review and approve the monthly Eligible Expenses Report submitted by Civic for compliance (see Section 4).

3.2.3 **Regular Oversight by Contract Administrator**. Mayor or Mayor's designee is the contract administrator (Contract Administrator) and shall regularly communicate, consult, and cooperate with Civic to be informed of Civic's activities, to coordinate Civic's activities with those of City, to ensure Civic's activities are consistent with the Approved Work Plan and this Operating Agreement, and to provide direction to Civic regarding its performance of services. When this Operating Agreement requires communications to or with the City, or for actions to be taken by City, those communications will be with or actions taken by the Contract Administrator, unless specified otherwise.

3.3 City's Right to Audit and Inspect Records. Civic shall make available to City for examination at its offices in San Diego at any time during normal business hours and as often as City deems necessary, all available data and records with respect to all matters covered by this Operating Agreement, any and all implementing agreements, and subcontracts (City's Right). City's Right includes the right to audit all invoices, materials, payrolls, and other data and media relating to all matters covered by the subject agreements. City's Right includes the right to inspect and photocopy same, and to retain copies outside of Civic's premises with appropriate safeguards if such retention is deemed necessary by City. This information shall be kept by City in the strictest confidence allowed by law. Civic shall maintain such data and records for a period of not less than five years following termination of this Operating Agreement, or alternatively, shall transfer such data and records to City. Civic shall include City's Right as described in this Section in any and all of its subcontracts, and shall ensure that it is binding upon all of its subcontractors. City's Right shall survive the termination of this Operating Agreement.

3.4 Right to Audit. City retains the right to review and audit, and the reasonable right of access to Civic's and any subcontractor's premises, to review and audit Civic's or a subcontractor's compliance with the provisions of this Operating Agreement (City's Right). City's Right includes the right to inspect, photocopy, and retain copies of any and all books, records, documents and any other information (Records) relating to this Agreement outside of Civic's premises if deemed necessary by City in its sole discretion. City shall keep these Records confidential to the extent permitted by law.

3.4.1 **Audit**. City's Right includes the right to examine Records of procedures and practices that City determines are necessary to discover and verify that Civic or s subcontractor is in compliance with all requirements under this Operating Agreement.

3.4.2 **Cost Audit**. If there is a claim for additional compensation or for additional services, the City's Right includes the right to Records that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

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3.4.3 **Accounting Records**. Civic and all subcontractors shall maintain complete and accurate Records in accordance with generally accepted accounting practices. Civic and its subcontractors shall make available to City for review and audit all Records relating to the services performed hereunder. Upon City's request, Civic and its subcontractors shall submit exact duplicates of originals of all requested records to City.

3.4.4 **City's Right Binding on Subcontractors**. Civic shall include City's Right as described in this Section 3.4 in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

3.5 City's Right to Terminate. City has the right to terminate all or part of this Operating Agreement (see Section 1.3).

4. BUDGET AND FUNDING

4.1 Compensation. City shall pay Civic for work performed and services rendered in accordance with the Approved Work Plan, Approved Operating Budget and this Operating Agreement.

4.2 Approval and Amendment of Operating Budget and Work Plan.

4.2.1 **Proposed Operating Budget and Work Plan**. Each year in advance of the start of the new fiscal year, Civic shall prepare and submit to City, through the Mayor or Mayor's designee, for approval a proposed budget (Proposed Operating Budget) including position detail for the performance of the functions required by this Operating Agreement and set forth in the proposed Work Plan (Proposed Work Plan) for each fiscal year during which this Operating Agreement is in effect.

4.2.2 **Schedule for Submission and Approvals**. Civic shall submit the Proposed Operating Budget by February 15 to the Mayor or Mayor's Designee for review and comment. Civic shall then submit the Proposed Operating Budget and Proposed Work Plan to Civic's Board for its review and action by March 30. Civic shall submit the Proposed Operating Budget and Proposed Work Plan to the Mayor or Mayor's Designee for review and final approval by May 30. The Proposed Operating Budget and Proposed Work Plan shall be in a format specified by the Mayor or Mayor's designee and shall contain Civic's best estimate of the cost of the work to be performed.

4.2.3 **Effect of Approved Documents**. The Operating Budget and Work Plan approved by the Mayor shall constitute the Approved Operating Budget and Approved Work Plan for that fiscal year. Civic shall perform the functions and projects authorized by the Approved Operating Budget and Approved Work Plan in accordance with this Operating Agreement.

4.2.4 **Amendment of Approved Operating Budget and Work Plan**. The Approved Work Plan may be amended from time to time as necessary and agreed to in writing by Civic and City through the Mayor or Mayor's designee. Civic may not change the Approved Work Plan without City's written approval. In the event increases in the Approved Operating Budget are required to perform the functions set forth in the Approved Work Plan, Civic may propose an amendment to the Approved Operating Budget for consideration by the Mayor or Mayor's

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designee as a mid-year or year-end adjustment. The Mayor's approval is required for both an increase to the Approved Operating Budget and an amendment to the Approved Work Plan.

4.3 Manner of Payment.

4.3.1 **Working Capital Advance**. Consistent with the Approved Operating Budget, and upon written request of Civic, City may, at its sole discretion, advance payment to Civic on or about the first day of every fiscal year (the Working Capital Advance) with a commercial bank designated by Civic as its depositary. The purpose of the Working Capital Advance is to provide working capital to Civic to pay its operating costs and expenses while Civic is waiting to receive its monthly reimbursement of Eligible Expenses, as defined herein. The total amount of the Working Capital Advance shall be determined by City in its discretion, but, if City determines to make such an advance, the Working Capital Advance shall not be less than two twelfths (2/12) of the Approved Operating Budget. Working Capital Advance funds shall be used only for eligible expenditures under this Operating Agreement. City may also, at its sole discretion, choose to roll over Working Capital from one fiscal year to the next to avoid the need for a Working Capital Advance.

4.3.2 **Reimbursement**.

4.3.2.1 Civic shall request reimbursement from City not more than once per month.

4.3.2.2 On a monthly basis, Civic shall submit to City a report detailing all of Civic's Eligible Expenses for the prior month and allocating expenses to the Approved Operating Budget. The report shall identify all of Civic's activities performed in connection with the Eligible Expenses and income for the same time period. Civic shall certify that staff time and expenditures submitted are for services performed in accordance with the provisions of this Operating Agreement.

4.3.2.3 Any expenditure contained in the report documenting activities, income and expenditures described in the preceding subsection that is not consistent with this Operating Agreement shall be considered an ineligible expenditure.

4.3.2.4 Any unused funds from the Working Capital Advance shall be returned to City upon termination of this Operating Agreement.

4.3.3 **Reimbursement of Eligible Expenses**.

4.3.3.1 City shall reimburse Civic for its reported Eligible Expenses incurred in performance of the functions required by this Operating Agreement and subject to the terms and conditions of this Operating Agreement. The total amount of all Eligible Expenses reimbursed in any fiscal year shall not exceed the Approved Operating Budget for that fiscal year, including any amendments.

4.3.3.2 As soon as practicable after the end of each calendar month, Civic shall submit to the City's Department of Finance (DoF) or designee a properly completed Eligible Expenses report and reimbursement request, including the following:

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(a) A written report of all Eligible Expenses paid in the preceding month allocating expenses to the Approved Operating Budget. The report shall identify all of Civic's activities and income for the prior month; and

(b) Written certification signed by Civic's Chief Financial Officer that: (i) the Eligible Expenses report and request are complete, true and correct; (ii) the requested reimbursement is for Eligible Expenses that have been paid in full by Civic; and (iii) the Eligible Expenses included in the report were incurred in the course of providing services under this Operating Agreement, and (iv) that such services were provided in accordance with the terms and conditions of this Operating Agreement; and

(c) Confirmation by the DoF that the funds to pay the Eligible Expenses are provided for in, available and unrestricted under, City's budget; and

(d) Such other documents, records or matters that the DoF shall reasonably and in good faith determine are necessary to approve the payment of such Eligible Expenses.

4.3.3.3 City shall review the completed Eligible Expenses report and reimbursement request from Civic, and verify the eligibility of expenditures and that each the conditions stated above is satisfied. Upon City's confirmation that the conditions have been met, City shall reimburse Civic for all Eligible Expenses, less those eligible expenditures already paid for by Civic from other sources of funds received by Civic, including any Working Capital Advance.

4.3.3.4 Expenses for which reimbursement shall be made to Civic include any and all costs which are: (i) reasonable, actual and necessary to the performance of Civic's obligations under this Agreement; (ii) included as Eligible Expenses; (iii) incurred; and (iv) presented to the DoF for reimbursement in accordance with this Agreement. In addition, the reimbursement of each one of such Eligible Expenses by City shall be in accordance with generally accepted accounting principles.

4.3.3.5 City shall have the right at any time and for any reason to audit Civic's books and records (including all expenditures) related to services performed under this Operating Agreement, and Civic shall pay the reasonable cost and expense of such audit which shall be considered an Eligible Expense. Civic shall maintain for review and audit by City upon request, adequate and complete documentation of all Eligible Expenses claimed for reimbursement. Civic shall cooperate fully with City and any auditor retained by City in connection with an audit to provide full access to relevant documents and staff. If the audit finds that one or more items submitted for reimbursement or reimbursed are not Eligible Expenses, then Civic shall reimburse City for such expenses. City may, in its discretion, obtain repayment by deducting the amount owed from pending or future requests for reimbursement,

4.3.3.6 References to the DoF in this Section shall refer to the persons or person designated in writing by the DoF from time to time.

4.3.4 **Direct Payment**. City may, at its sole discretion, directly pay for approved budgeted items on behalf of Civic.

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5. INSURANCE AND INDEMNITY

5.1 Insurance Requirements.

5.1.1 As of the Effective Date, Civic has and shall maintain in full force and effect at all times during the term hereof policies of insurance issued by an underwriter reasonably acceptable to City of the types and amounts and containing such terms and conditions as are all reasonably acceptable to City, and meeting at least the requirements set forth in the attached Exhibit A. City's Risk Management Department shall be consulted by City and provide initial and biannual reviews of such insurance to Civic. Such insurance shall provide protection against any liabilities arising from the operations, business and activities conducted by Civic, including errors and omissions insurance for the directors and officers of Civic and employers' liability, as determined by City in its reasonable discretion and for such insurance as Civic may reasonably obtain in the market using its best efforts.

5.1.2 Civic shall name City as an additional insured under such policies of public and any other liability insurance and shall contract with the underwriter that no policy of insurance obtained by Civic pursuant to the terms of this Section shall be terminated or amended without sixty (60) days' prior written notice to City. Upon request by City, Civic shall provide City with copies of all policies of insurance obtained pursuant to the terms of this Section. Such copies shall be certified by the underwriter as true and correct copies of Civic's policies with such underwriter, and provide such other terms and conditions in connection with such insurance and policies as City shall require from time to time in its reasonable discretion.

5.1.3 Immediately prior to the Effective Date and at all times during the five (5) years prior to the Effective Date, Civic represents and warrants that (i) it maintained all insurance policies as required by the agreements referenced in the recitals above and in effect during that five-year period and any additional insurance policies that it obtained, if any, and that such polices were and are valid, binding and enforceable, (ii) Civic did not at any time therein receive any termination, cancellation or similar notices from any of its insurance carriers, (iii) Civic's insurance policies during such time provided adequate insurance coverage for the assets, business and operations of Civic for all risks normally insured against by agencies carrying on the same or similar business, (iv) Civic has given timely notice to the insurer of all claims that were or may have been insured thereby, (v) Civic has not received any refusal of coverage or any notice that a defense will be afforded with a reservation of rights, and (vi) Civic has not received any indication that the issuer of any policy of insurance was or is not willing or able to perform its obligations thereby.

5.2 Indemnity Requirements. For the purpose of applying the requirements contained in this Section 5.2. the term "City" means and includes both the City of San Diego and the Successor Agency.

5.2.1 **Civic's Indemnification and Hold Harmless of City**. With respect to any liability, including, but not limited to, claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of Civic or Civic's employees, agents, and officers, arising out of any services or functions performed under this Agreement, Civic agrees to defend, indemnify, protect, and hold harmless City, it

EXHIBIT A

agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of City, its agents, officers, or employees, or any third party. Civic's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of City, its agents, officers or employees.

It is the express intent of the Parties, and it is specifically agreed by the Parties, that should Civic be required to indemnify City for any matter under this Operating Agreement, City shall not be required to reimburse or otherwise pay Civic or any other third party for any such losses or payments or otherwise be responsible for any such losses or payments.

5.2.2 **Notice Regarding Demands, Litigation, and Arbitration Proceedings**. Each Party shall provide written notice, which may be by e-mail, to the other Party, of the institution or the threat to institute any litigation, mediation, arbitration or similar proceedings, or with respect to any claims, demands or similar proceedings filed or threatened against the Party within 72 hours after the receipt of notice of such litigation or similar proceeding or after the receipt of any writings which threaten such litigation or claims, demands or similar proceedings in connection with any matter directly or indirectly related to the business, operations or interests of Civic, or to performance of this Operating Agreement.

6. DEFINITIONS

6.1 Definitions. As used in this Agreement, the following terms have the following meanings:

6.1.1 **Affordable Housing Master Plan** shall mean the Affordable Housing Master Plan approved by the Housing Successor and as amended from time to time.

6.1.2 **Approved Operating Budget** shall mean the Operating Budget approved by the Mayor in accordance with Section 4.2.3.

6.1.3 **Approved Work Plan** shall mean the Work Plan approved by the Mayor in accordance with Section 4.2.3.

6.1.4 **California Nonprofit Law** shall mean the California Nonprofit Public Benefit Corporation Law, California Corporations Code sections 5002 et seq., as amended.

6.1.5 **City** shall mean the City of San Diego.

6.1.6 **City Council** or **Council** shall mean the City Council for the City of San Diego.

6.1.7 **Civic** shall mean Civic San Diego, formerly known as the Centre City Development Corporation and successor to the Southeastern Economic Development Corporation.

6.1.8 **Contract Administrator** shall mean the Mayor or the Mayor's designee.

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6.1.9 **Default** shall mean Civic's failure to satisfactorily perform an obligation of this Operating Agreement, as described in Section 1.3.2.

6.1.10 **Dissolution Law** shall mean Assembly Bill No. xl 26, as modified by the California Supreme Court pursuant to California Redevelopment Association v. Matosantos et al. (2011) 53 Ca1.4th 231, as further modified and amended by Assembly Bill Nos. 1484, 1585 and 341, and as those bills may further be amended in the future.

6.1.11 **Eligible Expenses** shall mean all customary and ordinary expenses associated with the operation of a nonprofit corporation in performance of the functions required by this Operating Agreement, including, but not limited to:

6.1.11.1 Salaries and associated benefits including reasonable fees and other forms of reasonable and customary compensation for the actual services of Civic's officers, agents and employees, together with all reasonable and customary benefits and employer contributions in connection therewith, such as those for Internal Revenue Code section 403(b), if applicable, social security, if applicable, unemployment compensation, health insurance and other benefits which are customary in amount and scope;

6.1.11.2 Office, equipment and leasehold expenses and overhead, which are all reasonable, actual and necessary, including rent, taxes, furnishings, office supplies and equipment, repairs, duplicating services, postage, telephone, telegraph and other utility services, liabilities, casualty and fidelity insurance, moving expenses and the like which are customary in amount and scope; and

6.1.11.3 General business expenses, including legal and audits services, professional services, publications, photography, graphic services and displays, advertising, travel, membership dues, attendance at meetings, conferences, seminars, subscriptions, technical books and materials, garage expenses, transportation, including taxi fare, mileage and automobile rental, and the like.

6.1.12 **Former Agency** shall mean the former Redevelopment. Agency of the City of San Diego.

6.1.13 **Housing Successor** shall mean the City of San Diego, acting in its capacity as the housing successor to the Former Agency in accordance with Dissolution Law.

6.1.14 **Long Range Property Management Plan** shall mean the most recent version of the Long Range Property Management Plan approved by the Successor Agency, the Oversight Board, and the State Department of Finance in accordance with the Dissolution Law, along with any amendments made in accordance with the Dissolution Law.

6.1.15 **Mayor** shall mean the Mayor of the City of San Diego or the Mayor's designee.

6.1.16 **Operating Agreement** shall mean this Operating Agreement Between the City of San Diego and Civic San Diego.

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6.1.17 **Party** or **Parties** shall mean, individually, Civic or City and, collectively, Civic and City.

6.1.18 **Program Management** shall mean the negotiation and oversight of one or more agreements required to complete or facilitate the completion of projects by third parties or the direct management of a program or project by Civic.

6.1.19 **Proposed Operating Budget** shall mean the budget prepared by Civic and processed with the City as described in Section 4.2 of this Operating Agreement.

6.1.20 **Proposed Work Plan** shall mean the work plan prepared by Civic as described in Section 4.2, and processed in conjunction with the Proposed Operating Budget.

6.1.21 **Public Works Management** shall mean to cause the construction of infrastructure, public spaces, facilities or other improvements as required by this Operating Agreement.

6.1.22 **Successor Agency** shall mean the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic, as specified in Resolution R-2012-400, in accordance with the Dissolution Law.

6.1.23 **Working Capital Advance** shall mean the advance payment to Civic for the performance of the functions requirement by this Agreement as described in Section 4.3.1 of this Agreement.

7. CITY'S GENERAL CONTRACTING REQUIREMENTS

7.1 Compliance with the City's General Terms and Provisions. Civic shall comply with City's General Terms and Provisions attached hereto as Exhibit A; provided, however, that the terms and provisions of this Operating Agreement shall supersede and govern over any terms and provisions in Exhibit A that conflict with the terms and provisions of this Operating Agreement.

8. GENERAL PROVISIONS

8.1 Notices. In all cases where written, notice is required under this Operating Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement, For the purpose of this Operating Agreement, unless otherwise agreed in writing, notices shall be addressed to:

City	The City of San Diego 202 C Street, 11th Floor San Diego, CA 92101 Attn: Mayor of San Diego

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Civic

Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101
Attn: President of Civic

8.2 Time of the Essence. Time is of the essence for each provision of this Operating Agreement. Civic shall immediately notify City in writing if Civic experiences or anticipates delay in performing its obligations under this Operating Agreement, stating the reasons for and estimated length of the delay, and shall work with City to minimize the effect of such delay. If in City's opinion the delay materially affects performance of the Work Plan, City may exercise its rights to terminate this Operating Agreement.

8.3 Non-Assignment. Civic shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

8.4 Relationship of Parties. For the purpose of this Operating Agreement, Civic and any subcontractors employed by Civic, are independent contractors and not agents of City, and neither Civic's employees nor the employees of its subcontractors are employees of City. Provisions in this Agreement that give City the right to direct Civic mean Civic shall follow City's direction concerning the end result of Civic's performance.

8.5 Compliance with Controlling Law. Civic shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Operating Agreement. In addition, Civic shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

8.6 Jurisdiction. The jurisdiction and applicable laws for any suit or proceeding concerning this Operating Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. Venue for any court action shall be in the City and County of San Diego.

8.7 Successor in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

8.8 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change and agreed to in writing by both Parties.

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8.9 Further Assurances. The Parties agree that they shall prepare and deliver all further documents and do all further acts necessary and desirable to accomplish the purposes of this Agreement.

8.10 Waiver. No failure of either the City or Civic to insist upon the 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 of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

8.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

8.12 Municipal Powers. Nothing contained in this Operating Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

8.13 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Operating Agreement, and the decision of whether or not to seek advice of counsel with respect to this Operating Agreement is a decision which is the sole responsibility of each Party. This Operating Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in its drafting.

8.14 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Operating Agreement, as well as all continuing obligations indicated in this Operating Agreement, shall survive completion of the performance or termination of this Operating Agreement.

(Signatures on following page)

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IN WITNESS WHEREOF, this Operating Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, and by the legally authorized representative for Civic San Diego.

Dated: 7/11/19

CIVIC SAN DIEGO

By:__________________
Interim, President

Dated: 7/29/2019

CITY OF SAN DIEGO

By: Erik Caldwell

Name:__________________

Title: Deputy Chief Operating Officer

Approved as to form this 14 day of August, 2019

MARA W. ELLIOTT, City Attorney

By:__________________

Name: Bret A. Bartolotta

Title: Deputy City Attorney

O-21082

EXHIBIT A

THE CITY OF SAN DIEGO

GENERAL CONTRACT TERMS AND PROVISIONS

APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

EXHIBIT A

ARTICLE I
SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II
CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

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Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III
COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

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3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5^{th}) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV
SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs

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otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

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4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V
ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

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5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

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5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

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5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI
INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6. 2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

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shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6. 3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6. 4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6. 5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or

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proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII
INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

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7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than $1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

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7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right

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to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII
BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or

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material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contact, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX
CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of

EXHIBIT A

subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

EXHIBIT A

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

ARTICLE X
CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not

EXHIBIT A

identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI
DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII
MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor , its agents,

EXHIBIT A

officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII
MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

EXHIBIT A

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the

EXHIBIT A

exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

EXHIBIT A

6/18/19 item 52a

(O-2019-119 REV.)

ORDINANCE NUMBER O-21082 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 21 2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO (I) APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF (A) THE RESTATED ARTICLES OF INCORPORATION OF CIVIC SAN DIEGO, (B) THE AMENDED AND RESTATED BYLAWS OF CIVIC SAN DIEGO, AND (C) A NEW OPERATING AGREEMENT WITH CIVIC SAN DIEGO; (II) APPROVING AND AUTHORIZING THE TERMINATION OF (A) THE AGENCY AGREEMENT WITH CIVIC SAN DIEGO AND (B) THE CURRENT OPERATING AGREEMENT WITH CIVIC SAN DIEGO; AND (III) APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego (City) is the sole member of Civic San Diego, a nonprofit public benefit corporation (Civic); and

WHEREAS, Civic performs City-wide special projects and economic development, certain functions related to the wind-down of redevelopment, permitting, planning and public works for downtown, and management of the downtown parking district; and

WHEREAS, both the City and Civic desire that Civic restate its Articles of Incorporation and amend and restate its Bylaws such that the City is no longer the sole member of Civic, thereby rendering Civic completely independent and separate from the City; and

WHEREAS, the City and Civic also desire to enter into a new agreement (New Operating Agreement) under which Civic, as an independent, separate entity, will continue to provide services to the City for certain wind-down and reporting activities (Wind-Down Services) required by the State Legislature following its adoption of legislation dissolving redevelopment agencies across the state; and

EXHIBIT A

WHEREAS, because the Wind-Down Services do not include management of the downtown parking district, Civic desires to assign its rights and obligations under that certain Agreement by and between Civic, San Diego Free Ride, LLC and Tag-A-Long San Diego, LLC for Demand-Response Downtown Circulator Shuttle dated April 20, 2016 to the City (Assignment); and

WHEREAS, the City and Civic further desire to terminate as of July 1, 2019, that certain "Agency Agreement" between them dated as of December 2, 2016 (Agency Agreement) pursuant to section 3.2, which provides that the City may terminate the Agency Agreement for convenience by giving Civic at least 180 days prior written notice, which written notice was given on August 30, 2018; provided however, that the Agency Agreement shall remain in effect for projects which Civic must continue to process as a matter of law until such processing is completed; and

WHEREAS, the City and Civic further desire to terminate as of July 1, 2019, that certain "Operating Agreement" between them dated April 6, 2017 (Current Operating Agreement) pursuant to section 1.2.1, which provides that the City may terminate the Current Operating Agreement for convenience by giving Civic at least 180 days prior written notice, which written notice was given on August 30, 2018; provided however, that the Current Operating Agreement shall remain in effect (i) for projects which Civic must continue to process as a matter of law and (ii) until the New Operating Agreement is in full force and effect; and

WHEREAS, it is anticipated that six positions currently filled by Civic employees will be terminated, and that the City will create six new positions to be filled by City employees whose workspace will continue to be in Civic's offices, requiring that the City enter into a sublease with Civic for space in Civic's offices (Sublease) for the six new City employees; and

EXHIBIT A

WHEREAS, the Council has held a meeting to consider the following documents (collectively, the Transaction Documents), forms of which relate to Civic's separation from, and delivery of ongoing services thereafter to, the City:

a. A proposed form of Restated Articles of Incorporation of Civic San Diego (Articles), a copy of which Articles are on file in the Office of the City Clerk as Document No. O-21082-1; and

b. A proposed form of Amended and Restated Bylaws of Civic San Diego (Bylaws), a copy of which Bylaws are on file in the Office of the City Clerk as Document No. O-21082-2; and

c. A proposed form of the New Operating Agreement, a copy of which New Operating Agreement is on file in the Office of the City Clerk as Document No. O-21082-3; and

WHEREAS, the City is authorized to undertake the actions described in this Ordinance pursuant to its Charter and applicable laws of the State of California; NOW, THEREFORE,

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

Section 1. The City Council hereby finds and determines that the statements set forth above in the recitals to this Ordinance are true and correct.

Section 2. The City Council hereby approves both the City's removal of itself as the sole member of Civic such that Civic will become and operate as a fully independent public benefit corporation, completely separate from the City.

Section 3. The form and content of the form of the Articles submitted for the Council's consideration, a copy of which Articles are on file in the Office of the City Clerk as Document No. O-21082-1, and the execution, delivery and filing thereof by Civic with the

EXHIBIT A

California Secretary of State and California Attorney General are hereby approved. Any of the Chief Operating Officer or the Chief Financial Officer of the City and each of them or any of their respective designees (each, an Authorized City Signatory), are each hereby authorized, and any one of the Authorized Signatory is hereby directed, for and in the name and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Articles, and each of the board of directors and officers of Civic or any respective designee (each, an Authorized Civic Signatory) is hereby authorized to execute, deliver and file the Articles with the California Secretary of State and California Attorney General, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The form and content of the form of the Bylaws submitted for the Council's consideration, a copy of which Bylaws are on file in the Office of the City Clerk as Document No. O-21082-2, and the execution and delivery thereof by Civic are hereby approved. The Authorized City Signatories are each hereby authorized, and any one of the Authorized City Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Bylaws, and each of the Authorized Civic Signatories is hereby authorized to execute and deliver the Bylaws, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the

EXHIBIT A

City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The form and content of the form of the New Operating Agreement submitted for the Council's consideration, a copy of which New Operating Agreement is on file in the Office of the City Clerk as Document No. O-21082-3, and the execution and delivery thereof by the City is hereby approved. The Authorized City Signatories are each hereby authorized, and any one of the Authorized City Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver the New Operating Agreement, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The City Council agrees and hereby gives notice to Civic, that each of the Agency Agreement and Current Operating Agreement shall be terminated as of the dates and in the manner presented above in this Ordinance.

Section 7. The Assignment is approved. The Mayor or designee is authorized and directed, on behalf of the City, to sign and enter into the Assignment, a copy of which is on file in the Office of the City Clerk as Document No. O-21082-4.

Section 8. All actions heretofore taken by any officers, employees, or agents of the City with respect to the agreements and documents related to Civic presented above are hereby approved, confirmed and ratified; and the Chief Operating Officer, the Chief Financial Officer, the City Attorney and any such other officers, employees, or agents of the City as may be

EXHIBIT A

authorized by the Mayor of the City, the Chief Operating Officer or the Chief Financial Officer are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including, without limitation, pay necessary and appropriate fees and expenses, execute and deliver any and all certificates, additional agreements and other documents which they, or any of them, may deem necessary or desirable to consummate and/or assist in the transition of Civic from an agent of the City to a separate and independent service provider to the City with regard to Wind-Down Services (the Transition) in accordance with this Ordinance. In addition, any Authorized City Signatory is hereby specifically authorized to approve additions, changes and amendments to the Transaction Documents authorized by this Ordinance as any Authorized City Signatory shall determine are necessary or desirable and shall require or approve and that such Authorized City Signatory believes to be in the best interests of the City, such determination being conclusively evidenced by the execution and delivery of such Transaction Documents by the City. Such other officials, employees, and agents of the City as may be authorized by any Authorized City Signatory are hereby are each authorized, and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, additional agreements, and other documents which they, or any of them, may deem necessary or advisable in order to consummate the Transition in accordance with this Ordinance.

Section 9. The Mayor, or his designee, is authorized to execute and deliver the Sublease for a term not to exceed one year with total rent not to exceed $125,000, on terms and conditions that the Mayor, or his designee, determine to be reasonable and in the public interest.

Section 10. The Chief Financial Officer is authorized to appropriate and expend an amount not to exceed $125,000 to pay the base rent, utilities and all other charges and fees

EXHIBIT A

incurred in connection with the Sublease, contingent upon the Chief Financial Officer furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

Section 11. This Ordinance is subject to the provisions of the San Diego Municipal Code and the San Diego Charter. Subject to those provisions, this Ordinance shall take effect and be in force on the thirtieth (30th) day from and after the date of its final passage and, prior to the expiration of fifteen (15) days from the final passage hereof, the City Clerk or her specified designee shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the City.

Section 12. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public prior to the day of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By ______________________
Bret A. Bartolotta
Deputy City Attorney

BAB:jdf
05/17/19
06/04/19 REV.
Or.Dept: Civic San Diego
Doc. No.: 1888330_2

Attachment A
Agenda Item: G.1
Meeting Date: July 16, 2026

EXHIBIT A

(O-2019-119 REV.)

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 18 2019.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 6/21/19
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: ______________________
(date)

KEVIN L. FAULCONER, Mayor

EXHIBIT A

Passed by the Council of The City of San Diego on JUN 18 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☑	☐	☐	☐
Jennifer Campbell	☑	☐	☐	☐
Chris Ward	☑	☐	☐	☐
Monica Montgomery	☑	☐	☐	☐
Mark Kersey	☑	☐	☐	☐
Chris Cate	☐	☑	☐	☐
Scott Sherman	☐	☑	☐	☐
Vivian Moreno	☑	☐	☐	☐
Georgette Gómez	☑	☐	☐	☐

Date of final passage JUN 21 2019.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [signature] for Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUN 04 2019, and on JUN 21 2019.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [signature] for Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-21082

EXHIBIT A

Passed by the Council of The City of San Diego on June 18, 2019, by the following vote:

YEAS:	**BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, MORENO, & GÓMEZ.**
NAYS:	**CATE, SHERMAN.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Connie Patterson**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21082** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **June 04, 2019,** and on **June 21, 2019.**

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: Connie Patterson, Deputy

EXHIBIT A

DUPLICATE ORIGINAL

FIRST AMENDMENT TO OPERATING AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND CIVIC SAN DIEGO TO PROVIDE SUCCESSOR AGENCY AND HOUSING SUCCESSOR SERVICES

This First Amendment to the Operating Agreement between the City of San Diego and Civic San Diego to provide successor agency and housing successor services (First Amendment) is made and entered into by and between the City of San Diego (City) and Civic San Diego, a California nonprofit public benefit corporation (Civic), each also referred to individually as a "Party" and collectively as the "Parties." All capitalized terms not defined herein shall have the meanings attributed to them in that certain "Operating Agreement" between the Parties effective as of August 14, 2019.

RECITALS

1. On June 21, 2019, pursuant to San Diego Ordinance No. O-21082, the San Diego City Council (Council) approved the Operating Agreement under which Civic, as an independent, separate entity, would continue to provide services to the City for certain wind-down and reporting activities required by the State legislature following its adoption of legislation dissolving redevelopment agencies across the state.

2. Pursuant to section 1.2 of the Operating Agreement, City has the option to extend the term by an additional five-year period in its sole and absolute discretion, which extension must be approved by the Council.

3. City has elected to exercise its option and the Parties wish to amend the Operating Agreement in order to extend its term for an additional five (5) years in accordance with section 1.2.

TERMS

1. Section 1.1 of the Operating Agreement is replaced in its entirety to read as follows:

   1.1 Effective Date and Term. This Operating Agreement shall continue in effect until August 12, 2029, unless terminated earlier pursuant to section 1.3 or extended by City at its option described in section 1.2 below.

2. Section 1.2 of the Operating Agreement is revised to read as follows:

   1.2 City's Option to Extend. In its sole and absolute discretion, City shall have the option to extend the Term by one additional five-year period. To exercise this option, City must give Civic at least ninety (90) days' prior written notice of such extension. This extension may be renewed only by a vote of the City Council. The revival of redevelopment in California, if it were to occur, does not permit the City to exercise its option to extend the Term.

O- 21788

EXHIBIT A

3. Section 3.5 is added to the Operating Agreement and reads as follows:

> 3.5 Compensation Amount. The maximum compensation under this Agreement shall not exceed $15,000,000 for the additional 5-year term ending August 12, 2029.

4. This First Amendment will be effective when signed by both Parties and approved by the City Attorney in accordance with Charter section 40.

5. All provisions of the Operating Agreement not addressed in this First Amendment remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment is executed by City and Civic acting by and through their authorized officers.

Civic San Diego

By: ____________________

Name: Andrew Phillips

Title: President & CEO

Date: 2/28/24

City of San Diego

By: ____________________

Name: Christina Bibler

Title: Director, Economic Development

Date: 04/29/2024

Approved as to form this _____ day of _____________, 202__

MARA W. ELLIOTT, City Attorney

By: ____________________
Deputy City Attorney

Michael J. Park

O-21788

EXHIBIT A

#56 4/9/24

(O-2024-69)

ORDINANCE NUMBER O-21788 (NEW SERIES)

DATE OF FINAL PASSAGE APR 22 2024

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO (I) AUTHORIZING AN EXTENSION OF THE OPERATING AGREEMENT WITH CIVIC SAN DIEGO; AND (II) APPROVING AN AMENDMENT TO THE OPERATING AGREEMENT PROVIDING A SECOND FIVE-YEAR OPTION.

WHEREAS, Civic San Diego (Civic), a California nonprofit public benefit corporation separate from the City of San Diego (City), performs City-wide special projects and economic development, certain functions related to the wind-down of redevelopment, permitting, planning and public works for downtown, and management of the downtown parking district; and

WHEREAS, pursuant to San Diego Ordinance No. O-21082, the City Council (Council) approved an Operating Agreement pursuant to which Civic provides services to the City for certain wind-down and reporting activities required by the State legislature following its adoption of legislation dissolving redevelopment agencies across the State; and

WHEREAS, the Operating Agreement between City and Civic will expire on August 13, 2024; and

WHEREAS, the City desires to exercise its option to extend the term of the Operating Agreement for an additional 5 years in accordance with section 1.2 of the Operating Agreement; and

WHEREAS, the City further desires to amend the Operating Agreement to provide for a second 5-year option to the City to be exercised at the City's sole discretion; and

EXHIBIT A

WHEREAS, subject to certain exceptions, San Diego Charter section 99 (Section 99) generally provides that no contract, agreement, or obligation creating City indebtedness and extending for a period of more than five years may be authorized except by an ordinance adopted by a two-thirds majority of the City Council; and

WHEREAS, the amendment extends the term of the Operating Agreement beyond five years and does not fit within any recognized exception to Section 99, and therefore, is subject to Section 99; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, including information provided by affected third parties and verified by City staff with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

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

Section 1. The extension of the Operating Agreement for an additional five years until August 12, 2029, is authorized for the purposes of allowing Civic to complete its wind-down of redevelopment activities.

Section 2. The Mayor or designee is authorized to execute the amendment and to take any and all actions necessary and appropriate to implement the amended Operating Agreement.

Section 3. The Chief Financial Officer is authorized to appropriate and expend an amount anticipated not to exceed $15,000,000 for Civic's services provided to City under the amended Operating Agreement, contingent upon the Chief Financial Officer's furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

EXHIBIT A

(O-2024-69)

Section 4. A full reading of this Ordinance is dispensed with prior to its passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 5. This Ordinance shall take effect and be in force on the thirtieth day from and after the date of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By ______________________
Michael J. Park
Deputy City Attorney

MJP:nja
01/09/2024
Or. Dept: Civic San Diego
Doc. No. 3524781

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 09 2024.

DIANA J.S. FUENTES
City Clerk

By ______________________
Deputy City Clerk

Approved: 4/22/24
(date)

____
TODD GLORIA, Mayor

Vetoed: ______________________
(date)

____
TODD GLORIA, Mayor

EXHIBIT A

Passed by the Council of The City of San Diego on APR 09 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☑	☐	☐	☐
Jennifer Campbell	☑	☐	☐	☐
Stephen Whitburn	☑	☐	☐	☐
Henry L. Foster III	☑	☐	☐	☐
Marni von Wilpert	☑	☐	☐	☐
Kent Lee	☑	☐	☐	☐
Raul A. Campillo	☑	☐	☐	☐
Vivian Moreno	☑	☐	☐	☐
Sean Elo-Rivera	☑	☐	☐	☐

Date of final passage APR 22 2024.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Krysheel Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on MAR 12 2024, and on APR 22 2024.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Krysheel Medina, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-21788

EXHIBIT A

Passed by the Council of The City of San Diego on April 9, 2024, by the following vote:

YEAS:	**LACAVA, CAMPBELL, WHITBURN, FOSTER, VON WILPERT, LEE, CAMPILLO, MORENO, & ELO-RIVERA.**
NAYS:	**NONE.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California

(Seal)

By: **Krystell Medina**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21788** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **March 12, 2024,** and on **April 22, 2024.**

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California

(SEAL)

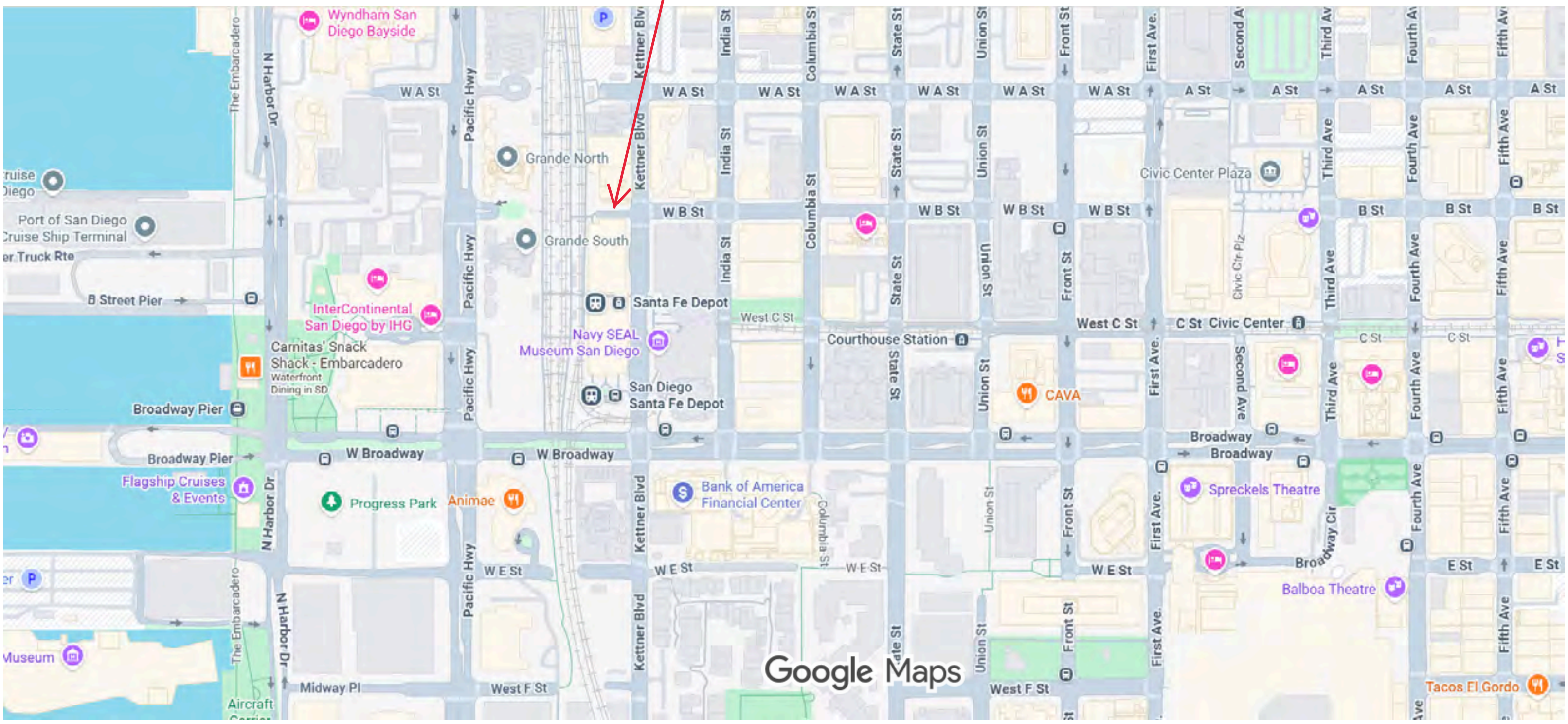
By: Krystell Medina, Deputy

EXHIBIT B
<u>Project Location</u>

Attachment A
Agenda Item: G.1
Meeting Date: July 16, 2026

EXHIBIT B

PROJECT LOCATION: End of B Street on North side of Santa Fe Depot



Imagery ©2026 , Map data ©2026 Google 200 ft

EXHIBIT C
Description of Project

EXHIBIT C

B Street Pedestrian Corridor: The work generally consists of improving the pedestrian access along B Street on the north end of the Santa Fe Depot adjacent to the MTS and railroad tracks with new street improvements to provide a pedestrian promenade with new paving, lighting, and landscape walls.

EXHIBIT D
Project Schedule

Attachment A
Agenda Item: G.1
Meeting Date: July 16, 2026

EXHIBIT D
B Street Pedestrian Corridor
Schedule

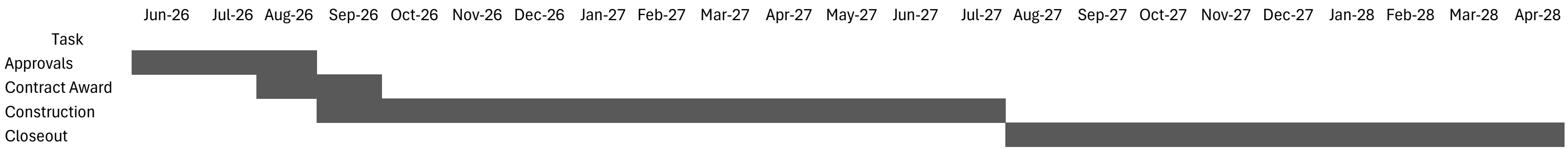


EXHIBIT E
Developer's Estimated Cost

EXHIBIT E
Developer's Estimated Cost

Project Title: B Street Pedestrian Corridor

ITEM DESCRIPTION		Total Cost
1. Construction (Hard) Costs		
Construction of B Street Pedestrian Corridor	$	1,000,000
Subtotal No. 1:	**$**	**1,000,000**
2. Design (Soft) Costs		
Permitting/Fees	$	100,000
Construction Administration (Design Team)	$	100,000
Construction Manager	$	350,000
Geotechnical Consulting	$	30,000
Specialty Testing	$	30,000
Miscellaneous Consulting/Legal Fees	$	25,000
Subtotal No. 2:	**$**	**635,000**
3. Total Project Costs (Subtotals No. 1 and No.2) (Section 3.1)	**$**	**1,635,000**
4. Project Contingency (15% of Project Costs) (Section 3.3.2)	**$**	**245,250**
5. Developer Administration Costs (15% of Total Project Costs) (Section 3.3.1)	**$**	**282,038**
TOTAL ESTIMATED COST (Section 3.3)	**$**	**2,162,288**

EXHIBIT F

Project Schedule Obligations and Components

1. **Developer's Obligation**. To the extent required by City, Developer shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.

   A. *Project Initiation.* During Project initiation, Developer shall submit an updated Project Schedule on a quarterly basis to City for review.

   B. *Construction Phase.* During Construction, Developer shall submit an updated Project Schedule monthly to City and shall include:

      i. Forecast data with the intended plan for the remainder of the contract duration.

      ii. Actual data with indications of when and how much work and/or services was performed (percent complete).

      iii. Logic changes or other changes required to maintain the Project Schedule.

2. **Detail and Format**. Unless otherwise directed by City, the Project Schedule shall include all phases of the Project. It shall be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and shall include:

   A. *Identification of design and construction activities and their sequence*.

      i. Work shall be divided into a minimum of 5 activities.

      ii. Incorporate specific activity and time requirements.

      iii. Include 10 weather/delay days, commonly known as "rain days." The late finish date shall be the fully elapsed Contract Time.

   B. *Float Time*. Show activities on their early dates with corresponding Total Float Time noted beside them.

      i. Project Schedule shall not include more than 40 calendar days of Float Time absent written City approval.

   C. *Milestones*. Show milestones with beginning and ending dates.

      i. Milestones shall include schematic bid opening; Notice to Proceed; start construction; end construction; and Project Completion and Acceptance.

   D. *Relationships*. Show all appropriate definable relationships with separate explanation of constraints and each start-start, finish-finish, or lag relationship. Relate all activities to each other and to the first appropriate milestone.

   E. *Procurement*. Show the procurement of major equipment and materials.

   F. *Submittals*. Include all submittals required and identify the planned submittal dates, adequate review time, and the dates acceptance is required to support design and construction.

3. **Submittal**. The Project Schedule shall be submitted electronically to City.

EXHIBIT G

<u>Meeting Requirements</u>

1. **<u>Preconstruction Meeting</u>**. Developer shall conduct a preconstruction meeting with its officers, agents, and employees and City. The purpose of this meeting is to discuss: (1) the Agreement conditions, (2) Scope of Work clarifications, and (3) City policies, inspection requirements, and procedures.

   A. *Attendance*. Developer shall ensure that its construction contractor and major subcontractors, the Project Superintendent, and the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Developer or City attend the preconstruction meeting.

   B. *Minutes.* Developer shall take corresponding meeting minutes and distribute copies to all attendees.

2. **<u>Progress Meetings</u>**. Developer shall conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Developer's Construction Superintendent, Developer's Project Manager, Developer's Design Consultant, City representatives including Responsible Department representatives, the Public Works Department Project Manager and the Resident Engineer.

   A. *As-Builts*. Developer shall bring updated As-Builts and verify that the latest changes have been made.

   B. *Special Meetings.* Special meetings shall occur at Project phases as outlined in **Exhibit H.**

   C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Developer has given no less than seven calendar days prior written notice of the rescheduled meeting.

3. **<u>Agenda</u>**. All meetings shall include at a minimum the agenda identified in **Exhibit H**.

EXHIBIT H

Preconstruction, Progress, & Special Meeting Agenda

1. Preconstruction. The issues below, but not limited to, should be made part of the Preconstruction Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.

   1.1 Permits and utility issues, including telephone, cable, gas, and electric. RE to announce to Developer that franchise companies may be working in the area of the Project and that coordination regarding such a situation may need to be done.

   1.2 Establish parking areas for construction employees and possibly patrons/others.

   1.3 Developer's payment procedure and forms.

   1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.

   1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).

   1.6 Distribution and discussion of the construction schedule.

   1.7 Procedure for maintaining the Project record documents.

   1.8 Distribution of the Second Opinion Option Form.

   1.9 Designation of persons authorized to represent and sign documents for the RE and Developer and the respective communication procedures between parties.

   1.10 Safety and first aid procedures including designation of Developer's safety officer.

   1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.

   1.12 Testing laboratory or agency and testing procedures.

   1.13 Establish schedule for progress meetings.

   1.14 Procedure for changes in work requested by Developer, notice to RE, timing, etc.

   1.15 Procedure for changes in work requested by City.

   1.16 Public safety.

   1.17 Housekeeping procedures and Project site maintenance.

   1.18 Protection and restoration of existing improvements.

   1.19 Sanitation, temporary lighting, power, water, etc.

   1.20 Procedure for encountering hazardous substances.

   1.21 Any items requested by attendees of preconstruction meeting/open discussion.

2. Progress Meetings. The issues below, but not limited to, should be made part of the Progress Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.

   2.1 Review progress of construction since the previous meeting.

   2.2 Discuss field observations, problems, conflicts, opportunities, etc.

   2.3 Discuss pre-planning opportunities.

   2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule; revise the schedule if necessary.

2.5 Discuss Developer's plan for progress during the next construction period and the corresponding inspections necessary.

2.6 Discuss submittal status.

2.7 Discuss request for information (RFI) status.

2.8 Progress of schedule.

2.9 Disputed items.

2.10 Non-conformance/non-compliance items.

2.11 New business of importance from any member of the meeting.

2.12 Deferred approvals and their coordination.

2.13 Discuss request for proposals, change orders, and progress payment status.

3. Special Meetings.

3.1 Other. Upon appropriate notice to other parties, the RE may call special meetings at times agreed to by all parties involved.

EXHIBIT I
Procedure for Processing Change Orders

1. **Forms Required**. Prior to construction, all Change Orders shall be requested in writing by the Developer on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to Developer. The purpose is for the developer to obtain advance written approval (or rejection) from the City prior to incurring the cost.

2. **Written Approval of Change Orders**. Change Orders that *will not* result in an increase in the Estimated Cost, may be approved by the RE in writing. If a requested Change Order *will* result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval only if the increase will exceed the Maximum Funds.

3. **Process for Approval of Change Orders**. A Change Order must indicate whether the change will result in any change to the Estimated Cost, Project Schedule, or Project quality established during the design and submittal review process.

   3.1 **Resident Engineer Review.** The RE shall either approve or reject the Change Order in writing on the appropriate City form within fourteen (14) calendar days of receiving Developer's written notice, provided Developer has submitted complete documentation substantiating the need for such Change Order and the reasonableness of the cost. If City fails to respond to Developer's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.

   Documentation substantiating the reasonableness of the cost of the Change Order may include;

   a. Signed daily work tickets. T & M sheets should be signed at the end of each day. This allows the RE to be present during construction and confirm quantities and time as it relates to the change order work and since Change Order Requests (COR's) are eventually billed on subsequent IAR's.
   b. Proposals showing the cost of labor, materials, and equipment, using unit costs that are similar to those of the original construction contract;
   c. An explanation why the Change Order unit costs are dissimilar to those of the original construction contract;
   d. Quotes from multiple vendors; or
   e. Copies of correspondence between the contractor, subcontractors, Resident Engineer, etc. that document a price negotiation.

   If the RE acknowledges the work to be extra, a Change Order will be issued adjusting the compensation for such portion of the Work in accordance with the Greenbook "Payment" and "Payment for Extra Work" Sections.

4. **City Council Approval.** As noted in Section 2 above, if the Change Order request *will* result in an increase in the Estimated Cost, City Council approval is required. In such cases, once a Change Order is preliminarily accepted by the appropriate City staff, City staff shall process the Change Order along with any required amendments this Agreement as a 1472 (Request for Council Action). At a hearing on such Request for Council Action, City Council may either approve or reject such Change Orders. Council Approval shall not be subject to the fourteen (14) calendar day response time set forth above in Section 3.1. Furthermore, nothing in this Agreement shall compel the City Council to take any particular action.

Exhibit J

Developer Checklist For Solicitation Preparation And Advertisement Of Reimbursable Construction Bid Packages

Before You Begin Creating the Solicitation

- Contact the City's Planning Department at (619) 533-3670 in order to receive a "WBS" number or an Internal Order (IO) number.
- Ensure that plans have been approved and signed by the City prior to advertising the solicitation.
- Contact the City's Project Implementation (PI) Division of PWD at (619) 533-3778 in order to request the Equal Opportunity Contracting Program (EOCP) ELBE/SLBE subcontracting goal percentages.
- Refer to the Reimbursement Agreement section of the Planning Department's website to ensure the appropriate and complete insurance requirements are provided.

Critical Elements for the Solicitation

- Type of State Contractor License required for the project.
- Addenda acknowledgement section.
- Bid Bond requirement language for Design-Bid-Build solicitations valued at $250,000 or more.
- Payment and Performance Bond language.
- Clear announcement of Pre-Bid meeting date, time, and location (if applicable).
- Clear announcement of Bid due date, time, and location.
- Clear instructions on Contractor Prequalification requirements and process.
- Clear announcement of Equal Benefits Ordinance policy.
- Clear statement that Prevailing Wages will apply to the project.
- Statement of the Prime Contractor self-performance requirement. Standard is 50%, minimum is 25%.
- Identify the basis of award; such as base bid only, or base bid plus all alternates (when applicable).

➢ **Required Forms and Certifications**

- ✓ **Subcontractor Listing Form**
- ✓ **Subcontractor Listing Form for Alternates**
- ✓ **Supplier Listing Form**
- ✓ **Non-Collusion Affidavit**
- ✓ **Drug-Free Workplace**
- ✓ **ADA Compliance**
- ✓ **Contractor Standards**
- ✓ **Equal benefits Ordinance**
- ✓ **Bid Bond**
- ✓ **Contractor's Certification of Pending Actions**

USING THE CITY'S SOLICITATION DOCUMENTS AS A TEMPLATE (provided by the Public Works Contracts Division upon request) IS HIGHLY RECOMMENDED IN ORDER TO MEET THESE REQUIREMENTS FOR REIMBURSEMENT.

Advertisement of the Solicitation

- Ensure that the solicitation for the project is advertised for one day (minimum) in the City's official newspaper (SD Daily Transcript via The Daily Journal Corporation – 1-800-788-7840).
- Ensure that there is the required time between the advertisement of the project and the bid due date. This will allow contractors to solicit and meet the EOCP requirements. Standard is 30 days "on the street", minimum is 21 days.

EXHIBIT K

Consultant Provisions

1. **Third Party Beneficiary.** The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Developer, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.

2. **Competitive Bidding.** Consultant shall ensure that all design plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

3. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.

4. **Indemnification for Design Professional Services**. To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

5. **Design Professional Services Defense**. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6. **Enforcement Costs.** Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.

7. **Professional Liability Insurance.** For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) aggregate. Consultant shall ensure both that (1) this policy's retroactive date is on or before

the date of commencement of the work to be performed under this Agreement; and (2) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego's exposure to loss.

8. **Commercial General Liability (CGL) Insurance.** Consultant shall keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars ($1,000,000) per occurrence, subject to an annual aggregate of two million dollars ($2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

9. **Insurance Policy Requirements.** Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.

10. **Workers Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum or one million dollars ($1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.

11. **Compliance Provision.** Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 (ADA) and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code (Title 24). Further, Consultant is responsible as designer and employer to comply with all ports of the ADA and Title 24.

12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.

EXHIBIT L

<u>Design and Construction Standards</u>

1. **<u>Laws</u>**. Developer shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:

   A. *Permits*. Development Services Department permits, hazardous material permits, Coastal Commission permits.

   B. *Building Codes*. State and local Building Codes

   C. *The Americans with Disabilities Act* (ADA) and *Title 24 of the California Building Code* (Title 24). It is Developer's sole responsibility to comply with all ADA and Title 24 regulations. *See* Developer Certification attached as **Exhibit M**.

   D. *Environmental.* Developer shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.

   E. *Air, Water, and Discharge.* Developer shall comply with the Clean Air Act of 1970, the Clean Water Act, and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).

   F. *ESBSSA*. Developer shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.

   G. *City Directives*. Developer shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

2. **<u>Standard Specifications</u>**. Developer shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:

   A. *Green Book and White Book.* Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments.

   B. *DOT*. California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.

3. **<u>City Standards</u>**. Developer's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:

   A. *City of San Diego's Drainage Design Manual*

   B. *City of San Diego's Landscape Technical Manual*

   C. *City of San Diego's Street Design Manual*

   D. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans*

   E. *City of San Diego's Technical Guidelines for Geotechnical Reports*

   F. *City of San Diego Standard Drawings including all Regional Standard Drawings*

   G. *City of San Diego Data Standards for Improvement Plans*

   H. *The City of San Diego Consultant's Guide to Park Design and Development.*

   I. *The City of San Diego Water Department Guidelines and Standards*

EXHIBIT M

Certification for Title 24/ADA Compliance

[INSERT Name of Project]

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for [INSERT Name of Project] shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with the Americans with Disabilities Act of 1990.

Dated: ______________________________

By: ______________________________
____

EXHIBIT N

Approval of Design, Plans, and Specifications

UNLESS OTHERWISE DIRECTED BY THE CITY IN WRITING, DEVELOPER SHALL OBTAIN APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS IN THE MANNER IDENTIFIED BELOW:

1. **City Approval**. Developer shall obtain City approval through the City of San Diego's Development Services Department and obtain all necessary permits for delivery of the project.

2. **Submittal of Plans, Specifications, and Budget**. Developer shall deliver to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of the Project, in accordance with **Exhibit D** (Project Schedule).

3. **Citywide Review of 100% Plans and Specifications**. Plans and Specifications shall include City's standard drawings and specifications as described in **Exhibit L**. If requested by City, Developer shall make changes to the Plans and Specifications, but Developer shall not be responsible for implementing such changes if they increase the Estimated Cost.

4. **Final Approval and Permit Review**. City approval of the Plans and Specifications is a condition precedent to authorization to proceed with subsequent work on the Project.

EXHIBIT O

Construction Obligations

1. **Site Safety, Security, and Compliance**. Developer shall be responsible for site safety, security, and compliance with all related laws and regulations.

   A. *Persons.* Developer shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Developer to access the Project site.

   B. *Other.* Developer is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been accepted by the City pursuant to Article I.

   C. *Environment.* Developer shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including, but not limited to, the Clean Air Act of 1970, the Clean Water Act, Executive Order Number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Furthermore, the Developer shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan (SWPPP) to be implemented by the Developer during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.

2. **Access to Project Site**.

   A. *Field Office.* As applicable and feasible, Developer shall provide in the construction budget a City field office (approximately 100 square feet) that allows City access to a desk, chair, two drawer locking file cabinet with key, phone, fax, computer, copy machine and paper during working hours.

   B. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Developer.

   C. *Site Tours.* Site tours may be necessary throughout completion of the Project. Developer shall allow City to conduct site tours from time to time as the City deems necessary. City will give Developer notice of a prospective tour and a mutually agreeable time shall be set. Developer is not obligated to conduct tours or allow access for tours when City fails to give prior notice.

3. **Surveying and Testing**. Developer shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:

   A. *Existing Conditions.* Developer shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The soils consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions, agronomic soil preparation recommendations, and any other information concerning the existing conditions of the site.

   B. *Utilities.* Developer shall provide all required information for the construction or relocation of public or private utility facilities that must be constructed or relocated as a result of this Project. Developer shall file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.

   C. *Geotechnical Information.* Developer shall obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement, that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.

4. **Public Right of Way**. All work, including, materials testing, special testing, and surveying to be conducted in the public right-of-way shall be coordinated with the City.

   A. *Materials Testing.* Developer shall pay for and coordinate with City to have all material tests within the public right-of-way and any asphalt paving completed by City's Material Testing Laboratory.

   B. *Surveying.* Developer shall pay for and coordinate with City's Survey Section all surveying required within the public right-of-way.

   C. *Follow all Laws, Rules, and Regulations*. Developer agrees to follow all City standards and regulations while working in the public right-of-way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.

5. **Traffic Control**. Developer shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans, and/or notes.

6. **Inspections**. Developer shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.

   A. *Reports.* Developer shall provide City all special inspection reports within seven (7) calendar days of inspection. Developer shall report all failures of special inspections to City.

   B. *Remedies.* Remedies for compliance shall be approved by Developer, Developer's consultants, City's Development Services Department, and City representatives.

   C. *Concealing Work*. Prior to concealing work, Developer shall obtain approval of the work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as provided in this Agreement. This approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Developer shall fulfill all requirements of each of these three entities.

7. **Property Rights**. Developer shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements. City shall not require Developer to provide any easement documents for land to which Developer does not have title; however, Developer shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement or other entitlement.

8. **Permits**. The Parties acknowledge the construction work to be performed on the Project by Developer in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Developer. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Developer is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Developer in accordance with the terms of the Agreement for the work completed. All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon reimbursement as set forth above.

9. **Maintenance**. Developer shall maintain and be responsible for the Project site until Acceptance of the Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.

10. **Drug-Free Workplace**. Developer agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. Developer shall certify to the City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace form (**Exhibit P**).

    A. *Developer Notice to Employees.* Developer shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

B. *Drug-Free Awareness Program*. Developer shall establish a drug-free awareness program to inform employees about all of the following:

i. The dangers of drug abuse in the work place.

ii. The policy of maintaining a drug free work place.

iii. Available drug counseling, rehabilitation, and employee assistance programs.

iv. The penalties that may be imposed upon employees for drug abuse violations.

v. In addition to Section 10.A above, the Developer shall post the drug-free policy in a prominent place.

C. *Developer's Agreements.* Developer further certifies that each contract for consultant or contractor services for this Project shall contain language that binds the consultant or contractor to comply with the provisions of Section 10 "Drug-Free Workplace," as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and contractors shall be individually responsible for their own drug-free work place program.

EXHIBIT P

Certification for a Drug-Free Workplace

PROJECT TITLE: [INSERT Name of Project]

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace, and that [INSERT Developer Name] has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

Signed ___________________________________

Printed Name ______________________________

Title _____________________________________

Date _____________________________________

EXHIBIT Q

Product Submittal and Substitution

1. **Product Submittal.** Prior to the bidding process, Developer shall submit for City approval a list of products intended for use in the Project. Upon Developer's completion of Plans and Specifications, City will review and approve products specified therein. Developer shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Developer's receipt of submittal. Approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits, or regulations.

2. **Substitutions.** Developer shall submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) calendar days, City will allow substitution only when a product becomes unavailable due to no fault of Developer's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Developer agrees that City requires Consultant's input and as such Developer shall coordinate a seven (7) calendar review by its Consultant.

   A. *Substantiate Request.* Developer shall include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Contract Documents.

   B. *Developer Representations.* By submitting a substitution request, Developer is representing to City all of the following: (a) Developer has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) Developer is providing the same warranty for the proposed product as was available for the specified product; (c) Developer shall coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) Developer shall waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.

   C. *Separate Written Request.* City will not consider either substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of construction contract documents.

3. **Samples.**

   A. *Postage.* Samples shall be sent to Developer's office, postage prepaid.

   B. *Review.* Developer shall furnish to City for review, prior to purchasing, fabricating, applying or installing, two (2) samples (other than field samples) of each required material with the required finish.

      i. Where applicable, all samples shall be 8" x 10" in size and shall be limited in thickness to a minimum consistent with sample analysis. In lieu thereof, the actual full-size item shall be submitted.

      ii. Developer shall assign a submittal number. Developer shall include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the Project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.

      iii. All materials, finishes, and workmanship in the complete building shall be equal in every respect to that of the reviewed sample.

      iv. City will return one submitted sample upon completion of City review.

      v. Developer's or Developer's agents' field samples shall be prepared at the site. Affected finish work shall not commence until Developer or Developer's agents have been given a written review of the field samples.

EXHIBIT R

Extra Work Provisions

1. **Extra Work**. City may at any time prior to Project Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not invalidate this Agreement and without notice to any surety.

    A. *Requests in Writing*. All requests for Extra Work shall be in writing, and shall be treated as and are subject to the same requirements as Change Orders. Developer shall not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this Section.

2. **Bonds Required for Extra Work**. Developer's and Developer's agents' bonds, under Article XVII, shall cover any Extra Work provided that the Extra Work is paid for by the Project Budget.

3. **Reimbursement for Extra Work**. Work performed by Developer as Extra Work is reimbursable in the same manner as described in Article XII. The Project Contingency as described in Article III, will be used first to cover the costs of Extra Work.

4. **Markup**. Developer will be paid a reasonable allowance for overhead and profit. The allowance shall be paid in accordance with and per the percentage described in the section of the Greenbook and Whitebook noted as "Markup", and shall be added to the Developer's costs for Extra Work.

EXHIBIT S

Notification of Reimbursable Project

Pursuant to Section 12.1.1 of the Reimbursement Agreement with [INSERT Developer Name] for Financing Plan Project No. [INSERT Number], [INSERT Project Name], in the [INSERT Community] Community, adopted pursuant to City Council Resolution/Ordinance No. [INSERT Number] and executed on [INSERT Date], [INSERT Developer Name] hereby notifies the City of San Diego that work will begin on [INSERT Name of Project]in the [INSERT Community] community on or about [Insert Date Work is Scheduled to Begin].

This Notification of Reimbursable Project form shall be submitted with the Project's construction permit application to the City's Development Services Department prior to commencement of any work on construction Project No. [INSERT PTS Number], Development Services Deposit Account No. [INSERT Account Number].

The Developer shall add the following note above the title block on the construction plan cover sheet, and on all sheets where subject to reimbursement:

REIMBURSABLE PROJECT: [INSERT Community Name].

This note is required to be submitted with the application for the Project's construction permit.

[Insert Name of Developer],
[Insert type of entity]

By: _______________________________

[Insert Title] _______________________________

Dated: ____________________________

EXHIBIT T

Sample Reimbursement Request Form

Change Order Request

No. ____

Completed by Developer Prior to Performing the Work

Reimbursable Project Name		Total Estimated Project Cost
Developer Project Manager	PFFP Community	Date Requested
Requested by	PFFP Project Number	Date Approval Requested

Change Order Scope of Work

Will this Change Order change the project quality established during design and submittal review? ☐ Yes ☐ No
Will this Change Order result in an increase in the Estimated Cost shown in the Reimbursement Agreement (see above)? ☐ Yes ☐ No
Will this Change Order change the project schedule? If yes, by how many days? _______ days ☐ Yes ☐ No

Justification for the Change Order or Extra Work

Line Item	Qty.	Unit	Unit Cost	Previous Cost	Current Cost	Total to Date
1						
2						
3						
4						
5						
6						
Total Requested for this Change Order *including Retention*						

I am an authorized signatory or agent of the Developer, and I hereby certify that this information is true, accurate and not part of a previously approved Change Order, and that complete substantiating documentation is attached to this form.

Date	Developer	Title and Signature

Completed by Resident Engineer Prior to Performing the Work

I have reviewed this request and its complete substantiating documentation and have made the following decision:

☐ The CO is **approved** (proceed with the work). ☐ The CO is **disputed work** (proceed with the work). ☐ The CO is **rejected**.

Date	Inspector Name and Signature
Comments	

Completed by Financial Consultant

I have reviewed this request with respect to the Developer's Reimbursement Agreement and industry practices and:

☐ The following items are recommended for approval: ____________________

☐ The following items are not recommended for approval: ____________________

Date	Consultant	Consultant Name and Signature
Previous Recommendation	Current Recommendation	Recommendation to Date
Comments		

Completed by Public Facilities Planning

The items recommended for approval are acceptable as a Change Order under the Reimbursement Agreement. Reimbursement is contingent upon acceptance of the work by City.

Date	Name and Signature
Comments	

Invoice Approval Request

No. ______

Completed by Developer

Reimbursable Project Name		**Total Estimated Project Cost**
Developer Project Manager	**PFFP Community**	**Date Requested**
Requested by	**PFFP Project Number**	**Date Approval Requested**
Invoice Scope of Work		
Related Change Orders or CORs (Please list their numbers)		

Line Item	Qty.	Unit	Unit Cost	Previous Cost	Current Cost	Total to Date
1						
2						
3						
4						
5						
6						
Total Requested for this Invoice *including Retention*						

I am an authorized signatory or agent of the Developer, and I hereby certify that this information is true, accurate and not part of a previously approved invoice, and that complete substantiating documentation is attached to this form.

Date	Developer	Title and Signature

Completed by Resident Engineer

I have reviewed this invoice and its complete substantiating documentation and have made the following decision:

☐ The work is within and pertains directly to the limits of the project, and the quantity is consistent with measurements of work installed in the field.

☐ The work is not within the limits of the project or the quantity is not consistent with measurements of work installed in the field. The invoice approval request is rejected.

Date	Inspector Name and Signature
Comments	

Completed by Financial Consultant

I have reviewed this request with respect to the Developer's Reimbursement Agreement and industry practices and:

☐ The following items are recommended for approval: ______

☐ The following items are not recommended for approval: ______

Date	**Consultant**	**Consultant Name and Signature**
Previous Recommendation	**Current Recommendation**	**Recommendation to Date**
Comments		

Completed by Public Facilities Planning

The items recommended for approval are acceptable and considered reimbursable as presented. Reimbursement is contingent upon acceptance of the work by City.

Date	Name and Signature
Comments	

T

EXHIBIT U

Project Deliverables

A. *Working Drawings.* Developer shall prepare Working Drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.

i. Quality. Developer shall make Working Drawings by one of the following methods: permanent ink, Computer Aided Drafting, a permanent photographic reproduction process, or with pencil made for use on drafting film and permanently fixed with spray coating. Scale and clarity of detail shall be suitable for half-size reduction.

ii. Font and Contents. Specifications shall be typewritten with one type face, on bond paper utilizing Greenbook format. Developer will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Green Book and White Book standards as needed.

B. *Surveys.* Developer shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.

C. *Schematic Design Documents.* Developer shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.

i. Schematic Design Documents shall include, but not be limited to the following:

a. Sketches with sufficient detail to illustrate the scale and location of Project components.

b. Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.

c. Analysis of parameters affecting design and construction for each alternate considered.

d. Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.

e. Probable construction costs for the base Project and all additive alternates considered.

f. Summary of Project requirements and a recommendation.

g. Artistic renderings of the Project.

ii. Form. Developer's Schematics shall conform to the quality levels and standards in size, equipment, and all facets of its design and deliverables as set forth in City specifications and as may be updated prior to commencement of construction.

D. *Design Development Documents.* Developer shall prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. These documents shall contain, at a minimum, the following:

i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.

ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.

iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.

iv. Proposed construction schedules.

v. Technical 'Special Provisions' section of the Specifications.

vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.

vii. Probable Project construction costs, for each component of the Project being considered in this phase.

viii. Color board with material samples.

E. *Construction Documents.* Developer shall provide, based on the approved Design Development documents, Working Drawings and Contract Specifications (throughout the Agreement and attached exhibits referred to as Construction Documents) setting forth in detail the requirements for construction of the Project, including the necessary bidding information.

F. *Utility Location Requests.* Along with initial submission of Construction Documents, Developer shall furnish copies of the Service and Meter Location Request and all utility companies' verifications.

G. *Cost Estimate.* Developer shall provide a construction cost estimate based on the Construction Documents.

H. *H, G, & E Reports.* Developer shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports as required by City.

I. *As-Builts.* Developer shall provide As-Builts.

i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Developer shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Developer shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Developer shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.

ii. Developer shall include all of the following on the As-Builts:

a. Depth of foundation in relation to finished first floor.

b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.

c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.

d. Field changes of dimensions and details.

e. Changes authorized by approved proposal requests, construction change orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.

f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.

g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.

h. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.

i. The title "PROJECT RECORD" in 3/8" letters.

iii. Developer shall maintain a set of As-Builts at the Project site for reference. Developer shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.

J. *As-Graded Reports.* Developer shall submit the City approved As-Graded Report summarizing the results of the observations and testing of grading operations.

K. *Signed Grading and/or Public Right-of-Way Permit.* The Developer shall submit the signed grading and/or public right-of-way permit.

L. *Operation and Maintenance Manuals*. Developer shall submit all Operation and Maintenance manuals prepared in the following manner:

i. In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.

ii. A separate volume for each system, including but not limited to mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:

a. Part 1: Directory, listing names, addresses, and telephone numbers of Developer’s agents, suppliers, manufacturers, and installers.

b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system. For each specification division or system, provide names, addresses and telephone numbers of Developer’s agents, suppliers, manufacturers, and installers. In addition, list the following: 1) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.

M. *Capitalization Form.* The Developer shall submit all required capitalization information in a form acceptable to the Facilities Financing Project Manager.

N. *Certificate of Occupancy/Property Transfers.* The Developer shall submit any required certificates of occupancy and/or property transfers.

EXHIBIT V

<u>Capitalization Form</u>: Capitalization Form to be completed by Developer updated upon final completion of Project (100%) to reflect all verified project costs.

EXHIBIT "V"

Capitalization Cost Breakdown
For Developer Built Reimbursable Public Projects-Completed

Capitalization Form to be completed by developer upon final completion of Project (100%) to reflect all verified project costs.
Actual Cost incurred should be used to fill out Capitalization Form, even if not fully reimbursed.

1) Project Title/Location: ____________________
2) Project (PTS) Number: ____________________
3) Internal Order Number: ____________________
4) Drawing Number: ____________________

5) Permit Number: ____________________
6) Substantial Completion Letter Date: ____________________
7) As-Built Date: ____________________
8) Public Facilities Financing Plan Ref. #: ____________________
Reimb. Agreement Resolution #:
Date Approved:

TABLE A.

(1) Item	(2) Description	(3) Asset Code	(4) Quantity #	(5) Unit Measurement	(6) Total Cost *
STREETS					
Roadways		ROAD		SF	
Sidewalk		SIDE		SF	
Curb & Gutter		SIDE		LF	
Curb Ramps		SIDE		Each	
Medians		SIDE		SF	
Alleys		ALLY		SF	
Traffic Signals		TRAF		Each	
Street Lights		STRT		Each	
Guardrails		STRT		LF	
BRIDGES					
Vehicular/Wildlife		BRDG	0.00	SF	
Pedestrian		BRDG	0.00	SF	
Other (Specify)					
STORM DRAINS					
Storm Drains		STRM		LF	
Channels & Culverts		CHAN		LF	
Other (Specify)					
PARK INFRASTRUCTURE (list)					
Parkgrounds		PARK		Each/acres	
Picnic Shelter		PARK		Each	
Playground		PARK		Each	
Recreation Center		3000		Each/SF	
Comfort Stations		3000		Each	
Park Lighting		PARK		Each	
Pool		PARK		Each	
Bike Path or Multi-Use Trails		PATH		LF	
Parking Lot		LOTS		SF	
OTHER (list)					
Pedestrian Lighted Crosswalk		TRAF			
Fire Station		various			-
Library					
Police Station					
		Total Project Cost	-		$ -

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE INFORMATION PROVIDED ON THIS CAPITALIZTION FORM IS TRUE AND ACCURATE REGARDING THE CITY ACQUIRED INFRASTRUCTURES.
PRINT NAME:____________________ TITLE:____________________
SIGNATURE:____________________ DATE:____________________

	Name/Title	Contact No.
Prepared by:		

City Use Only-Forward Original to Facilities Financing for Distribution

Copy	Comptroller's Office - CIP Fixed Asset Accountant
Copy	Street Division
Copy	Development Services Department

** Project soft cost for administration, engineering, design, etc. should be allocated using the percentage of hard cost for each cost category.*
Note: Water & Sewer may be part of the PUD Capitalization and need to be double checked by the City Comptroller.

1/26/2015

EXHIBIT W

Required Insurance Provisions

1. **Types of Insurance**. At all times during the term of this Agreement and for so long as the Agreement requires, Developer shall maintain insurance coverage as follows:

1.1 Commercial General Liability. Developer shall provide at its expense a policy or policies of Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Developer shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars ($2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars ($2,000,000); (iii) Personal Injury Limit one million dollars ($1,000,000); and (iv) Each Occurrence one million dollars ($1,000,000).

1.2 Commercial Automobile Liability. For all of Developer's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Developer shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars ($1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ("Any Auto"). All costs of defense shall be outside the policy.

1.3 Architects and Engineers Professional Liability. For all of Developer's employees who are subject to this Agreement, Developer shall keep in full force and effect, or Developer shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) annual aggregate. Developer shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Contract. Developer agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.

1.4 Worker's Compensation. For all of Developer's employees who are subject to this Contract and to the extent required by the State of California, Developer shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Developer against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Developer to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars ($1,000,00) for Bodily Injury by Accident for each accident, one million dollars ($1,000,000) for Bodily Injury by Disease each employee, and a one million dollars ($1,000,000) for Bodily Injury by Disease policy limit. Developer shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

1.4.1 Prior to the execution of the Agreement by the City, the Developer shall file the following signed certification:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance, in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Contract."

1.5 Builder's Risk. To the extent commercially available, Developer shall provide a policy of "all risk" Builders Risk Insurance. Developer shall also add its construction contractor, and the construction contractor's subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars ($50,000). It shall be Developer's responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is occupied by City, or a Notice of Completion is filed, whichever occurs first.

2. **Endorsements Required**. Each policy required under Section 1, above, shall expressly provide, and an endorsement shall be submitted to the City, that:

2.1 *Additional Insureds.* Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.

2.1.1 Commercial General Liability. The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer's Estimate is one million dollars ($1,000,000) or more shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, (iii) Your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for Projects for which the Engineer's Estimate is less than one million dollars ($1,000,000) shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, or (iii) premises owned, leased, controlled, or used by you; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

2.1.2 Commercial Automobile Liability Insurance. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

2.2 *Primary and Non-Contributory*. The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Developer's insurance and shall not contribute to it.

2.3 *Project General Aggregate Limit*. The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the work performed under this Agreement. Claims payments not arising from the work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.

2.4 *Written Notice*. Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Developer to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.

2.5 The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

**ORIGINAL
DUPLICATE**

TRANSFER AGREEMENT AND ESCROW INSTRUCTIONS

CATELLUS OPERATING LIMITED PARTNERSHIP

CITY OF SAN DIEGO

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

and

MUSEUM OF CONTEMPORARY ART, SAN DIEGO

Covering certain real property at the SANTA FE DEPOT SITE commonly known as the

BAGGAGE BUILDING SITE

and

REA SITE

Effective Date: The date on which this Agreement is signed by the last to sign as between the City or Agency, that date being July 1, 2004

DOCUMENT NO. R-03790 / R-0379

FILED JUL 0 9 2004

OFFICE OF THE REDEVELOPMENT AGENC

SAN DIEGO, CALIF.

DOCUMENT NO. RR-299406

FILED JUN 29 2004

OFFICE OF THE CITY CLERK

SAN DIEGO, CALIFORNIA

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TRANSFER AGREEMENT AND ESCROW INSTRUCTIONS

This Transfer Agreement and Escrow Instructions (Agreement) is made as of the date described in Section 11.14 below, between CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation (Catellus), the CITY OF SAN DIEGO, a municipal corporation of the State of California (City), the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California (Agency), and the MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation (Museum), and is intended both as an agreement concerning the transfer of the real property herein described (Property), and as escrow instructions to COMMONWEALTH LAND TITLE COMPANY (Escrow Agent). Catellus, the City, the Agency and the Museum agree as follows:

1.
FUNDAMENTAL PROVISIONS AND DEFINITIONS

1.1 Development Agreement or DA. Catellus entered into an Amended and Restated Development Agreement dated April 9, 1993 with the City, as amended by a First Amendment thereto dated March 5, 1996, a Second Amendment thereto dated December 4, 1997, and a Third Amendment thereto dated February 18, 2003, and a Fourth Amendment thereto to be approved by City concurrently with the approval of this Agreement (collectively, the DA).

1.2 Owner Participation Agreement or OPA. Catellus entered into an Amended and Restated Owner Participation Agreement dated April 9, 1993 with the Agency, as amended by a First Implementation Agreement thereto dated March 4, 1996, a Second Implementation Agreement thereto dated December 4, 1997, a Third Implementation Agreement thereto dated February 10, 2003, and a Fourth Implementation Agreement thereto to be approved by Agency concurrently with the approval of this Agreement (collectively, the OPA).

1.3 Escrow Agent. Commonwealth Land Title Company.

1.4 Escrow No. 10026120

1.5 Title Company. Commonwealth Land Title Company.

1.6 Purchase Price. None. Catellus is conveying the Baggage Building Site to the Museum (as the non-profit entity designated by City pursuant to Section 2.1.1) as required by the DA and OPA. Catellus also hereby agrees to convey the REA Site to the Museum concurrently with its conveyance of the Baggage Building Site, although not required to do so by the DA and OPA. The parties agree that the value of the REA Site shall be established by an independent appraisal to be obtained by Catellus. The parties acknowledge that such value shall not apply as a credit toward Catellus' commitment to a Fine Arts Program at the Santa Fe Depot Site, as set forth in Revised Attachment C-1 to the DA, and Revised Attachment No. 5 to the OPA, respectively (Obligations of Catellus, Paragraph A.10).

1.7 **Close of Escrow.** The actual Closing Date may be earlier than the Close of Escrow, as set forth in Article 7 below.

1.8 **Address for Notices to Catellus.**

Catellus Operating Limited Partnership
201 Mission Street
2nd Floor
San Francisco, California 94105
Attn: Tim Carey
Telephone: (415) 974-4500
Telecopier: (415) 974-4613

1.9 **Address for Notices to City.**

City Administration Building
202 C Street, M.S. 9B
San Diego, California 92101-4155
Attn: Will Griffith, Director of Real Estate Assets
Telephone: (619) 236-2237
Telecopier: (619) 236-7003
Email: wgriffith@sandiego.gov

1.10 **Address for Notices to Agency.**

Redevelopment Agency of the City of San Diego
Executive Director
202 C Street, 9th Floor
San Diego, California 92101
Attn: Hank Cunningham
Assistant Executive Director
Telephone: (619) 236-6550
Telecopier: (619) 533-6514
Email: hcunningham@sandiego.gov

1.11 **Address for Notices to CCDC.**

Centre City Development Corporation
225 Broadway, Suite 1100
San Diego, CA 92101-5074
Attn: Pamela M. Hamilton,
Senior Vice President
Telephone: (619) 235-2200
Telecopier: (619) 236-9148
Email: hamilton@ccdc.com

1.12 Address for Notices to Museum.

Museum of Contemporary Art, San Diego
700 Prospect Street
La Jolla, California 92037-4291
Attn: Charles Castle
Telephone: (858) 454-3541
Telecopier: (858) 454-6985
Email: cecastle@mcasd.org

1.13 Address for Notices to Escrow Agent.

Commonwealth Land Title Company
750 B Street, Suite 2350
San Diego, California 92101
Attn: Maureen Casey
Telephone: (619) 230-6340
Telecopier: (619) 233-4196
Email: mcasey@landam.com

1.14 Property. The real property (Property) is in the downtown area of San Diego, California, consisting of two fee parcels generally described as follows, and more particularly described on Exhibit A attached hereto:

1.14.1 Baggage Building Site; Baggage Building. The southerly fee parcel is commonly referred to as the Baggage Building Site, on which the Baggage Building is situated. The Baggage Building is to be upgraded by Catellus prior to the Close of Escrow as required by the DA and OPA.

1.14.2 REA Site; REA Building. The adjacent northerly fee parcel is commonly referred to as the REA Site, on which the REA Building was situated. The REA Site includes the southerly 50% of B Street adjacent to the REA Site which has previously been vacated by the City. As part of this transaction, the REA Building has been demolished by Catellus, at Catellus' expense, in connection with its upgrading of the Baggage Building.

1.15 Breezeway Easement. In addition to conveying fee title to the Property to the Museum, Catellus shall concurrently convey a non-exclusive easement to the City across the accessway located between the Baggage Building and the nearby building commonly referred to as the Depot Building, such easement being more particularly described on Exhibit B attached hereto (the Breezeway Easement).

1.16 **Definitions**. The following words and phrases have the following meanings:

(a) New Museum Building – means the new building to be constructed by Museum on the REA Site.

(b) Amtrak - means National Railroad Passenger Corporation, a corporation organized and existing under the National Rail Passenger Service Act and the laws of the District of Columbia.

(c) Development Plan – means the plans to develop the Property in substantial accordance with the Basic Concept/Schematic Drawings submitted to and approved by City, as same may have been or may be modified with the consent of City.

(d) City Option – means the Option Agreement between the Museum and the City in the form of Exhibit C.

(e) Amtrak Lease – means the contemplated Lease between Museum and Amtrak substantially in the form of Exhibit D. The Amtrak Lease shall require the City's and the Agency's consent prior to its execution. With such consent City shall agree that City shall honor and be bound by the terms of the Lease if City becomes the owner of the New Museum Building during the Lease term.

2.
AGREEMENT TO TRANSFER AND ACKNOWLEDGMENTS

2.1 Agreement to Transfer.

2.1.1 Baggage Building Site. Catellus hereby reaffirms its obligation set forth in the DA and OPA to transfer fee title to the Baggage Building Site to the Museum (as the non-profit entity designated by the City), including the Baggage Building itself, pursuant to the Grant Deed attached as Exhibit E. See, Revised Attachment C-1 to the DA, and Revised Attachment No. 5 to the OPA, respectively (Obligations of Catellus, Paragraphs A.10 and A.11).

2.1.2 REA Site. Catellus hereby agrees also to transfer the REA Site to the Museum pursuant to this Agreement.

2.1.3 Amtrak Lease. City, Agency and Museum agree to negotiate in good faith for Amtrak's lease of approximately 2,725 sq. ft. within the New Museum Building. If the Amtrak Lease is not executed by Museum and by Amtrak in a form acceptable to the City and the Agency by September 1, 2004, the Museum shall use the contemplated Amtrak space for Museum purposes in accordance with Section 10.2. City, Agency and Museum may, if they so jointly decide, extend such date.

2.2 Catellus Acknowledgments.

2.2.1 Baggage Building. Catellus confirms its obligation under the DA and OPA to perform certain work as provided therein to upgrade the Baggage Building prior to transferring it to the Museum. Catellus also acknowledges that the Museum is the entity selected by the City to use the Baggage Building as a museum.

2.2.2 REA Site. Catellus acknowledges that (a) the Museum will have the right and ability to use the REA Site for constructing the New Museum Building on a portion thereof, (b) upon completion of the New Museum Building, that Building will be used by the Museum in conjunction with the Baggage Building and for similar purposes as described herein, (c) in the New Museum Building, the Museum may lease pursuant to Section 2.1.3 an area of approximately 2,725 square feet to Amtrak, and (d) the portion of the REA Site not devoted to the New Museum Building will be used for Museum or public access purposes as shown in Exhibit K Preliminary Plan for the B Street Pathway improvements, as agreed to between Museum and City. A Right of Entry Agreement shall be entered into between Museum and Agency concurrently with the Closing in the form of Exhibit M attached hereto.

3.
CLOSING DELIVERIES

3.1 Catellus' Closing Deliveries. Prior to the Close of Escrow, Catellus shall deliver the following documents or funds to the Escrow Agent, in time for delivery to Museum or to the City, or for use by Escrow Agent, as applicable, at the Closing:

3.1.1 Grant Deed. A grant deed to the Property (Grant Deed), from Catellus as grantor, to the Museum as grantee, duly executed and acknowledged by Catellus so as to be suitable for recording, substantially in the form attached hereto as Exhibit E.

3.1.2 Maintenance Covenant. A Maintenance Covenant under California Civil Code Section 1468 (Maintenance Covenant), by and between Catellus and the Museum, duly executed and acknowledged by Catellus so as to be suitable for recording, substantially in the form attached hereto as Exhibit F.

3.1.3 Breezeway Easement. A Breezeway Easement (Breezeway Easement), by and between Catellus as grantor, and the City as grantee, duly executed and acknowledged by Catellus so as to be suitable for recording, substantially in the form attached hereto as Exhibit G.

3.1.4 Façade Easement. A Façade Easement (Façade Easement), protecting the façade of Santa Fe Depot and the Baggage Building (but not the REA Building, which has been demolished) in accordance with the requirements of the DA and OPA, from Catellus as grantor, to the City as grantee, duly executed and acknowledged by Catellus so as to be suitable for recording, substantially in the form attached hereto as Exhibit H.

3.1.5 Non-Foreign Affidavit. An affidavit executed by Catellus to the effect that Catellus is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes, and an equivalent affidavit with respect to the State of California. If

Catellus does not provide such affidavits in forms reasonably satisfactory to the Escrow Agent at least three (3) business days prior to the Close of Escrow, Escrow Agent may at the Closing deduct from Catellus's proceeds and remit to Internal Revenue Service and to the State of California, such sums as may be required by applicable Federal and California law with respect to purchases from foreign Sellers.

3.1.6 Closing Costs. Catellus's share of title, escrow and closing costs, as provided in Section 8, plus $99,440 to be paid to Museum (as provided in Subsection 4.1.6).

3.2 City's Closing Deliveries. Prior to the Close of Escrow, the City shall deliver the following documents to the Escrow Agent, to which the Museum and Catellus hereby agree, in time for delivery to Seller or to the Museum or for use by Escrow Agent, as applicable, at the Closing:

3.2.1 City Option. Duplicate originals of an option in the form of Exhibit C with respect to the Property (City Option), from the Museum as Optionor to the City as Optionee, duly executed by the Museum and City. The City Option shall provide that the City may, if it so elects, become the owner of the Property on or after July 31, 2091, or earlier in the event of a Default by Museum as defined in the City Option.

3.2.2 Breezeway Easement. A Breezeway Easement Grant Deed, as described in Section 3.1.3.

3.2.3 Façade Easement. A Façade Easement, as described in Section 3.1.4.

3.2.4 Closing Costs. City's title costs (if any) as provided in Section 8.

3.3 **Museum's Closing Deliveries**. Prior to the Close of Escrow, Museum shall deliver the following documents or funds to the Escrow Agent, in time for delivery to Catellus or to the City, or for use by Escrow Agent, as applicable, at the Closing:

3.3. The Maintenance Covenant, as described in Section 3.1.2 duly executed and acknowledged by the Museum so as to be suitable for recording, substantially in the form attached hereto as Exhibit F.

3.3.2 Two executed originals of the Amtrak Lease, if such Lease has been executed by the Museum and Amtrak prior to the Close of Escrow.

3.3.3 Museum's share of title, escrow and closing costs, as provided in Section 8.

4.
CONDITIONS PRECEDENT

4.1 Conditions Precedent. The parties' obligations to proceed with the Closing with respect to the Property are subject to the satisfaction or waiver of each of the following conditions precedent, on or before the Close of Escrow unless otherwise stated:

4.1.1 City Council and Agency Approval. On or before the Close of Escrow, the City Council of the City, and the Board of the Agency shall both have approved this Agreement, the Fourth Amendment to the DA as referred to in Section 1.1, and the Fourth Implementation Agreement to the OPA as referred to in Section 1.2.

4.1.2 Condition of Title. The City and the Museum shall have given written approval of a current preliminary title report concerning the Property (PTR) issued by the Title Company, as well as all underlying documents (Underlying Documents) referred to in the PTR, and the Title Company shall be prepared to issue the title policies described in Section 7.3.3 below. Catellus has caused the PTR and all Underlying Documents to be delivered to the City and the Museum before the execution of this Agreement. The City's and the Museum's approval or disapproval thereof shall be given within ten days after their receipt of the PTR and Underlying Documents. The disapproval of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this condition, for Catellus shall have the obligation, at its expense, to satisfy and remove any such disapproved monetary encumbrance at or before the Closing.

4.1.3 Baggage Building Improvements. Catellus, at its own cost, shall have completed the Improvements to the Baggage Building required by the DA.

4.1.4 Form of Façade Easement. Catellus, the City and the Museum shall have agreed on the form of the Façade Easement. The parties acknowledge that this condition precedent has now been satisfied by the approval of the form of Exhibit H attached hereto.

4.1.5 REA Building Demolition. Catellus, at its own cost, shall have completed the demolition of the REA Building. The parties acknowledge that this condition precedent has now been satisfied.

4.1.6 Baggage Building Additional Improvements. In accordance with a mutual understanding reached by Catellus and Museum, Catellus has completed additional improvements to the floor of the Baggage Building such that the floor is in a condition reasonably acceptable to the Museum at the Closing; certain additional improvements to the floor of the Baggage Building will be completed by the Museum after the Closing. Catellus shall have caused $99,440 in immediately available funds to be deposited with the Escrow Agent to pay the costs associated with completing such additional improvements, which amount shall be released to the Museum concurrently with the Close of Escrow; the breakdown of how the $99,440 was computed is shown on Exhibit O attached hereto. If the cost of completing such additional improvements exceeds $99,440, or if the Museum elects to perform any additional improvements beyond what was contemplated by Exhibit O, the cost thereof shall be borne solely by the Museum. Museum shall have the sole use of such $99,440 and may spend such funds in its sole discretion in any manner it deems appropriate for the construction of its improvements on the Property and Catellus shall have no claim to such funds following the Closing.

4.2 Waivers, Approvals and Disapprovals. Any waiver of a condition precedent shall be effective only if it is (a) in writing, (b) signed by the appropriate waiving party or parties, and (c) delivered to Escrow Agent and the other parties on or before the Close of Escrow. If any party fails to approve or disapprove of any contingency within the applicable time specified for approval, it shall be presumed that the party has disapproved of the item, matter or document that is the subject of such contingency. A conditional approval shall constitute a disapproval.

5.
ENVIRONMENTAL PROVISIONS

5.1 Exculpation of Escrow Agent. Escrow Agent shall have no concern with, or liability or responsibility for this Article 5.

5.2 **Environmental Definitions.** For purposes of this Agreement:

5.2.1 Hazardous Substance. The term "Hazardous Substance" shall mean any chemical or substance whose nature or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or environment.

5.2.2 Hazardous Substance Condition. A "Hazardous Substance Condition" shall mean the existence of a Hazardous Substance on, under, or which originated on or under, and thereafter migrated off, the Property that requires remediation or removal under applicable Federal, state or local law.

5.2.3 Contractual Response Requirements. "Contractual Response Requirements" which Catellus or Museum (or both) are obligated to undertake pursuant to this Agreement are to prepare (to the mutual satisfaction of Catellus and the Museum) and implement a Soils Management Plan as defined and discussed below in Section 5.3, and to assess, remediate or remove, as appropriate, Hazardous Substance Conditions encountered at the Property during the course of construction of the New Museum Building, to the extent required in order to meet the Environmental Clean-Up Standard set forth in Section 5.3.2 below. In agreeing to assess, remediate or remove Hazardous Substance Conditions at the Property, to the extent required in order to meet the Environmental Clean-Up Standard set forth in Section 5.3.2 below, the parties hereto are not (a) limiting or expanding any environmental responsibility which Catellus may have independent of this Agreement, or (b) releasing or relieving Catellus from any statutory, legal or contractual obligation which Catellus may have independent of this Agreement, related to the remediation or removal of Hazardous Substances or Hazardous Substance Conditions, or to the presence of any Hazardous Substances or Hazardous Substance Condition(s) on or about the Property (collectively, "Non-Contractual Response Requirements").

5.2.4 Response Costs. The term "Response Costs" shall mean all disbursements, expenses and costs of any kind or nature, including without limitation consultants', experts' and attorneys' fees, site assessment costs, governmental agency oversight costs, fines, penalties, permitting fees, costs of sampling, excavation and disposal of groundwater and soils containing Hazardous Substances, installation and removal of groundwater wells, monitoring costs, and any other costs related to the remediation or removal of Hazardous Substance Conditions, reasonably necessary in order to fulfill any Contractual Response Requirements, which Catellus or the Museum have under this Agreement or under applicable Federal, state or local law, as a result of the construction of the additional improvements to the floor in the Baggage Building described in Exhibit O and the completion of construction of The New Museum Building, including the receipt of a "no further action" letter to conclude any regulatory enforcement action (in the event there is a regulatory enforcement action that is expected to result in the issuance of a "no further action letter).

5.2.5 Qualified Environmental Professional. The term "Qualified Environmental Professional" shall mean an environmental consultant who: (i) shall be either a registered geologist, certified engineering geologist, or registered civil engineer; (ii) shall be licensed by the state of California; (iii) shall have experience in the assessment and remediation of petroleum hydrocarbons, volatile organic compounds including chlorinated solvents and BTEX, lead and other Title 22 metals, and PCBs; and (iv) shall have experience in the assessment and remediation of downtown San Diego properties (e.g., burn ash and burn ash-related compounds).

5.3 **Catellus Report**. Catellus has furnished to Museum and City the reports listed on Exhibit P attached hereto. Catellus does not warrant or represent that such reports are accurate.

5.4 Environmental Clean Up.

5.4.1 Preparation of Soils Management Plan. The Museum shall cause to be prepared a Soils Management Plan ("SMP") consistent with the principles outlined by the parties in this Section 5. The SMP shall be prepared by a Qualified Environmental Professional, engaged by the Museum, at the Museum's cost and expense (but Catellus agrees to reimburse Museum for any fees or costs of the Qualified Environmental Professional which relate to a Hazardous Substance Condition for which Catellus is responsible pursuant to this Section 5). The SMP shall provide a protocol to be followed by the Museum during the construction of the additional improvements to the floor in the Baggage Building described in Exhibit O, and by the Museum during the construction of the New Museum Building. The SMP shall include, but not be limited to, the performance of the following activities: (i) identification of potential constituents of concern, which shall include, but not be limited to, lead and other related Title 22 metals, chlorinated solvents and other volatile organic compounds, petroleum hydrocarbons, polynuclear aromatic hydrocarbons (PAHs), and PCBs; (ii) provide a methodology for soil screening (i.e. XRF, odor, staining, PID/OVA meters) to be conducted at the time of active excavation and any other related activities that may justify real-time monitoring; (iii) provide a response and potential soil sampling plan for identified constituents of concern, and for which sampling shall -occur during excavation and/or construction activities; (iv) identify mitigation or remedial options for any discovered Hazardous Substance Condition(s); (v) outline a protocol for the on-site soil management and profiling; (vi) provide parameters for on-site soil reuse; (vii) outline a protocol for off-site soil disposal and manifesting; (viii) preparation of a report detailing the activities undertaken as outlined in the SMP; (ix) documentation of the off-site disposal or reuse of soils containing Hazardous Substances; and (x) identify when reporting to any State or County Agency is required.

Subject to the reimbursement obligations of Catellus set forth in Section 5.4.1 (first paragraph above) and in Section 5.4.3 below, the Museum shall, at its sole cost and expense, be responsible for the day-to-day implementation of the SMP, including, but not limited to hiring a Qualified Environmental Professional to perform each of the tasks identified in the SMP, and to complete any necessary and/or required mitigation and remediation of Hazardous Substance Conditions at the Property, pursuant to Section 5 of this Agreement.

In the event that a Hazardous Substance Condition is detected at the Baggage Building Site or the REA Site which, in the opinion of the Qualified Environmental Professional pursuant to the Soils Management Plan, requires notice to, or oversight by, any governmental regulatory agency, the Museum shall give notice to the appropriate governmental regulatory agency with jurisdiction promptly and in accordance with all applicable laws. Furthermore, the Museum will obtain such agency's oversight, if required, of any potential mitigation, potential remediation or continued excavation efforts at the Baggage Building Site and/or the REA Site. Further, in the event that a Hazardous Substance Condition is discovered which, in the opinion of the Qualified Environmental Professional, may have the potential to negatively impact the health and safety of construction workers and/or future occupants of the Property, a health risk assessment shall be performed by the Qualified Environmental Professional, as defined above, to ensure that no unacceptable health risk exists from any discovered Hazardous Substance.

5.4.2 <u>"No Further Action" Letter.</u> If in the opinion of the Qualified Environmental Professional, circumstances indicate that it would be reasonable to expect the County of San Diego Department of Environmental Health or any other State or County agency administering environmental programs to respond to such a request, the Museum, using its reasonable best efforts and with the full cooperation of Catellus, shall diligently undertake all reasonable steps (including, if required, the submittal of a Voluntary Assistance Program application to the County of San Diego Department of Environmental Health, or to another equivalent State or County program) to obtain written confirmation in the form of a "no further action" letter (or confirmation of equivalent effect), stating in effect that the response actions taken by the Museum and/or Catellus, with agency oversight, to address Hazardous Substance Conditions encountered at the Baggage Building Site and/or REA Site (if applicable) are acceptable, using generally acceptable human health risk protocols, for allowing reuse of such Property as non-residential commercial/industrial property. The circumstances indicating that "it would be reasonable to expect [any such governmental agency] to respond to such a request" shall include an evaluation of whether there is any data known to, or that ought to be made known to, any such agency, which would cause such an agency to commence any review or oversight, or require any action to be taken on an Hazardous Substance Condition. The "reasonable steps" referred to in the first sentence of this Section 5.4.2 shall include reasonable best efforts by the Museum to satisfy all conditions required under applicable law in order to obtain such agency concurrence or confirmation.

5.4.3 Catellus's Response Requirements: Catellus shall, at its sole cost and expense, reimburse the Museum for any and all Response Costs incurred as a result of any necessary and/or required remediation of the Property, necessitated by the construction of the additional improvements to the floor in the Baggage Building described in Exhibit O, and by the construction of the New Museum Building.

Catellus's Contractual Response Requirements shall be limited to the assessment, remediation and/or removal of Hazardous Substance Conditions, as required under applicable Federal, state or local law, encountered at the Property during the course of construction of the additional improvements to the floor in the Baggage Building, and during the construction of the New Museum Building, to the extent required to complete the new floor in the Baggage Building and the construction of the New Museum Building, or obtain a "No Further Action" letter to conclude any governmental regulatory action.

5.4.4 Environmental Clean-Up Standard. With respect to the work which Catellus and/or the Museum are to perform in order to fulfill the Contractual Response Requirements, and without limiting any legal liability or responsibility which Catellus or Museum may have independent of this Agreement under applicable Federal, state or local law to fulfill any Non-Contractual Response Requirements:

(a) All Applicable Legal Standards. Catellus's and/or the Museum's environmental clean-up of the Baggage Building and REA Site shall meet all applicable standards in effect as of the date on which such environmental cleanup is performed for properties to be redeveloped or used for non-residential commercial/industrial purposes.

(b) More Stringent Clean-Up Standard Left to City and/or Museum. The City, the Agency and the Museum recognize that more stringent standards of environmental clean-up exist, or may hereafter exist, than the Environmental Clean-Up Standard applicable to the reuse of the Property as non-residential commercial/industrial property (for example, a more stringent standard exists for property to be used as residential property). The City, the Agency and the Museum nevertheless agree that, once the Environmental Clean-Up Standard has been met, if the City, the Agency, the Museum or their successors or assigns (including, without limitation, Amtrak under any lease) wish to use all or any portion of the Property for any other purposes or activities to which a more stringent clean-up standard applies, it shall be the City's, the Agency's, the Museum's or their successors' or assigns' responsibility, and not Catellus's, to carry out any additional environmental clean-up required to achieve regulatory approval for such other purposes or activities.

(c) Construction Work and Costs. If more stringent standards of environmental clean-up have to be met for the protection of construction workers during the course of construction on the Property, the costs for meeting those more stringent standards will be recognized by the parties as a cost of construction, and not as Response Costs for which Catellus is responsible under the Contractual Response Requirements.

5.4.5 Acceptance of Lead Based Paint Conditions. The Museum acknowledges that lead based paints have been discovered within the Baggage Building, and that said lead based paints have previously been encapsulated upon the recommendation of Catellus's environmental consultants and with the concurrence of the Museum. The Museum is accepting the transfer of the Property with full knowledge of the encapsulated lead based paints, and releases Catellus from any future liability with respect to any assessment, remediation or removal of said lead based paints. The City and Agency acknowledge that they have been informed of the encapsulated lead based paint condition at the Baggage Building, and agree that while the City may consider the encapsulated lead based paint condition in deciding whether or not to exercise the City Option, Catellus shall have no future obligation to the City or the Agency to assess, remediate or remove any lead based paints from the Baggage Building.

5.4.6 Disclaimer of Obligations by the City of San Diego. The responsibility to prepare and implement the SMP rests entirely with Catellus and the Museum, and the City and Agency hereby disclaim any responsibility for the preparation, approval or implementation of the SMP, and neither the City nor the Agency shall participate in the development of the SMP, review or approve the contents of the SMP or the work performed thereto, or direct the implementation of the SMP. Catellus and the Museum agree to provide the City and Agency with copies of all SMPs, workplans, reports, studies, correspondence between Catellus and/or the Museum and any governmental regulatory agency, or any other documentation generated in the preparation of the SMP and the performance of the activities set forth in the SMP and this Section 5.4.

5.4.7 Non-Contractual Response Requirements Remain. Nothing in these Sections 5.2 or 5.4 is intended, or shall be construed, (a) to limit any Non-Contractual Response Requirements which Catellus may have independent of this Agreement, or (b) to release or relieve Catellus from any statutory, legal or contractual obligation which Catellus may have independent of this Agreement related to the remediation or removal of Hazardous Substances or Hazardous Substance Condition(s), or to the presence of any Hazardous Substances or Hazardous Substance Condition on or about the Property.

6.
REPRESENTATIONS, WARRANTIES, ETC.

6.1 Transferee Inspection. By the Close of Escrow, the City, the Agency and the Museum shall make or have waived all inspections of the Property which they believe are necessary to protect their own interests in, and their contemplated uses of, the Property.

6.2 No Brokers. Each party to this Agreement represents and warrants to each other party that it has had no dealings with any broker or finder in connection with the negotiation of this Agreement or the consummation of the transfer contemplated herein, and no broker or finder is entitled to any commission or fee in connection with this transaction as the result of any dealings or acts of such party. Each party hereby agrees to indemnify, defend, protect and hold the other parties harmless from and against any claims, losses and liabilities, including attorneys' fees, expert witness fees and costs, which may arise by reason of any alleged acts or dealings of the indemnifying party inconsistent with the representation and warranty made herein.

6.3 **No Encumbrances**. Museum may not encumber the property or any portion thereof to secure a promissory note or any other obligation of Museum.

7.
THE CLOSING

7.1 Escrow. Upon execution hereof by the parties, this Agreement shall constitute not only the agreement of transfer among the parties, but also instructions to Escrow Agent for the consummation of this Agreement through an escrow (Escrow) administered by Escrow Agent.

7.2 General Provisions. Escrow Agent is authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law, custom and practice of the community in which Escrow Agent is located, including any reporting requirements of the Internal Revenue Code and California Revenue and Taxation Code. The parties shall execute such additional general provisions and other instructions as may reasonably be requested by Escrow Agent in order to consummate this transaction, provided that the same are not inconsistent with this Agreement, the DA or the OPA.

7.3 Closing. Escrow Agent shall close the Escrow on the Close of Escrow by (a) filing for record the Grant Deed and such other documents as may be necessary to procure the Title Policies described below, and (b) delivering funds and documents as set forth in this Agreement, WHEN AND ONLY WHEN each of the following conditions has been satisfied:

7.3.1 Documents and Funds. All documents and funds required by Article 3 have been delivered to Escrow Agent.

7.3.2 Conditions Precedent. Each of the conditions precedent set forth in Article 4 has been, or upon such closing will be, satisfied or waived.

7.3.3 Title Policies. Escrow Agent has procured, or can procure, the following title insurance policies for the City and the Museum, respectively:

(a) For the Museum, the Title Company's ALTA extended coverage owner's policy of title insurance (Owner's Policy), with liability in an amount of $5,000,000, insuring that fee title to the Property all vests in Museum; and;

(b) A separate policy for City in the same amount insuring City's rights under the City Option (Optionee's Policy, and together with the Owner's Policy, the Title Policies).

7.4 **Early Closing.** If all of the conditions precedent set forth in Article 4 above become satisfied or waived at a date earlier than the July 20, 2004, then Escrow Agent shall close the Escrow at such earlier date.

7.5 **Late Closing.** If Escrow Agent cannot close the Escrow on or before July 20, 2004, it will, nevertheless, close the Escrow when all conditions have been satisfied or waived, notwithstanding that one or more of such conditions has not been timely performed unless Escrow Agent receives a written notice to terminate the Escrow and this Agreement from a party who, at the time such notice is delivered, is not in default hereunder. The right to terminate the Escrow and this Agreement shall be optional, not mandatory. No delay in the giving of such notice shall affect the rights hereunder of the party giving the same.

7.6 **Termination Procedures.** Escrow Agent shall have no liability or responsibility for determining whether or not a party giving a notice of termination is or is not in default hereunder. Within two (2) working days after receipt of such notice from a party, Escrow Agent shall deliver a copy of such notice to the other parties. Unless written objection to the termination of the Escrow is received by Escrow Agent within ten (10) days after Escrow Agent delivers such notice to the other parties, Escrow Agent shall forthwith terminate the Escrow and return all funds, documents and other items held by it to the party depositing same, except that Escrow Agent may retain such documents and other items usually retained by escrow agents in accordance with standard escrow termination procedures and practices, and may deduct from any cash or other funds held by it, a sum sufficient to pay its escrow termination charges in full. If written objection to the termination of the Escrow is delivered to Escrow Agent within such ten (10) day period, Escrow Agent is authorized to hold all funds, documents and other items delivered to it in connection with the Escrow and may, in Escrow Agent's sole discretion, take no further action until otherwise directed, either by the parties' mutual written instructions or final order of a court of competent jurisdiction.

7.7 **Retention of Rights**. Neither (a) the exercise of the right of termination, (b) delay in the exercise of such right, (c) the failure to object to a termination, nor (d) the return of funds, documents or other items, shall affect the right of any party to pursue legal remedies for any other party's breach of this Agreement (including, without limitation, damages for the payment of all or any portion of Escrow Agent's escrow termination charges). Nor shall the termination of the Escrow or this Agreement in any way constitute a termination or amendment of the DA or OPA or of any of the parties' rights or obligations thereunder.

7.8 **Possession.** Possession of the Property shall be given to Museum at the Closing, free and clear of all leases, tenancies and other rights of occupancy, and also free and clear of all liens and encumbrances other than those expressly permitted herein.

8.
PRORATIONS, FEES AND COSTS

8.1 Prorations. Escrow Agent shall prorate real property taxes and assessments as of the close of Escrow, based upon the latest available tax bills. The Museum and the City are both exempt from being subject to real property taxes.

8.2 Catellus' Charges. Catellus shall pay (a) the County Documentary Transfer Tax related to the Grant Deed, in the amount Escrow Agent determines to be required by law, (b) one-half of Escrow Agent's escrow fee or escrow termination charge, (c) usual transferor's charges related to the Grant Deed, and (d) 50% of any other costs, prorations, expenses and adjustments. Catellus is also responsible for the payment of 50% of the cost for the Title Policies (excluding any endorsements thereto).

8.3 Museum's Charges. The Museum shall pay (a) any County Documentary Transfer Tax related to the Amtrak Lease, in the amount determined to be required by law, (b) one-half of Escrow Agent's escrow fee or escrow termination charge, (c) 50% of the cost for the Title Policies, (d) the cost of any endorsements on the Owner's Policy requested by the Museum and (e) 50% of any other costs, prorations, expenses and adjustments.

8.4 City's Charges. The City shall pay the cost of any additional endorsements on the Optionee's Policy requested by the City. The parties acknowledge that the City does not currently expect to request any additional endorsements.

8.5 Utility Charges. Escrow Agent shall have no concern with, or liability or responsibility for, this Section 8.5. Charges for utilities (including, without limitation, water, sewer, electricity, gas and telephone charges) shall be prorated within sixty (60) days after the Close of Escrow, based on the most recent bills available for such services. Catellus shall pay for all such services to the Property for all periods before the Close of Escrow. The Museum shall pay for all such services to the Property for all periods from and after the Close of Escrow.

9.
FURTHER REQUIREMENTS OF AMTRAK LEASE AND EFFECT OF NO AMTRAK LEASE

9.1 Notwithstanding any other provision of this Agreement, Amtrak, City and Agency have not yet concluded negotiations of the Amtrak Lease. Any Amtrak Lease to be executed by Museum and Amtrak must be substantially in the form of Exhibit D or otherwise acceptable to Museum, Amtrak, City and Agency, and shall be consistent with the other provisions of this Agreement. If the Amtrak Lease is not executed by Museum and Amtrak, then the following shall be effective with respect to the terms of this Agreement:

(i) The $150,000 payment required to be paid by Museum to Agency pursuant to paragraph 2 of Section 10.22 shall be reduced to $90,000; and

(ii) Museum (not Amtrak) shall be responsible for the maintenance of the 16' pathway described as an Amtrak obligation in the first paragraph of Section 10.22, except that the 16' pathway shall be used only for pedestrian purposes.

10.
MUSEUM OBLIGATIONS FOR BENEFIT OF CITY:

10.1 **No Catellus or Escrow Agent Responsibility**. Neither Escrow Agent nor Catellus shall have any concern with, or responsibility or liability for, the matters set forth in this Section 10.

10.2 Uses. Museum will continuously operate a contemporary art museum featuring exhibitions and public programs exploring contemporary art forms and media (consistent with the activities and events conducted at Museum's La Jolla or downtown facilities), and for such other purposes as may be approved in writing by the City and for no other purpose whatsoever. That portion of the New Museum Building to be constructed on the REA site which the City consents to be leased to Amtrak is exempted from this exclusive use provision during the term of Amtrak's lease.

10.3 Related Council Actions. Neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Property, except that City has given permission, subject to Museum's compliance with the provision of the next sentence, to Museum to construct the New Museum Building on the REA site. Discretionary action includes but is not limited to issues which may be required for the development and operation of the premises in accordance with applicable laws or governmental regulations.

10.4 Competent Management. Museum shall provide competent management of the Property. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a contemporary art museum and the operation, maintenance and repair of the Baggage Building and the New Museum Building, and related activities in a fiscally responsible manner.

10.5 Operation of Property. A regular schedule of days and hours of operation shall be established by Museum to serve the public. The initial schedule is intended to provide for the Museum to be open to the public at least six days a week with evening hours at least four evenings per month, but this schedule is subject to modification by Museum, The Museum will feature an active and innovative program of contemporary art exhibitions, artists' residencies and commissioned projects, and educational activities for adults and children. Programming options will include changing installation of works from Museum's permanent collection or temporary exhibitions borrowed from other museums, large community-wide celebrations, film showings or poetry readings, musical performances and free tours for school children. Museum will engage in active, multi-disciplinary interpretive programs that include partnerships with local arts and education organizations. Docents will be available year-round to offer special tours of exhibitions, including labels and ancillary texts in English and Spanish. Museum anticipates that there will be on-going, year-round series of special events, performances, educational programs, exhibition openings, and other well-publicized and well-attended activities to enliven the space and surrounding area, day and night, weekdays and weekends. Museum shall diligently and in a creditable manner furnish services to the public in conformity with all existing applicable rules and regulations of the City. These provisions do not apply to the premises leased to Amtrak.

10.6 **Rates and Charges.** Admission fees charged by Museum shall be reasonable in the opinion of the City and comparable with those charged at similar facilities in San Diego County. The current anticipated adult admission fee will be $6.

10.7 **Political Activities.** The Property shall be used exclusively for the purposes specified herein. The Property shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that Museum shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

10.8 **Public Use.** Museum shall not discriminate with respect to the general public's access to the Property. Museum may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow Museum to use the Property for the purposes specified herein. Museum agrees that all activities conducted on the Property will be consistent with the provisions of this Agreement.

10.9 **Indemnity.** Museum agrees to defend, indemnify, protect, and hold the City, Agency, CCDC and their agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Museum's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with Museum's development or operation of the Property or the work and operations to be performed under this Agreement, and all expenses of investigating and defending against same; provided, however, that Museum's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the City, Agency, CCDC and their agents, officers, or employees.

10.10 **Insurance**. Museum shall take out and maintain at all times the following insurance at its sole expense:

(1) Public liability and property damage insurance in the amount of not less than Three Million Dollars ($3,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by City or Museum or by authorized representatives of City or Museum on or in connection with the use or operation of the Property.

(2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Property in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to City and Museum. The proceeds shall be placed in a trust fund to be reinvested as needed in rebuilding or repairing the damaged property. If there are excess proceeds (which Museum believes will not be the case), City shall be entitled to them.

Museum's responsibility to maintain said insurance also includes the following:

(1) Additional Insureds. All insurance policies will name City, Agency and CCDC as additional insureds, protect City, Agency and CCDC against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to City. All insurance companies must be satisfactory to City and licensed to do business in California. All policies will be in effect when the Museum opens, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Property, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A current copy of the insurance policy will remain on file with City during the entire period of Museum's ownership. At least thirty (30) days prior to the expiration of each policy, Museum shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets these requirements.

(2) Modification. City may require reasonable revisions of amounts and coverages at any time by giving Museum sixty (60) days' prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Property. Museum also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Agreement.

(3) Accident Reports. Museum shall report to City any accident or event causing more than Ten Thousand Dollars ($10,000) worth of property damage or any serious injury to persons on the Property. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.

(4) Failure to Comply. If Museum fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, City has the right to obtain the insurance. Museum shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by Museum on the first (1st) day of the month following the notice of payment by City.

10.11 Waste, Damage, or Destruction. Museum agrees to give notice to City of any fire or other damage that may occur on the Property within ten (10) days of such fire or damage.

Museum agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Property clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Property shall be damaged by any cause which puts the Property into a condition which is not decent, safe, healthy, and sanitary, Museum agrees to make or cause to be made full repair of said damage and to restore the Property to the condition which existed prior to said damage; or, at City's option, Museum agrees to clear and remove from the Property all debris resulting from said damage and rebuild the Property in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth above.

Museum agrees that preliminary steps toward performing repairs, restoration, or replacement of the Property shall be commenced by Museum within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

10.12 **Entry and Inspection.** City reserves and shall always have the right, but not the obligation, to enter Property for the purpose of viewing and ascertaining the condition of the same, or to inspect the operations conducted thereon. In the event that such entry or inspection by City discloses that Property is not in a decent, safe, healthy, and sanitary condition, City shall have the right, but not the obligation, after ten (10) days' written notice to Museum, to have any necessary maintenance work done at the expense of Museum, and Museum hereby agrees to pay promptly any and all costs incurred by City in having such necessary maintenance work done, in order to keep its Property in a decent, safe, healthy, and sanitary condition. Further, if at any time City determines that the Property is not in a decent, safe, healthy, and sanitary condition, City may at its sole option, without additional notice, require Museum (but not Amtrak, as the lessee) to file with City a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of City to correct the said unsatisfactory condition. Museum shall pay the cost of said bond. The rights reserved in this Section shall not create any obligations on City or increase obligations elsewhere in this Agreement imposed on City.

10.13 **Maintenance.** Museum agrees to assume full responsibility and cost for the operation and maintenance of the Property. Museum shall make all repairs and replacements necessary to maintain and preserve the Property in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with the Development Plan described in Section 10.21, Development Plans, and with all applicable laws. The obligations imposed on Museum pursuant to this subsection shall include the maintenance of the exterior of the façade of the Baggage Building.

10.14 **Facade Protection**. Museum shall be required to maintain, preserve and protect the exterior facade of the Baggage Building (so as to preserve its historic appearance). This obligation shall remain in effect for a maximum of two years after the City becomes the fee owner of the Baggage Building, pursuant to the City Option Agreement to be entered into concurrently with the Close of Escrow, subject to the City's using its best efforts to obtain a new tenant or occupant of the Baggage Building. The exterior facade shall be kept in good condition and repair, as an obligation running with the land and appurtenant to the fee ownership of Parcel 3. Nothing herein modifies or alters in any way the obligations of Catellus under Section A.6 of Revised Attachment C-1 to the DA, specifically including, without limitation, Catellus's agreement to guarantee the preservation and maintenance of the exterior facades of the Baggage Building.

10.15 **Improvements/Alterations**. No improvements, structures, or installations shall be constructed on the Property, and the Property may not be altered by Museum without prior written approval of the City. Further, Museum agrees that major structural or architectural design alterations to any improvements, structures, or installations (other than art) may not be made on the Property without prior written approval by the City and that such approval shall not be unreasonably withheld. This provision shall not relieve Museum of any obligation under this Agreement to maintain the Property in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations.

10.16 Utilities. Museum agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Property. All utilities will be installed underground.

10.17 Liens. Museum shall at all times save City free and harmless and indemnify City against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Property and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Property by Museum or by any party other than City, and a lien or notice of lien is filed, Museum shall within five (5) days of such filing either:

a. take all actions necessary to record a valid release of lien, or

b. file with City a bond, cash, or other security acceptable to City sufficient to pay in full all claims of all persons seeking relief under the lien.

10.18 Taxes. Museum agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Museum or the Property, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Museum or levied by reason of the business or other Museum activities related to the Property, including any licenses or permits. Museum recognizes and agrees that it may be subject to a possessory interest subject to property taxation, and that Museum may be subject to the payment of taxes levied on such interest, and that

Museum shall pay all such possessory interest taxes. Museum is acknowledged by City to be a 501(c)(3) organization, and thus exempt.

10.19 **Signs.** Museum agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without complying with City's requirements; this provision does not, however, apply to works of art. If any such unauthorized item is found on the Property, Museum agrees to remove the item at its expense within 24 hours notice thereof by City, or City may thereupon remove the item at Museum's cost.

10.20 **Unavoidable Delay.** If the performance of any act required of City or Museum is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. In the event Museum or City claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

10.21 **Development Plans.** Museum agrees to develop the Property in substantial accordance with the Basic Concept/Schematic Drawings submitted to and approved by City and as documented in, and subject to the conditions of Centre City Development Permit/Local Coastal Permit No. 41-0560. Such Basic Concept/Schematic Drawings have been revised and may be further revised by mutual agreement of City and Museum, as long as such revisions are consistent with Centre City Development Permit/Local Coastal Permit No. 41-0560. Museum shall diligently pursue after the Close of Escrow the obtaining of all permits, and shall commence construction of its improvements on the Property within 60 days after the permits are obtained (but in all events within 180 days of the Close of Escrow) and shall proceed diligently to complete all improvements in accordance with Centre City Development Permit/Local Coastal Permit No. 41-0560 within 30 months of the Close of Escrow.

10.22 **Public Access Improvements in B Street**. The parties acknowledge that it is a goal of the Agency to install a public pathway and landscaping between Kettner Boulevard and the Transit Courtyard within the vacated B Street right of way. The parties acknowledge that each will cooperate with the Agency to achieve this objective (as will Amtrak, as required by the Amtrak Lease). The Preliminary Plan for the B Street Pathway improvements is attached hereto as Exhibit K. The Preliminary Plan illustrates a non-exclusive Public Pedestrian Easement granted to the City by the Museum over and across the northerly 8' of the Property and a non-exclusive Public Pedestrian Easement requested by the City from TWELVE O TWO KETTNER LLC, owner of Assessor's Parcel No. 533-395-02 (the "Adjacent Owner"), for the southerly 8' of such Adjacent Owner's property. Further, the Preliminary Plan illustrates a non-exclusive Limited Vehicular Access Easement which may be granted by the Adjacent Owner to Amtrak for the southerly 8' of such Adjacent Owner's property; Museum shall permit Amtrak, if Amtrak is its Lessee, to use the northerly 8' of its Property for non-exclusive limited vehicular access as provided in the Amtrak Lease, and such Lease shall require that Amtrak maintain the combined 16' pathway (such maintenance to include sweeping, removal of trash, and cleaning [including the removal of oil stains and the like], repairing and reconstructing the pavers as necessary to keep the pathway in a safe, clean and attractive condition). Within the 16' of Public Pedestrian Easement area (if such 16' is secured in easement by the Agency) the Agency will install a 16' paved pathway and the Preliminary Plan illustrates additional paving and landscaping to be installed by the Agency adjacent to the 16' pathway within the Property and within Assessor Parcel No. 533-395-02.

Within ten days of the Agency's request, but in any event not sooner than the Close of Escrow, the Museum shall timely execute and deliver to the Agency the following documents (which shall be recorded by the Agency either at the conveyance of the Property from Catellus to the Museum or by separate instruments recorded subsequently), (1) the non-exclusive Public Pedestrian Easement which will be granted to the City substantially in the form attached hereto as Exhibit L affecting the northerly 8′ of the Property, (2) a Right of Entry substantially in the form attached hereto as Exhibit M affecting the northerly 22′ of the Property (but excluding the northerly 8′ of the Property which is subject to the Easement) providing access to the Agency for the Agency's installation of the additional paving and landscaping implementing the B Street Pathway, and (3) a Covenant to Maintain Paving and Landscaping substantially in the form attached hereto as Exhibit N affecting the northerly 22′ of the Property (but excluding the northerly 8′ which is subject to the Easement). Museum shall also pay to Agency $150,000 to assist Agency in the funding of the improvements as contemplated on Exhibit K; Agency shall fund all amounts required to construct and install such improvements.

The Agency intends to enter into an agreement with the Adjacent Owner providing for (1) the demolition of the existing exterior stairway and its reconstruction (and site improvements related thereto) within the northerly half of vacated B Street, without which the Agency would be unable to construct the B Street Pathway improvements, as they are shown on Exhibit K, (2) the Adjacent Owner's agreement to permit such demolition/reconstruction work in accordance with plans and a schedule approved by the Agency, and (3) the Adjacent Owner's execution and delivery to the Agency of documents substantially similar to Exhibits L, M and N but pertaining to the southerly 22′ of Adjacent Owner's property, and (4) the Adjacent Owner's execution and delivery to Amtrak of a non-exclusive Limited Vehicular Access Easement substantially similar to Exhibit Q, if Amtrak is a Lessee of the Museum in the REA Site.

It shall be the responsibility of the Agency to develop the final construction drawings for the improvements and landscaping implementing the B Street Pathway in consultation with the Museum and Adjacent Owner (and Amtrak, if Amtrak is a Lessee of the Museum in the REA Site). If Agency is unsuccessful in its efforts to obtain the cooperation of Adjacent Owner as contemplated by the provisions of this section 10.22, or if Agency decides to proceed in some other manner with respect to the B Street Pathway improvements, Agency has the right to cause Museum to provide it with documents in recordable form similar to Exhibits N, O and P, but pertaining to other locations within the northerly 22′ of the Property.

10.23 Hazardous/Toxic Waste. Museum will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the Property. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, Museum shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

Museum agrees to assume the defense of, indemnify, and hold City and Agency harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from Museum's construction activities and operations on the Property, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If Museum knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Property, Museum shall give written notice to the City within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if Museum knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Museum shall notify the City immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. Museum will notify the City immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Property. In addition, Museum and Museum's lessee shall not utilize or sell any hazardous substance on the property without the prior written consent of City.

10.24 Asbestos Disclosure. Catellus discloses to Museum that portions of the structural components of the Property may have contained asbestos, which Catellus has caused to be removed. Museum acknowledges having received notice from Catellus of the former presence of such asbestos in accordance with Health and Safety Code Section 25915. Museum shall, to the extent required, disclose the former existence of asbestos on the Property, as required by Health and Safety Code Section 25915. Museum agrees to indemnify and hold City and Agency harmless from any loss or claim which may result from the existence of asbestos on the Property.

10.25 Hazardous Materials Disclosure. Catellus discloses to Museum that portions of the structural components of the Property may have contained hazardous materials, which Catellus has removed or encapsulated. Museum acknowledges having received notice from Catellus of the former presence of such hazardous materials in accordance with Health and

Safety Code Section 25915. Museum shall, to the extent required, disclose the former existence of hazardous materials on the Property, as required by Health and Safety Code Section 25915. Museum agrees to indemnify and hold City and Agency harmless from any loss or claim which may result from the existence of hazardous materials on the Property.

10.26 **Compliance with Law**. Museum shall at all times in the construction, maintenance, occupancy, and operation of the Property comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments at Museum's sole cost and expense. In addition, Museum shall comply with any and all notices issued by the City or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

10.27 Nondiscrimination. Museum agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Museum's use of the Property, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

10.28 Relocation Payments. Museum understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Agreement.

10.29 **Survival**. The provisions of Section 10 survive the Closing.

11. GENERAL PROVISIONS

11.1 Assignment.

11.1.1 By Catellus. This Agreement may not be assigned by Catellus without the prior written consent of all other parties hereto, except that Catellus may assign this Agreement, without any further consent, to a party to whom Catellus has assigned all or any relevant interest in the DA and OPA, in full compliance with the requirements for such an assignment under the DA and OPA (including, without limitation, any requirements therein for approval by the City and the Agency).

11.1.2 By Other Parties. Except as provided in Section 11.1.1 above, this Agreement may not be assigned by any party hereto without the prior written consent of all other parties hereto.

11.2 Force Majeure. The performance by any party under this Agreement shall not be deemed to be in default where delays are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargos, lack of transportation, governmental restrictions or priority (other than that such restrictions or priority adopted by the City shall not excuse performance by the City, and such restrictions or priority adopted by the Agency shall not excuse performance by the

Agency), litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or suppliers, acts of the other parties, acts or failure to act of the City or Agency or any other public or governmental agency or entity (other than that acts or failure to act by the City shall not excuse performance by the City, and acts or failure to act by the Agency shall not excuse performance by the Agency), or any other causes beyond the control or without the fault of the party claiming an extension of time to perform.

11.3 Attorneys' Fees. In the event of any litigation or arbitration among the parties, or any of them, concerning this transaction, the prevailing party shall be entitled to recover from the other parties its reasonable attorneys' fees, expert witness fees and costs.

11.4 Prior Agreements. This Agreement supersedes any and all prior agreements between Catellus and the Museum regarding the Property. This Agreement does not, however, in any way supercede or amend the DA or OPA.

11.5 Amendments. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by all of the parties to this Agreement.

11.6 Pronouns. The use herein of (a) the neuter gender includes the masculine and the feminine, and (b) the singular number includes the plural, whenever the context so requires.

11.7 Captions. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any of the terms hereof.

11.8 Exhibits. All exhibits referred to herein and attached hereto are incorporated herein by reference. The Exhibits are as follows:

Exhibit A	Legal Description of Baggage Building Site and REA Site
Exhibit B	Legal Description of Breezeway
Exhibit C	Form of City Option Agreement
Exhibit D	Amtrak Lease
Exhibit E	Form of Grant Deed
Exhibit F	Form of Maintenance Covenant
Exhibit G	Form of Breezeway Easement Grant Deed
Exhibit H	Form of Façade Easement
Exhibit I	Intentionally Deleted
Exhibit J	Intentionally Deleted
Exhibit K	Preliminary Plan for the Vacated B Street Pathway Improvements
Exhibit L	Form of Public Pedestrian Easement (affecting the northerly 8′ of the Property)
Exhibit M	Form of Right of Entry (affecting the northerly 22′ of the Property)
Exhibit N	Form of Covenant to Maintain Paving and Landscaping (affecting the southerly 14' of the northerly 22′ of the Property)

Exhibit O	Catellus letter dated December 3, 2003
Exhibit P	List of reports provided by Catellus
Exhibit Q	Form of Limited Vehicular Access Easement (affecting the northerly 8' of the Property)

11.9 **Further Documents and Assurances.** The parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement.

11.10 **Time of Essence.** Time is of the essence of this Agreement.

11.11 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11.12 **Construction of Agreement.** This Agreement and any document or instrument delivered pursuant to this Agreement shall be construed without regard to the identity of the person who drafted it. The parties agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement or any document or instrument delivered pursuant to this Agreement.

11.13 **Time for Acceptance; Date of Agreement.** This Agreement, when executed by Catellus and the Museum and delivered to the City and Agency, must be authorized, executed and delivered by the City and Agency to Escrow Agent before the Outside Close of Escrow. The effective date of this Agreement shall be the date on which it is signed by the last to sign as between the City or Agency.

[Signatures on next page]

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date described in Section 11.14 above.

Date: 6-18-04, 2004

CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership (as successor by merger to Catellus Development Corporation, a Delaware corporation)

By: Catellus Development Corporation, a Delaware corporation (formerly known as Catellus SubCo, Inc., a Delaware corporation), its sole general partner

By: Catellus Urban Development Corporation, a Delaware corporation, as its Agent

By: [signature]
Name: Tim Carey
Executive Vice President, Urban Development

Date: July 1, 2004

CITY OF SAN DIEGO, a municipal corporation of the State of California

By: [signature]
Name: P. Lamont Ewell
Title: City Manager

APPROVED:

CASEY GWINN
City Attorney

By: [signature]
Name: ______________________
Title: ______________________

Date: 7/2/04, 2004

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California

By: [signature]
Name: Hank C. Cunningham
Title: Assistant Executive Director

APPROVED:

CASEY GWINN
~~City Attorney~~ General Counsel

By: [signature]
Name:
Title:

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: Murray O. Kane
Name:
Title:

Date: June 29, 2004

MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation

By: Pauline Foster
Name:
Title: President

Exhibit "A"

All that certain real property situated in the County of San Diego, State of California, described as follows:

Parcel A: Baggage Building Fee Parcel

Being all of Parcel 3 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land.

Parcel B: REA Site Fee Parcel

Being all of Parcel 4 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land.

Assessor's Parcel Number: **[533-472-02] (Portion)**

Exhibit 'B'

LEGAL DESCRIPTION OF BREEZEWAY

BEING A PORTION OF PARCEL 2 OF PARCEL MAP NO. 19378, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 2; THENCE SOUTHERLY ALONG THE EASTERLY LINE THEREOF, SOUTH 00°32'19" WEST, 16.55 FEET, TO A LINE BEING THE EASTERLY PROJECTION OF THE NORTHERLY FACE OF THE EXIST DEPOT BUILDING; THENCE ALONG SAID LINE, NORTH 89°20'16" WEST, 128.32 FEET TO THE INTERSECTION WITH THE EASTERLY LINE OF THAT CERTAIN EASEMENT AGREEMENT BY AND BETWEEN CATELLUS DEVELOPMENT CORPORATION AND THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY RECORDED JANUARY 9, 1991 AS FILE NO. 1991-0010998 OF OFFICIAL RECORDS, SAID EASTERLY LINE BEING THE COMMON LINE BETWEEN PARCEL 1 AND PARCEL 2 OF SAID PARCEL MAP NO. 19378; THENCE NORTHERLY ALONG SAID COMMON LINE, NORTH 00°32'19" EAST,16.27 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE NORTHERLY LINE THEREOF, SOUTH 89°27'50" EAST, 128.32 FEET TO THE **POINT OF BEGINNING**.

CONTAINS 0.048 ACRES, 2106 SQ.FT. MORE OR LESS.

LICENSED LAND SURVEYOR
PETER C. GOLDING
NO. 4768
Exp date 3-31-04
STATE OF CALIFORNIA

Peter C. Golding 12-4-03

PETER C. GOLDING DATE
LS 4768
EXPIRATION DATE 03/31/04

[illegible]

Attachment B
Agenda Item: G.1
Meeting Date: July 16, 2026

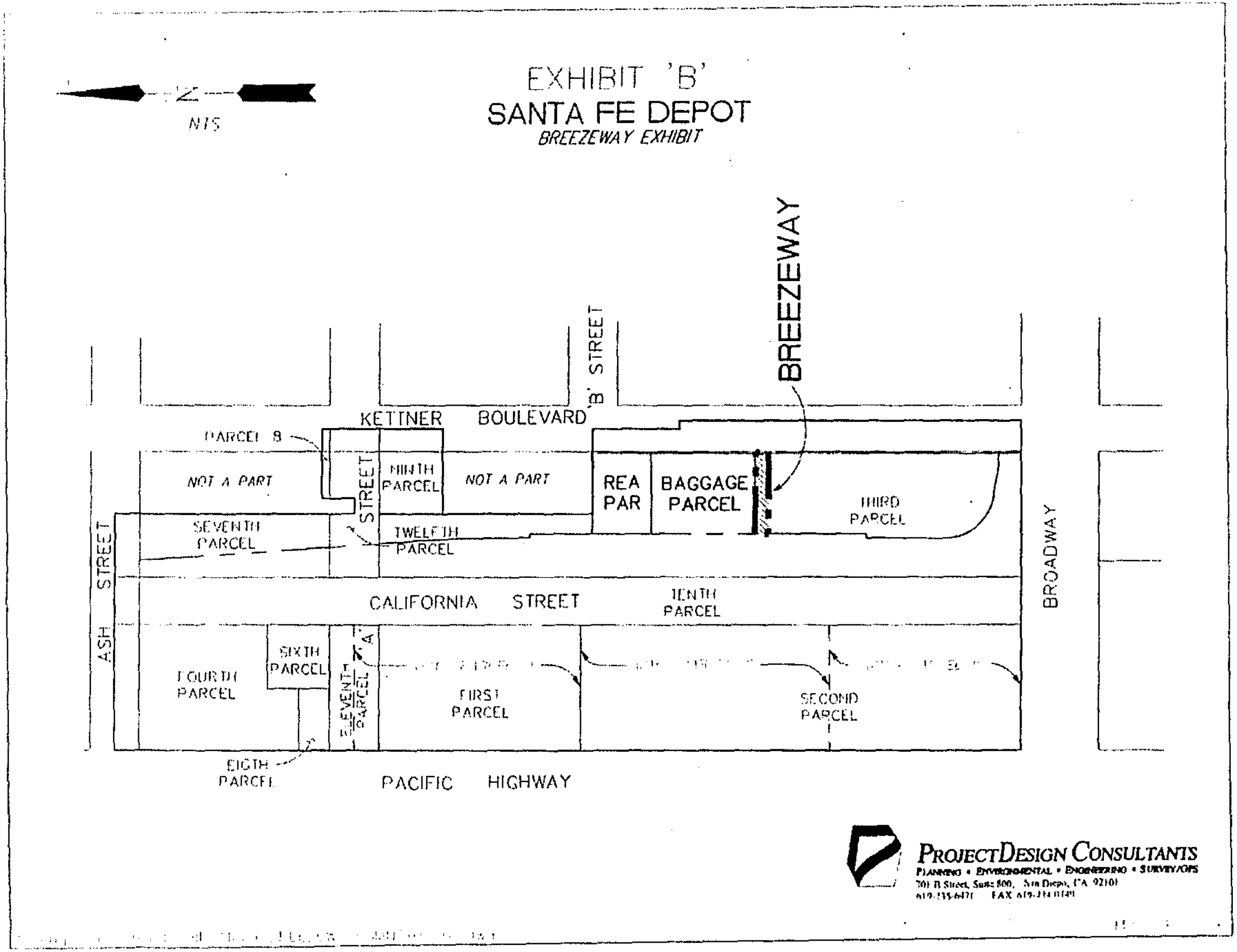


EXHIBIT C

CITY OPTION

THIS CITY OPTION (Option) is made as of July __, 2004 ("Effective Date"), between Museum of Contemporary Art, San Diego (Museum) and City of San Diego (City), who agree as follows:

1. Recitals. This Option is made with reference to and in contemplation of the following facts and circumstances:

1.1 Pursuant to a Transfer Agreement and Escrow Instructions among Catellus Operating Limited Partnership, City, Redevelopment Agency of the City of San Diego and Museum executed concurrently herewith (Transfer Agreement), Museum will become the owner of certain real property described on Exhibit I (Property).

1.2 City wants to reserve the right to acquire the Property (a) in the event Museum commits a Default (as defined in 1.3) under the Option; or (b) on or after July 31, 2091.

1.3 A Default is the failure of Museum to perform any substantive covenant or condition required by the Transfer Agreement to be performed by Museum, without curing such failure within thirty days following the receipt of written notice from City specifying such failure to perform (or if such failure to perform is not curable within thirty days, if Museum shall not commence the necessary actions to cure such failure within said thirty day period and thereafter diligently pursue such cure to completion). Any failure of Museum to continuously operate for 60 days shall constitute a default.

2. Grant of Option.

2.1 Museum hereby grants to City an exclusive option to acquire fee title to the Property upon the provisions and conditions set forth in this Option.

3. Museum's Covenants. Museum hereby agrees that Museum will perform all of its obligations pursuant to the Transfer Agreement.

4. Exercise of Option. City may exercise the Option if the Museum commits a Default, or on or after July 31, 2091 by delivering written notice of exercise of the Option ("Notice of Exercise") to Museum as set forth in Paragraph 6 below.

5. Escrow Instructions. Concurrently with its delivery of the Notice of Exercise to Museum, City shall also deliver a copy to such escrow company with the offices in the City of San Diego as City may select. The escrow company shall prepare escrow instructions to be signed by City and Museum consistent with the following:

a. The Property shall be conveyed by Museum to City subject only to matters of record as of the acquisition of the Property by Museum plus any other matters of record which may have been approved by City.

b. The Property shall be in the physical condition required by the Transfer Agreement.

c. The escrow shall close within sixty days after the Notice of Escrow is delivered to Museum.

d. All costs of escrow and title (City shall be entitled to obtain a policy of title insurance in the amount of $10 million) shall be paid by Museum.

e. City shall be entitled to possession of the Property as of the close of escrow.

f. The obligations of Museum pursuant to Section 10.14 of the Transfer Agreement shall remain in effect after the close of escrow.

6. Notice. Any notice required or permitted hereunder shall be deemed to have been received either: (a) when delivered by hand and the party giving such notice has received a signed receipt thereof; or (b) one (1) day following the date deposited with Federal Express or other recognized overnight courier; or (c) when sent by telecopy machine or (d) on the day following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

If to the City:

City Administration Building
202 C Street, M.S. 9B
San Diego, California 92101-4155
Attn: Will Griffith
Telephone: (619) 236-2237
Telecopier: (619) 236-7003
Email: wgriffith@sandiego.gov

If to the Museum:

Museum of Contemporary Art, San Diego
700 Prospect Street
La Jolla, California 92037-4291
Attn: Charles Castle
Telephone: (858) 454-3541
Telecopier: (858) 454-6985
Email: cecastle@mcasd.org

With a copy to:

Robert Caplan, Esq.
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, California 92101
Telephone: (619) 685-3070

Facsimile: (619) 702-6688
Email: rcaplan@scmv.com

If to Escrow Agent:

Commonwealth Land Title Company
750 B Street, Suite 2350
San Diego, California 92101
Attn: Maureen Casey
Telephone: (619) 230-6340
Telecopier: (619) 233-4196
Email: mcasey@landam.com

7. Governing Law and Venue. This Option shall be governed and construed in accordance with the laws of the State of California. Sole and proper venue for any action related to this Option shall be in San Diego, California.

8. Entire Agreement. This Option, together with the exhibits attached hereto, constitute the entire agreement between the parties concerning the Option and supercede all prior agreements or undertakings with respect thereto.

9. Amendments. This Option may not be modified except by the written agreement of the parties.

10. Severability. In the event any one or more of the provisions contained in this Option are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this Option shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

11. Attorneys' Fees. If an action is brought to enforce or interpret the provisions of this Option, the prevailing party shall be entitled to recover its actual attorneys' fees and costs.

12. Time of the Essence. Time is expressly made of the essence with respect to the performance hereof.

13. Captions. Any paragraph headings or captions contained in this Option shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Option.

14. Further Acts. Each party shall perform any further acts and execute and deliver any additional documents which may be reasonably necessary in the opinion of either party to carry out the provisions of this Option.

[Signatures on next page]

MUSEUM OF CONTEMPORARY ART, SAN DIEGO

By:________________________________

By:________________________________

CITY OF SAN DIEGO

By: ________________________________

EXHIBIT "I"

LEGAL DESCRIPTION OF PROPERTY

O:\5\5950\53445\Trans\Exhibits to Museum Trans agrmt\Exhibit C Option Option 05.doc

EXHIBIT D

AMTRAK LEASE

This Amtrak Lease ("Lease") is executed as of _____________, 2004, between the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation, ("Museum") and National Railroad Passenger Corporation, a corporation organized and existing under National Rail Passenger Service Act and the laws of District of Columbia ("Amtrak") who agree as follows:

RECITALS

A. On or about July 20, 2004, Museum is acquiring pursuant to a Transfer Agreement and Escrow Instructions ("Transfer Agreement") by and between Catellus Operating Limited Partnership, a Delaware corporation (Catellus), the City of San Diego, a municipal corporation of the State of California (City), the Redevelopment Agency of the City of San Diego, a public body corporate and politic of the State of California (Agency), and Museum, the real property as set forth in Exhibit "A", attached hereto and made a part hereof, with the existing baggage building (Baggage Building) adjacent to the railway depot in San Diego, California and real estate, adjacent to and located north of the Baggage Building, and commonly known as the "REA Site" as also set forth on Exhibit A, to construct and thereafter operate, for uses ancillary to a museum, a building on the REA Site (New Museum Building). The legal description of the REA Site is Parcel 4 of Parcel Map No. 19378 filed in the Official Records of San Diego County, California on November 26, 2003 as File No. 2003-1418318. A form of this Lease (but different from this executed Lease) is Exhibit D to the Transfer Agreement.

B. The New Museum Building shall contain approximately 13,563 square feet.

C. Museum desires to lease and Amtrak desires to lease for railroad uses a portion of the New Museum Building, such portion to consist of approximately 2,755 square feet as set forth in Exhibit "B" attached hereto and made a part hereof (Premises).

D. The New Museum Building shall be constructed in accordance with plans and specifications to be prepared for Museum ("Plans") and within the time period designated by Museum ("Construction Schedule"). Such Plans and Construction Schedule are set forth on Exhibit "C" attached hereto and made a part hereof. Museum shall be required to provide at its own separate expense within the Premises only such improvements and finish items as are so designated in the Plans, which will include separate utility services for the Premises.

1. LEASE OF PREMISES

Museum hereby leases, as of the date of substantial completion of the New Museum Building, to Amtrak, and Amtrak leases from Museum, upon the provisions and conditions set forth herein, the Premises which consist of the space shown on Exhibit B. In addition, Amtrak shall have a non-exclusive right with Museum to access to Museum's loading area in the New Museum Building as follows: Amtrak's use of the Museum loading area is anticipated to be primarily for regular garbage removal service. Parking, storage, engine idling, and garbage storage by Amtrak in the loading area, arcade, landscaped areas, and the Public Pedestrian Walkway (as referred to herein) are prohibited. Amtrak's access to the Museum loading area for other purposes will be reasonably accommodated by the Museum by prior arrangement with the Museum. The Museum shall not have access to the exclusive Amtrak loading area located on the west side of the building.

2. TERM

The term of this Lease ("Term") shall commence when Museum notifies Amtrak that the Premises are available for occupancy ("Effective Date"), and expire on July 31, 2091 ("Expiration Date"). Museum shall provide to Amtrak prior to the Effective Date a certificate of occupancy (or other appropriate permission for Amtrak to occupy the Premises) plus a certification that the Premises have been substantially completed pursuant to the Plans. Notwithstanding the Term, Amtrak may at any time, by the giving of written notice to Museum, elect to terminate the Lease ninety (90) days after the giving of such notice ("Early Termination"). In the event of an Early Termination, Amtrak shall not be entitled to the return of any amounts paid to Museum.

3. RENT AND OTHER FINANCIAL OBLIGATIONS OF AMTRAK

A. Amtrak shall pay $850,000 to Museum, as rental for the entire Term as follows: **[AMTRAK AND MUSEUM TO AGREE ON PAYMENT SCHEDULE, AND THE AMOUNT MAY HAVE TO BE INCREASED BECAUSE OF "BUILD OUT" REQUESTS AND AMTRAK'S REQUESTED GARBAGE AREA]**.

B. If Amtrak fails to make any payment of rent to Museum according to the schedule described in 3.A. above, then Amtrak shall be in default of this Lease, this Lease shall terminate and Amtrak shall thereafter have no rights to use or occupy the Premises.

4. USE

The Premises shall be used for any lawful purpose reasonably related to the operation of a railroad and Amtrak's business operations including but not limited to storage, maintenance, and related railroad purposes, and for no other use without the prior written consent of Museum.

Amtrak shall not do or permit anything to be done which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the New Museum Building or Museum's property located therein. Amtrak shall not do or permit anything to be done in or about the Premises which in any way unreasonably interferes with the use by the Museum of the remainder of the New Museum Building as a museum and related uses (which includes, without limitation, the generation of a level of noise, odors, or vibrations incompatible with the operation of a museum) or which in any way will violate any of the obligations imposed on Museum under the Transfer Agreement. The 22' area immediately north of the New Museum Building owned by Museum is intended to be improved by the City with the southerly 14' thereof to be a landscaped and paved area (generally as shown in Exhibit K to the Transfer Agreement), and with the northerly 8' thereof (in conjunction with the southerly 8' of the adjacent owner's property, if such arrangements can be made) to be a Public Pedestrian Pathway (such reference to include all 16' as indicated). The Public Pedestrian Pathway can be utilized by Amtrak for limited vehicular ingress and egress consistent with the following: (1) no vehicle (other than an emergency vehicle such as a fire truck) using such vehicular ingress and egress shall be larger than nine feet wide and twenty-two feet long; (2) the Public Pedestrian Pathway shall be maintained by Amtrak (such maintenance to include sweeping, removal of trash, an cleaning [including the removal of oil stains and the like], repairing and reconstructing the pavers as necessary to keep the pathway in a safe, clean and attractive condition); and (3) no vehicle may be parked, and nothing can be stored or maintained (including without limitation trash containers) on any portion of the Public Pedestrian Pathway (or any portion of the landscaped area south of the Public Pedestrian Pathway, or the arcade to the east of the Premises (which is an area owned by Museum which it intends to use primarily for sculpture, art exhibitions and other Museum purposes). Amtrak agrees, as a condition to the effectiveness of this Lease, that it will cooperate with Museum and Agency in providing easements and other documents that may be required to accommodate the arrangements ultimately made by City with respect to the Public Pedestrian Pathway (and related landscaped areas), which arrangements Amtrak acknowledges may differ from those contemplated by the foregoing provisions.

5. UTILITIES, SERVICES, MAINTENANCE AND CONSTRUCTION

A. Amtrak shall pay for all utilities and services for the Premises; Museum will arrange for same to be separately metered. Museum shall have no obligations with respect thereto, except to provide the services to the Premises as required by the Plans.

B. With respect to the New Museum Building Amtrak shall only be required to maintain the interior of the Premises. Museum shall maintain the remainder of the New Museum Building including without limitation the roof, windows, structural elements, exterior walls, plumbing, drainage, and sewage systems, and the loading area.

6. LIMITATION OF LIABILITY

This Lease is made upon the express condition that Museum shall be free from all liability and claims for damages, except those damages solely caused by the gross negligence of Museum, by reason of any injury to any person(s) or property of any kind, from any cause(s) in any way connected with the Premises or their use or occupancy thereof during the Term of this sublease or any extensions. Museum shall not be liable for the conduct of any other visitor to the Premises or the New Museum Building. Museum shall not be liable under any circumstances for consequential damages or damages or injury to Amtrak's business or potential business. Amtrak shall not be liable for damages or injuries to portions (including the loading area) of the New Museum Building, other than the Premises, except those caused by Amtrak's negligence.

7. INDEMNITY

A. With the exception that this Lease shall in no event be construed to require indemnification by Amtrak to a greater extent than permitted by the laws and the public policy of the State of California or any applicable Federal law, and without in any manner limiting Museum's rights and remedies in the event of a breach of this Lease by Amtrak, Amtrak agrees to indemnify, defend, and hold harmless Museum, City and Agency, and their respective officers, agents, employees, affiliated parent and subsidiary companies, lenders, members, managers, successors and assigns (individually, "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, causes of action, liabilities, losses, costs, damages and/or expenses in law or equity (including, without limitation, attorneys' fees and expenses) of every kind and nature whatsoever (collectively, "Claims") arising out of or in connection with this Lease, the Premises, the New Museum Building, the Public Pedestrian Pathway, or the arcade, provided that the Claim (i) is based upon or relating to personal or bodily injury to or death of any person or persons, or damage to or loss of property of any kind whatsoever, including, without limitation, loss of use thereof, or the violation of any California law or regulation or any Federal law, and (ii) is caused in whole or in part by any act or omission to act or any willful misconduct by Amtrak, anyone directly or indirectly employed by Amtrak or anyone for whose acts Amtrak may be liable, regardless of whether such injury, death or damage is caused or contributed to by any act or omission to act by any Indemnified Party, anyone directly or indirectly employed by any Indemnified Party, or anyone for whose acts any Indemnified Party may be liable. Amtrak's obligation to indemnify and hold the Indemnified

Parties harmless shall apply with full force and effect regardless of any active and/or passive negligent act or omission by any Indemnified Party or its agents or employees and regardless of any concurrent negligence, whether active or passive, primary or secondary, by any Indemnified Party, by anyone directly or indirectly employed by any Indemnified Party, or by anyone for whose acts any Indemnified Party may be liable. However, Amtrak shall have no obligation to indemnify any Indemnified Party against liability for death, injury or damage or other loss, damage or expense arising solely from the negligence or willful misconduct of such Indemnified Party.

B. Museum shall indemnify, defend, and hold Amtrak harmless from any and all expenses, demands, actions, causes of action, claims, liability, loss, cost, or obligations, including actual attorneys' fees, relating to use of the New Museum Building (other than the Premises) by Museum and its employees, agents, and invitees, or anything done or allowed to be done by Museum and its employees, agents, and invitees in the New Museum Building (other than the Premises).

8. IMPROVEMENTS AND ALTERATIONS

Museum has made no promise to alter or improve the Premises and has made no representations concerning the condition thereof, except that Museum will require its general contractor to construct the New Museum Building in substantial accordance with the Plans and the Construction Schedule. Amtrak shall maintain the Premises in good condition and repair (normal wear and tear excepted) and shall not make any penetrations through the walls of the Premises. Amtrak will not cause or permit the Premises (including, without limitation, the exterior of the New Museum Building) to be damaged or defaced in any manner whatsoever and Amtrak shall immediately repair any damage it causes to the New Museum Building, including, without limitation, rebuilding the New Museum Building to its condition before damage caused by Amtrak, its employees, officers, directors, patrons, contractors or agents. Amtrak shall not make any material alterations or additions to the Premises without Museum's prior written consent, which consent will not be unreasonably withheld or delayed. Amtrak will return the Premises at the end of the Term in the same condition and repair as when Amtrak took possession, except for normal wear and tear.

9. DESTRUCTION OF PREMISES, EMINENT DOMAIN

A. In the event of destruction or substantial damage to the Premises during the Term which renders the Premises unusable to Amtrak, Museum shall have the option of:

(i) Within one hundred eighty days after such damage or destruction, replacing or rebuilding the New Museum Building, including the Premises, and in such manner and according to such plans and specifications which would restore the New Museum Building, including the Premises, to substantially the same condition as immediately before its destruction or substantial damage.

(ii) Declining to replace or rebuild, in which event Amtrak shall have the option of terminating this Lease by written notice. If Amtrak elects to terminate this Lease pursuant to this subsection 10.a. (ii) during the first fifteen (15) years of the Term and Museum receives casualty insurance proceeds related to the destruction of the New Museum Building, then Museum shall pay to Amtrak, in full compensation for all amounts paid by Amtrak hereunder, a portion of the insurance proceeds actually received by Museum related to the reconstruction of the New Museum Building (and not related to the personal property, including art displayed or stored in the New Museum Building) equal to the percentage of the rental paid by Amtrak hereunder as related to the cost of the construction of the New Museum Building (e.g. if the cost of the New Museum Building is $17,000,000 and Amtrak paid $850,000 in rentals, then Amtrak would be entitled to received 5% of the insurance proceeds actually received by the Museum directly related to the New Museum Building structure, not to exceed $850,000).

(iii) Museum shall notify Amtrak within thirty days after such damages or destruction of Museum's decision to rebuild the New Museum Building including the Premises or declining to rebuild. During the 180-day repair or replacement period identified in Subsection (a) above, Amtrak shall have no obligation to: (1) pay any costs or expenses associated with the Premises required under this Lease; or (2) provide any services to the Premises required under this Lease.

B. In the event that all or part of the Premises shall be taken under the power of eminent domain or sold under threat of such taking, this Lease shall terminate. The entire award of proceeds from such taking or sale of land and/or improvements, including severance damages, except for that portion related to the Premises for which Amtrak has paid, shall belong to Museum; Amtrak shall also be entitled to the portion of the award specifically allotted to its personal property which may be taken, and any relocation allowance actually paid by the condemning authority.

10. <u>INSURANCE</u>

A. Unless Amtrak makes the election permitted by b., Amtrak shall maintain at all times during the Term of this Lease a comprehensive commercial liability insurance policy covering the use of the Premises on an occurrence basis with a minimum coverage of $3,000,000 (to be increased every five years consistent with increases in the national consumers price index) and a property insurance policy for the full replacement value of the Premises. The coverage shall be proportionate increases at least every five years to take into account cost of living increases occurring within such five year period. Prior to occupying the Premises, Amtrak shall furnish Museum with a Certificate of Insurance evidencing such coverage and showing Museum as additional insureds.

B. Amtrak may elect to self-insure its obligations as long as Amtrak has in place, nationwide, a comprehensive and properly funded self-insurance program. If Amtrak makes such election, it shall provide Museum the principal aspects of such self-insurance program upon Museum's written request.

11. ASSIGNMENT AND SUBLETTING

Amtrak may not transfer or assign this Lease, or sublet the Premises or any part thereof, without Museum's written approval. These prohibitions shall not apply to a transfer or assignment by Amtrak to a successor entity resulting from Congressional or judicial action. The rights and obligations of this Lease shall benefit and burden all successors and assigns of this Lease.

12. DEFAULTS

Neither party shall be deemed to be in default under this Lease unless and until it has failed to perform any obligation within thirty days after receipt of written notice from the other specifying the manner in which it has failed to perform such obligation; provided, however, that if the nature of such obligation is such that more than thirty days are required for its performance, then the party receiving such written notice shall not be deemed to be in default if it shall commence performance within such thirty day period and thereafter diligently prosecute the same to completion.

13. MISCELLANEOUS

A. Amtrak shall permit Museum and its agents at all reasonable times to enter the Premises as may be necessary or desirable for the operation or improvement of the Premises or in order to comply with the laws, orders or requirements of governmental or other authorities.

B. Amtrak shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises, or the New Museum Building, including, without limitation, the inside or outside of windows or doors, without the written consent of Museum.

C. Museum acknowledges it is aware that pursuant to 494.S.C. § 2430, Amtrak is exempt from all State and local taxes, surcharge or fees.

D. The parties shall promptly take such actions and sign all documents reasonably requested to give effect to the provisions of this Lease.

E. As indicated in the Recitals, Museum is acquiring the Baggage Building and the REA Site pursuant to the Transfer Agreement. Amtrak acknowledges receipt of a copy of the Transfer Agreement.

F. This Lease shall be governed by and construed in accordance with the laws of the State of California. Proper venue for any action shall be in the federal courts of San Diego, California.

G. Time is of the essence with respect to the performance of every provision of this Lease.

H. If any condition or provision of this Lease shall be held invalid or unenforceable to any extent under any applicable law or by any court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

I. This Lease, along with any Exhibits affixed hereto, constitutes the entire and exclusive agreement between Museum and Amtrak relative to the Premises.

J. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

Museum of Contemporary Art, San Diego
Attention: Dr. Hugh M. Davies
700 Prospect Street
La Jolla, California 92037

AMTRAK
National Railroad Passenger Corporation
30th Street Station
Fourth Floor, South Tower
Philadelphia, Pennsylvania 19104
Attention: Vice President Real Estate Development

AMTRAK
National Rail Passenger Corporation
530 Water Street
5th Floor
Oakland, California 94607
Attention: Project Director Real Estate Development

or, at such appropriate address designated in writing by the respective party.

K. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.

L. Amtrak shall not record this Lease or any short form memorandum referring to this Lease.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO,
a California non-profit public benefit
corporation

By:______________________________
Its:______________________________

AMTRAK:

NATIONAL RAILROAD PASSENGER CORPORATION,
a corporation organized and existing under National Rail
Passenger Service Act and the laws of District of Columbia

By:____

O:\5\5950\53445\Trans\Lease (Amtrak) 11.doc

EXHIBIT E

RECORDING REQUESTED BY AND WHEN RECORDED MAIL THIS GRANT DEED AND ALL TAX STATEMENTS TO:

Museum of Contemporary Art,
San Diego
700 Prospect Street
La Jolla, California 92037-4291
Attn: Charles Castle

APN: ____________________

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s):
Documentary transfer tax is $____________.
( ) computed on full value of property conveyed (open space lots), or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.

1. **Grants from Grantor to Museum.**

1.1 **Grant of Property.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by this Grant Deed (the "Grant Deed"):

CATELLUS OPERATING LIMITED PARTNERSHIP,
a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation ("Grantor"),

hereby grants to:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation ("Museum")

all of Grantor's right, title and interest (subject, however, to the terms, conditions and other provisions set forth below in this Grant Deed) in and to that certain real property (the "Property") located in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit I attached hereto and incorporated herein by this reference. As noted in Exhibit I, the Property consists of the "Baggage Building Site" and the "REA Site."

1.2 **<u>Grant of Eaves Encroachment.</u>** As an appurtenance to the Baggage Building Site conveyed by the grant set forth in Section 1.1 above, Grantor hereby also grants to the Museum, a right of encroachment for the Eaves of the Baggage Building (as those terms are hereinafter defined) which overhang the westerly boundary of the Property above Grantor's Land (as hereinafter defined), more particularly set forth as follows (the "<u>Eaves Encroachment</u>").

1.2.1 Grantor is the owner of certain real property also located in the City of San Diego, County of San Diego, State of California, lying westerly of the Property, commonly known as the "Transit Courtyard" (the "<u>Grantor's Land</u>").

1.2.2 There is an existing historic building on the Baggage Building Site, commonly known as the "<u>Baggage Building</u>." The easterly portion of the Baggage Building consists of an enclosed, roofed building space, and the westerly portion of the Baggage Building consists of an open air, roofed pedestrian arcade (the "<u>Colonnade</u>").

1.2.3 The westerly boundary of the Property is a straight line along the westerly base of the columns supporting the roof of the Colonnade. The westerly edge of the roof of the Colonnade overhangs those columns, encroaching over a portion of Grantor's Land. That portion of the roof of the Colonnade which encroaches over a portion of Grantor's Land will hereinafter be referred to as the "<u>Eaves</u>" of the Baggage Building.

1.2.4 Grantor hereby grants to the Museum a right of encroachment for the Eaves of the Baggage Building, within the air space coinciding with the location of the Eaves as they exist on the date of recordation of this Grand Deed, that is, with the underside of the Eaves at an elevation approximately eighteen feet (18) feet above grade, and extending out over Grantor's Land as more particularly described in <u>Exhibit II</u> attached hereto and incorporated herein by this reference.

1.2.5 The right of encroachment granted by this Section 1.2 is perpetual, subject, however, to earlier automatic termination if and when, as a result of damage, destruction or removal, the roof of the Colonnade ceases to exist in its present configuration, without a commencement of reconstruction, in substantially the same configuration as presently exists, within four (4) years after the date of such damage, destruction or removal.

2. **<u>Limitation to Permitted Uses.</u>**

2.1 **<u>Museum, Cultural and Institutional Uses Only.</u>** The Museum, its successors and assigns shall use and manage the Property only as a museum or for other Cultural or Institutional Uses (as hereinafter defined), together with certain ancillary uses of portions of the Property for a cafe, a gift shop, Public Pedestrian Pathway, landscaping, and similar supporting uses.

2.1.1 For purposes of this Grant Deed, the phrase "Cultural or Institutional Uses" shall mean uses by institutions displaying or preserving objects of interest in one or more of the arts and sciences, such as museums, libraries and art galleries.

2.1.2 In support of the uses specified in Subsection 2.1.1 above, the Museum, its successors and assigns may also allow ancillary uses of portions of the Property for a cafe, a gift shop, driveways, public access and similar supporting uses.

2.1.3 Notwithstanding Subsections 2.1.1 and 2.1.2 above, in any building hereafter constructed on the REA Site, the National Railroad Passenger Corporation (commonly known as "Amtrak"), or any successor to the railway interests of Amtrak, may lease or sublease and use approximately 2,755 useable square feet of space, and such a lease, sublease or use shall not constitute a breach of the limitations on use set forth in Subsections 2.1.1 and 2.1.2 above.

2.1.4 The uses of the Property permitted by this Section 2 will hereafter be referred to as the "Permitted Uses."

3. **Successors and Assigns.**

This Grant Deed shall be binding upon, and shall inure to the benefit of, Grantor, the Museum, their successors and assigns.

IN WITNESS WHEREOF, this Grant Deed has been executed by the Grantor on the date set opposite its name.

Date: ________________, 2004

CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership (as successor by merger to Catellus Development Corporation, a Delaware corporation)

By: Catellus Development Corporation, a Delaware corporation (formerly known as Catellus SubCo, Inc., a Delaware corporation), its sole general partner

By: Catellus Urban Development Corporation, a Delaware corporation, as its Agent

By: ______________________
Name: Timothy B. Carey
Title: Executive Vice President, Urban Development

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _______________, 2004, before me, ______________________________________, Notary Public, personally appeared ______________________________________,

__________ Personally known to me

Or

__________ proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal:

____
SIGNATURE OF NOTARY PUBLIC

(S E A L)

EXHIBIT I

LEGAL DESCRIPTION AND MAP OF THE PROPERTY

Baggage Building Site and REA Site

EXHIBIT II

LEGAL DESCRIPTION AND MAP OF THE EAVES ENCROACHMENT

EXHIBIT F

RECORDING REQUESTED BY:

Catellus Operating Limited Partnership

WHEN RECORDED MAIL TO:

LATHAM & WATKINS LLP
600 West Broadway, Suite 1800
San Diego, California 92101
Attn: Sarah Rosen, Esq.

(Space Above for Recorder's Use)

MAINTENANCE COVENANT
UNDER CALIFORNIA CIVIL CODE SECTION 1468

THIS MAINTENANCE COVENANT UNDER CALIFORNIA CIVIL CODE SECTION 1468 (the "Covenant") is made as of ___________________, 2004, by and between CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation ("Catellus" or "Covenantee"), and the MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation (the "Museum" or "Covenantor").

Recitals

A. **Santa Fe Depot Site.** In the central business district in the City of San Diego, County of San Diego, State of California, there is a railway depot building (the "Santa Fe Depot" or "Depot Building") on a site which includes several adjacent blocks of land, commonly known as the "Santa Fe Depot Site," more particularly described on Exhibit I attached hereto. The Museum Site (as defined in Recital B below) and the Remaining Catellus Property (as defined in Recital C below) are both part of the Santa Fe Depot Site.

B. **Museum Site.** By Grant Deed recorded concurrently with this Covenant, Catellus, as grantor, has conveyed to the Museum, as grantee, certain real property (the "Museum Site"), constituting a portion of the Santa Fe Depot Site, consisting of two fee parcels generally described as follows, and more particularly described on Exhibit II attached hereto:

-- **Baggage Building Site; Baggage Building.** The southerly fee parcel is commonly referred to as the "Baggage Building Site," on which the existing "Baggage Building" is situated.

-- **REA Site; New Museum Building.** The adjacent northerly fee parcel is commonly referred to as the "REA Site," on which the Museum intends to construct a new Museum building (the "New Museum Building"). The REA Site includes the southerly 50% of B Street adjacent to the REA Site, which has previously been vacated by the City.

The Museum Site is the land of the Museum, as Covenantor, affected by this Covenant.

C. **Remaining Catellus Property.** As a result of the conveyance described in Recital B, Catellus is now the owner of the real property located in the City of San Diego, County of San Diego, State of California, constituting a portion of the Santa Fe Depot Site, more particularly described on Exhibit III attached hereto (the "Remaining Catellus Property"). The Remaining Catellus Property is the land of Catellus, as Covenantee, to be benefited by this Covenant.

D. **Purpose.** In consideration for Catellus's conveyance of the Museum Site to the Museum, the Museum, as Covenantor, enters into this Covenant with Catellus, in order to make the Museum responsible for maintenance and repair of the exterior skin of all Improvements (as hereinafter defined) now existing or hereafter constructed or installed on the Museum Site, and all other portions of the Museum Site exterior to such buildings (collectively, the "Museum Site Exterior Areas"), which are visible from the Remaining Catellus Property or from the public streets along the boundaries of the Santa Fe Depot Site (together, the "Exterior View Areas"). The provisions in this Covenant implementing the foregoing purpose are intended (a) to serve as agreements by the parties as owners of adjoining lands, and covenants by the Museum (as grantee of the Museum Site), with Catellus (as grantor of the Museum Site), to do or refrain from doing certain acts on the Museum Site, for the benefit of the Remaining Catellus Property, and (b) to run with the land of both the Museum and Catellus, pursuant to California Code of Civil Procedure Section 1468.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Limited Term.** The term of this Covenant shall commence upon the date of recordation hereof in the Office of the County Recorder of San Diego County, California, and shall expire on December 31, 2030; provided, however, that Section 4.10 hereof, entitled Legal Fees, shall survive such expiration.

2. **Maintenance, Repair and Replacement.**

2.1 **Museum Responsibility.**

(a) As used in this Covenant, "Improvement" means any structure or appurtenance thereto, constructed (or to be constructed), installed (or to be installed) or substantially altered (or to be substantially altered) on the Museum Site, which has (or upon construction, installation or substantial alteration will have) a physically imposing and material impact on the aesthetic appearance of the Museum Site, and which is (or upon construction, installation or substantial alteration will be) visible from the Exterior View Areas.

(b) The Museum shall maintain, repair or replace, as reasonably required, both (i) the facades of all Improvements on the Museum Site, and (ii) the Museum Site Exterior Areas (together, the "Facades and Exteriors"), in order to meet the Maintenance Standard set forth in Paragraph 2.4 below.

(c) At any time and from time to time, the Museum may delegate its responsibility to maintain, repair or replace the Facades and Exteriors to any tenant, subtenant or other person.

2.2 **Maintenance Costs.** The costs for maintenance, repair and replacements incurred by the Museum pursuant to this Covenant shall be borne solely by the Museum or its delegatee.

2.3 **Remedies for Nonperformance.** If the Museum fails to provide maintenance, repair or replacements of the Facades and Exteriors to the Maintenance Standard, then:

(a) Catellus shall have the right to notify the Museum in writing of such nonperformance, specifying the particulars thereof (a "Notice of Nonperformance").

(b) If the Museum fails to commence such remedy within ninety (90) days after its receipt of the Notice of Nonperformance, or if the Museum commences such remedy and thereafter fails diligently to prosecute the same to completion, then Catellus shall thereafter have the right to pursue any remedy at law or in equity against the Museum for any failure by the Museum to provide maintenance, repair or replacements of the Facades and Exteriors to the Maintenance Standard, pursuant to this Covenant.

2.4 **Maintenance Standard.** All maintenance, repair and replacement called for by this Covenant shall meet the following standards (together, the "Maintenance Standard"):

(a) Such maintenance, repair and replacement shall be comparable, in quality and in frequency of performance, to the maintenance, repair and replacement undertaken by the Museum at its "most favored" other prominent public venues (for purposes of this clause (a), the Museum's "most favored" venues shall be determined by references to the foregoing standards, i.e., quality and frequency of maintenance, repair and replacement activities, etc.);

(b) It shall serve to maintain the quality and condition of the Facades and Exteriors in a way that does not reflect adversely on the balance of the Santa Fe Depot Site;

(c) It shall serve to maintain the affected property in a safe, clean and orderly condition; and

(d) It shall comply with all applicable requirements of law.

2.5 **Compliance with Obligations.** All construction, maintenance, repair and replacements called for by this Covenant shall comply with any and all applicable covenants, conditions, restrictions, liens and encumbrances to which the Museum Site may be subject, if any.

2.6 **Catellus Responsibility.** Without in any way limiting the obligations of the Museum under Sections 2.1 through 2.5 above, Catellus shall abide by the maintenance, repair and replacement standards required of it pursuant to:

(a) Sections A.1 and B.4 of Revised Attachment C-1 to the Amended and Restated Development Agreement dated April 9, 1993 with the City of San Diego, a municipal corporation of the State of California, as amended by a First Amendment thereto dated March 5, 1996, a Second Amendment thereto dated December 4, 1997, and a Third Amendment thereto dated February 18, 2003 and a Fourth Amendment thereto dated [________], 2004 (collectively, the "DA");

(b) Section A.6 of Revised Attachment C-1 to the DA, specifically including, without limitation, Catellus's agreement to guarantee the preservation and maintenance of the exterior facades of the Baggage Building;

(c) Sections A.1 and B.4 of Revised Attachment No. 5 to the Amended and Restated Owner Participation Agreement dated April 9, 1993 with the Agency, as amended by a First Implementation Agreement thereto dated March 4, 1996, a Second Implementation Agreement thereto dated December 4, 1997, and a Third Implementation Agreement thereto dated February 10, 2003 and a Fourth Implementation Agreement thereto dated [________], 2004 (collectively, the "OPA");

(d) Section A.6 of Revised Attachment No. 5 to the DA, specifically including, without limitation, Catellus's agreement to guarantee the preservation and maintenance of the exterior facades of the Baggage Building; and

(e) Section 402 of the OPA.

3. **Section 1468 Provisions.**

3.1 **Running with the Land.** The Museum Site is the land of the Covenantor which is affected by this Covenant. The Remaining Catellus Property is the land of the Covenantee to be benefited by this Covenant (as more fully set forth in Section 3.1 below). This Covenant shall run with both the Museum Site and the Remaining Catellus Property. The Museum hereby covenants that the Museum Site shall be transferred, encumbered, hypothecated, used and improved subject to the covenants, conditions, restrictions, rights and reservations contained in this Covenant.

3.2 **Successive Owners.** Successive owners of the Museum Site are expressly bound by this Covenant, for the benefit of the Remaining Catellus Property.

3.3 **Acts Relate to Use.** Each act covenanted to be performed in this Covenant relates to the use, repair, maintenance or improvement of, or to the payment of taxes and assessments on, the Museum Site.

3.4 **Recordation.** This Covenant is entered into pursuant to California Civil Code Section 1468, and shall be recorded in the Office of the County Recorder of San Diego County, California.

3.5 **Allocation of Benefits among Successors.**

(a) **Catellus Corporate Successor.** As used in this Covenant, the phrase "Catellus Corporate Successor" means (i) any entity controlling, controlled by, or under common control with Catellus, and/or (ii) any successor to Catellus by merger, consolidation or acquisition of its corporate stock. A "Catellus Corporate Successor" need not be a corporation, but rather may be a corporation, a partnership, a limited liability company or any other form of legal entity.

(b) **When Catellus Owns Remaining Catellus Property.** If Catellus or any Catellus Corporate Successor (i) hereafter sells or otherwise transfers fee title to any portion of the Remaining Catellus Property to any third party (that is, to a person or entity other than Catellus or a Catellus Corporate Successor), but (ii) retains fee title to any other portion of the Remaining Catellus Property, then, effective upon the date of such transfer, this Covenant shall benefit only the portion of the Remaining Catellus Property then still owned by Catellus or by such Catellus Corporate Successor.

(c) **When Catellus Transfers Last Parcel.** At such time as Catellus or a Catellus Corporate Successor sells or otherwise transfers fee title to last portion of the Remaining Catellus Property owned by it (the "Last Parcel") to any third party (that is, to a person or entity other than Catellus or a Catellus Corporate Successor), then effective upon the date of such transfer, this Covenant shall benefit only the parcel upon which the Depot Building is located.

4. **Miscellaneous Provisions.**

4.1 **Enforcement.** This Covenant may be enforced by proceedings at law or in equity, including without limitation proceedings to recover damages and/or to restrain violations.

4.2 **Successors and Assigns.** This Covenant shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

4.3 **No Obligations to Third Parties.** Except as otherwise expressly provided herein, this Covenant shall not be deemed to confer any rights upon, or obligate any of the parties to, any person or entity other than the parties hereto.

4.4 **Time of Essence.** Time is of the essence to this Covenant.

4.5 **Waiver.** The waiver or failure to enforce any provision of this Covenant shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

4.6 **Severability.** If any portion of this Covenant, as applied to either party or to any circumstances, shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Covenant and shall in no way effect the validity or enforceability of the remaining portions of this Covenant.

4.7 **Captions.** The captions in this Covenant are solely for the convenience of the parties hereto, and shall not be used for the interpretation or determination of the validity hereof.

4.8 **Exhibits.** The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

4.9 **Applicable Law.** This Covenant shall be governed by and construed and enforced in accordance with the laws of the State of California.

4.10 **Legal Fees.** In the event that any legal action or other proceeding is brought by any party arising from or related to this Covenant, the prevailing party in such action or proceeding shall be entitled to recover from the other party all its costs and expenses, including without limitation reasonable attorneys' and experts' fees, and costs and expenses incurred in enforcing, perfecting and executing any judgment, including without limitation those incurred in post-judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery and bankruptcy litigation.

4.11 **Amendments.** This Covenant may be amended or rescinded only in a writing executed by both of the parties hereto and recorded in the Office of the County Recorder of San Diego County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Covenant as of the date first above written.

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO,
a California non-profit public benefit corporation

By: ______________________________
Name: ______________________________
Title: ______________________________

[Additional Signature on Next Page]

CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership (as successor by merger to Catellus Development Corporation, a Delaware corporation)

By: Catellus Development Corporation, a Delaware corporation (formerly known as Catellus SubCo, Inc., a Delaware Corporation, its sole general partner

By: Catellus Urban Development Corporation, a Delaware corporation, as its Agent

By: ______________________________
Name: Tim Carey
Title: Executive Vice President, Urban Development

Table of Exhibits

EXHIBIT I

SANTA FE DEPOT SITE

EXHIBIT II

MUSEUM PROPERTY

Baggage Building Site and REA Site

EXHIBIT III

REMAINING CATELLUS PROPERTY

EXHIBIT G

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

The City of San Diego
1200 Third Avenue, Suite 1700
San Diego, California 92101
Attn: James A. Braun, Property Agent

APN: ____________________ SPACE ABOVE THIS LINE FOR RECORDER'S USE

BREEZEWAY EASEMENT

The undersigned grantor(s) declare(s):
Documentary transfer tax is $____________.
( ) computed on full value of property conveyed (open space lots), or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.

Preamble

THIS BREEZEWAY EASEMENT (the "Agreement") is made as of ____________________, 2004, by and between CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation ("Grantor"), and the CITY OF SAN DIEGO, a municipal corporation of the State of California (the "City").

Recitals

A. Servient Tenement. Grantor is the owner of certain real property situated in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit 1 attached hereto (the "Servient Tenement").

B. Purpose. The City desires to acquire certain easement rights in the Servient Tenement.

Agreement

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant. Grantor hereby grants to the City an easement in gross as hereinafter described (the "Breezeway Easement").

2. Location. The Breezeway Easement is located upon, under, over and across the Servient Tenement (the "Breezeway Easement Area").

3. Uses.

3.1 The Breezeway Easement is for (a) public and private pedestrian and vehicular ingress and egress over and across the Breezeway Easement Area, and (b) public and private utility purposes, provided, however, that all utility lines installed, used or maintained within the Breezeway Easement pursuant to this Agreement shall be concealed from public view.

3.2 The City shall not cut, fill or otherwise change the grade of the Breezeway Easement Area, or place drainage or retaining structures on the Breezeway Easement Area, without the prior written consent of Grantor.

3.3 The City's right to install, use and maintain utilities is expressly made subject to Grantor's right to review and approve its plans therefor and to supervise the City's removal and replacement activities to ensure minimal disruption to the Breezeway Easement Area, to Grantor and to adjacent property owners, lessees and tenants. Upon reasonable request by Grantor, the City agrees to coordinate its construction schedule with Grantor in order to minimize the impact of such activities on Grantor and adjacent property owners, lessees and tenants.

3.4 In connection with any such work of installation, use and maintenance by the City, the City shall restore the pavement, sidewalk, surface and other improvements located or to be located within the Breezeway Easement Area now or in the future to substantially the same condition they were in immediately prior to such work, at the City's sole cost and expense.

4. Subsequent Conveyances. The Breezeway Easement includes a right and power in the City to convey the Breezeway Easement or any portion thereof, and all other rights herein conveyed, in the form of an easement or an irrevocable offer to dedicate real property, to any other governmental agency, and/or to grant an easement in gross to any public or private utility for public or private utility purposes, without necessity for further consent or documentation of any kind by Grantor. Grantor hereby consents to any such conveyance or grant by the City, and agrees to execute, acknowledge and deliver to and in favor of any governmental agency or public or private utility, any instrument reasonably necessary to implement the intentions expressed or implied herein, provided that such execution, acknowledgment and delivery shall be at no expense to Grantor.

5. Non-Exclusivity. The Breezeway Easement is not exclusive. Without limiting the generality of the foregoing, Grantor may also use the Breezeway Easement Area for the same purposes as the City's use thereof, and for other purposes which do not unreasonably interfere with such uses by the City, and/or convey easements appurtenant or in gross upon, under, over and across the Breezeway Easement Area to other persons,

public and private, for the same purposes as the City's use thereof, and for other purposes which do not unreasonably interfere with such uses by the City, without necessity for further consent or documentation of any kind by the City. The City hereby consents to any such conveyance or grant by Grantor, and agrees to execute, acknowledge and deliver to and in favor of any governmental agency or public or private utility, any instrument reasonably necessary to implement the intentions expressed or implied herein, provided that such execution, acknowledgment and delivery shall be at no expense to the City. No amount of uses of the Easement shall constitute an overburdening of the Easement.

6. Binding Effect. This Agreement shall be binding upon, and shall insure to the benefit of, the parties hereto and their successors and assigns.

7. Compliance with Laws. The City, at its expense, shall comply with all laws, statutes, ordinances, rules and regulations binding on the City and affecting the Breezeway Easement Area, now in force or hereafter adopted, with respect to the use by the City of the Breezeway Easement Area pursuant to this Agreement.

8. Liens.

8.1 The City shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of the City and shall keep the Breezeway Easement Area free of all mechanics' and material suppliers' liens in connection therewith; provided, however, that the City may contest the validity of any such lien so long as such lien is discharged by bond or otherwise (within thirty 30 days after notice thereof) without cost to Grantor.

8.2 The City shall provide at least ten (10) days' prior written notice to Grantor before any labor is performed, supplies furnished or services rendered on or at the Breezeway Easement Area which would give rise to a mechanic's lien or any other lien, and Grantor shall have the right to post on the Breezeway Easement Area notices of non-responsibility.

9. Burden on Land. The Breezeway Easement granted in this Agreement shall be a burden on the Servient Tenement, which burden shall run with the land and shall be binding on owners and encumbrances of the Servient Tenement, their successors and assigns.

10. Time. Time is of the essence of this Agreement and each and every part hereof.

11. Amendment. This Agreement may be amended or otherwise modified only in a writing signed and acknowledged by Grantor and the City, or their respective successors and assigns.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. Severability. If any provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Breezeway Easement has been executed by the parties on the dates set opposite their names.

Date: ____________________, 2004

CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership (as successor by merger to Catellus Development Corporation, a Delaware corporation)

By: Catellus Development Corporation, a Delaware corporation (formerly known as Catellus SubCo, Inc., a Delaware corporation), its sole general partner

By: Catellus Urban Development Corporation, a Delaware corporation, as its Agent

By: ____________________
Name: Timothy B. Carey
Title: Executive Vice President, Urban Development

Date: ____________________, 2004

CITY OF SAN DIEGO, a municipal corporation of the State of California

By: ____________________
Name: ____________________
Title: ____________________

APPROVED:

CASEY GWINN
City Attorney

By: ______________________________
Name: ____________________________
Title: ____________________________

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On ________________, 2004, before me,
______________________________________, Notary Public, personally appeared
____,

__________ Personally known to me
Or
__________ proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal:

____
SIGNATURE OF NOTARY PUBLIC

(S E A L)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On ________________, 2004, before me,
______________________________________, Notary Public, personally appeared
____,

__________ Personally known to me
Or
__________ proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal:

____
SIGNATURE OF NOTARY PUBLIC

(S E A L)

EXHIBIT 1

LEGAL DESCRIPTION AND MAP OF SERVIENT TENEMENT (WHICH ALSO CONSTITUTES THE BREEZEWAY EASEMENT AREA)

EXHIBIT H

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

The City of San Diego
1200 Third Avenue, Suite 1700
San Diego, California 92101

Attn: James A. Braun, Property Agent

APN: ______________________

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FAÇADE EASEMENT

The undersigned grantor(s) declare(s):
Documentary transfer tax is $____________.
( ) computed on full value of property conveyed (open space lots), or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.

Preamble

THIS FAÇADE EASEMENT (the "Agreement") is made as of ____________________, 2004, by and between CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation ("Grantor"), and the CITY OF SAN DIEGO, a municipal corporation of the State of California (the "City").

Recitals

A. Servient Tenement. Grantor is the owner of certain real property located in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit 1 attached hereto (the "Servient Tenement"). Two historic buildings, commonly referred to as the "Santa Fe Depot" and the "Baggage Building," are situated on the Servient Tenement.

B. Purpose. Grantor desires to convey to the City, and the City desires to acquire from Grantor, certain easement rights pertaining to the maintenance, preservation and protection of the exterior façades of the Santa Fe Depot and Baggage Building.

Agreement

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant. Grantor hereby grants to the City an easement in gross as hereinafter described (the "Façade Easement").

2. Location. The Façade Easement is located upon and across the exterior façades of the Santa Fe Depot and Baggage Building (the "Façade Easement Area").

3. Uses. The Façade Easement is for the purpose of preserving the historic exterior appearance of the Santa Fe Depot and Baggage Building.

4. Maintenance. By accepting this Façade Easement, the City, as grantee of the Façade Easement under this Agreement, assumes no duty to maintain, protect or preserve the Façade Easement Area. Rather, Grantor acknowledges and agrees, for itself and for its successors and assigns, that it shall be the duty of the fee owner of the Servient Tenement to maintain, protect and preserve the façades of the Santa Fe Depot and Baggage Building in good condition and repair, as an obligation running with the land and appurtenant to the fee ownership thereof.

5. Non-Merger. If the same person or entity ever comes to own both the Façade Easement and fee title to any portion of the Servient Tenement, such common ownership shall not effect a merger of the Façade Easement into the Servient Tenement, the intent of the parties being that the Façade Easement survive such common ownership, unless otherwise expressly elected in writing by such common owner. The parties acknowledge that the MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation, has assumed the duty to maintain the Facade of the Baggage Building, if the City becomes fee owner of the Baggage Building, pursuant to the City Option Agreement dated [________], 2004.

6. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors and assigns.

7. Burden on Land. The land or land area of the Grantor affected by the covenants in this Façade Easement is the Servient Tenement. The land or land area of the City to be benefited thereby is the Façade Easement Area. Successive owners of both the Servient Tenement and the Façade Easement Area are expressly bound hereby, for the benefit of the Façade Easement Area. This Façade Easement is intended to create covenants running with the land, and shall be recorded in the Office of the San Diego County Recorder, at the expense of Grantor.

8. Amendment. This Agreement may be amended or otherwise modified only in a writing signed and acknowledged by Grantor and the City, or by their respective successors or assigns.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, this Façade Easement has been executed by the parties on the dates set opposite their names.

Date: _______________, 2004

CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership (as successor by merger to Catellus Development Corporation, a Delaware corporation)

By: Catellus Development Corporation, a Delaware corporation (formerly known as Catellus SubCo, Inc., a Delaware corporation), its sole general partner

By: Catellus Urban Development Corporation, a Delaware corporation, as its Agent

By: ______________________________
Name: Timothy B. Carey
Title: Executive Vice President, Urban Development

Date: _______________, 2004

CITY OF SAN DIEGO, a municipal corporation of the State of California

By: ______________________________
Name: ______________________________
Title: ______________________________

APPROVED:

CASEY GWINN
City Attorney

By: ______________________________
Name: ______________________________
Title: ______________________________

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On ______________, 2004, before me, ____________________________________, Notary Public, personally appeared ____,

__________ Personally known to me
Or
__________ proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal:

____
SIGNATURE OF NOTARY PUBLIC

(S E A L)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On ______________, 2004, before me, ____________________________________, Notary Public, personally appeared ____,

__________ Personally known to me
Or
__________ proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal:

____
SIGNATURE OF NOTARY PUBLIC

(S E A L)

EXHIBIT 1

LEGAL DESCRIPTION AND MAP OF THE SERVIENT TENEMENT

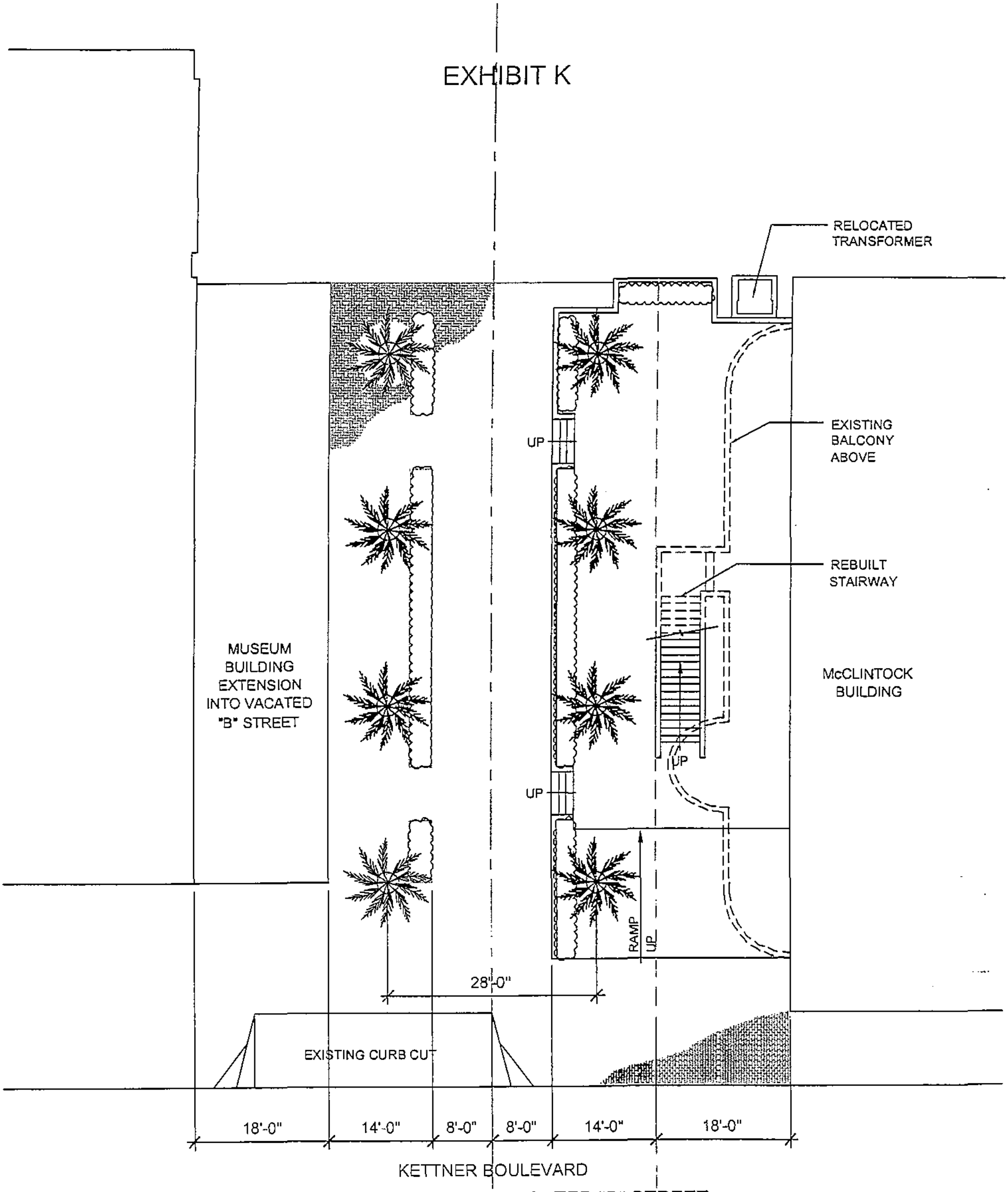
EXHIBIT I

Intentionally Deleted

EXHIBIT J

Intentionally Deleted

EXHIBIT K



PRELIMINARY PLAN FOR VACATED "B" STREET
PATHWAY IMPROVEMENTS

MAY 5, 2004

EXHIBIT L

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

PROPERTY DEPARTMENT
CITY OF SAN DIEGO
1200 THIRD AVENUE
SUITE 1620
SAN DIEGO, CA 92101

FREE RECORDING REQUESTED
BY CITY OF SAN DIEGO (SEE
GOV'T CODE 6103)
NO DOCUMENTARY TAX DUE
R & T 11922 (Amended)

PUBLIC PEDESTRIAN EASEMENT

For valuable consideration, Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation ("Grantor"), does hereby grant to the City of San Diego, a municipal corporation ("Grantee"), a perpetual non-exclusive public easement over, along and across the land of Grantor situated in the County of San Diego, State of California, more particularly described on Exhibit I and illustrated on Exhibit II, attached hereto and by this reference made a part hereof ("B Street Pathway"), for exclusive use of the City to operate the public pathway in accordance with City practices.

Grantee agrees to and shall defend, indemnify and hold Grantor, and its officers, employees, contractors and agents harmless from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person (including without limitation Grantor) which shall occur within the B Street Pathway or otherwise in connection with the activities of Grantee under this Grant of Public Pedestrian Easement.

This Grant of Public Pedestrian Easement is made by Grantor pursuant to that certain Transfer Agreement and Escrow Instructions dated ________, 2004, between Grantor, Grantee, Catellus Operating Limited Partnership, and Agency.

This Grant of Public Pedestrian Easement shall bind and enure to the benefit of the respective heirs, representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, this instrument is executed as of this ______ day of 2004.

MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation

By:______________________________
Name:____________________________
Title:_____________________________
(Grantor)

EXHIBIT M

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement, made this ______ day of ___________ 2004, by and between the Redevelopment Agency of the City of San Diego ("Agency") and Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation ("Owner").

RECITALS

A. WHEREAS, the Agency desires to install improvements within the Site Area designated on Exhibit I, which is the property of Owner, in order to complete the B Street Pathway and related landscaping and other improvements within the Centre City Redevelopment Project; and

B. WHEREAS, the improvements to be installed have been designed in consultation with Owner and Owner has approved the construction drawings for such improvements.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO, as follows:

1. Permission is hereby granted by the Owner to Agency to enter onto the Site Area for the purposes of installing the improvements generally as depicted on Exhibit II.

2. This permission is effective as of the date hereof, and shall remain in effect until December 31, 2005.

3. Agency shall keep the Site Area free from all encumbrances and liens of whatever nature involved in its activities on the Site Area. Agency shall defend and hold harmless and indemnify Owner from any and all such encumbrances and/or liens (including all costs and attorneys' fees in defending any claim or liability in any way connected with Agency, or Agency's Contractor or subcontractors, failure to pay any person(s) referred to in Section 3181 of the California Civil Code, which claim or liability may be instituted or filed against the Site Area).

4. Agency hereby releases and agrees to protect, defend, hold harmless and indemnify Owner from and against all demands, claims, injury, liability, loss, damage, cost and expense, however same may be caused, including all costs and reasonable

attorneys' fees in providing the defense to any claim arising therefrom, for any loss of, or damage to property (real and/or personal), for personal injury to or death of any person or persons arising out of or occurring by reason of, Agency's activities within the Site Area. Single limit liability insurance in an amount not less than Two Million Dollars ($2,000,000) in a form acceptable to Owner shall be provided prior to access to the Site Area.

5. It is agreed that Agency, and not Owner, shall bear the cost for any actual damage to and/or use of the Site Area. Agency agrees to protect, defend, hold harmless and indemnify Owner from any such costs, including all costs and reasonable attorneys' fees in providing the defense to any claim arising therefrom.

IN WITNESS WHEREOF, said parties have executed the Right of Entry on the day and year first above written.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California

By:____________________________
Name: __________________________
Title:___________________________

Date:___________________________

OWNER:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation

By:____________________________
Name:__________________________
Title:___________________________

Date:___________________________

APPROVED AS TO FORM AND LEGALITY
CASEY GWINN
Agency General Counsel

By:______________________________

Date:______________________________

O:\5\5950\53445\TRANS\EXHIBITS TO MUSEUM TRANS AGRMT\EXHIBIT N.DOC

EXHIBIT N

COVENANT TO MAINTAIN PAVING AND LANDSCAPING

This Covenant to Maintain Paving and Landscaping is made as of ___________, 2004 between Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation (Museum) and the City of San Diego, a municipal corporation (City), who agree:

1. Museum has provided to the Redevelopment Agency of the City of San Diego (Agency) the right to install improvements within the northerly twenty-two feet of Parcel 4 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land (Parcel 4); the northerly eight feet thereof will be improved by the Agency with a Public Pedestrian Pathway (sometimes referred to as the B Street Pathway, which will also encompass the southerly eight feet of the property to the north of Parcel 4) and the southerly fourteen feet of the northerly twenty-two feet of Parcel 4 will be improved by the Agency with landscaping and other improvements (such southerly fourteen feet being referred to as the Landscaped Area).

2. Museum shall, for the benefit of City and Agency, maintain, repair or replace the Landscaped Area, as reasonably required. Museum commits to the City that so long as it owns Parcel 4, the Landscaped Area will remain in as good condition as when the improvement of the Landscaped Area is completed by Agency.

3. The costs for such maintenance, repair and replacements shall be borne by Museum.

4. The obligations of Museum pursuant to this Covenant to Maintain Paving and Landscaping shall be subject to the provisions of the Transfer Agreement among the City, Agency, Museum and Catellus Operating Limited Partnership dated June __, 2004, pursuant to which Museum acquired Parcel 4.

MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation

By:_______________________________
Name:_____________________________
Title:______________________________

CITY OF SAN DIEGO, a municipal corporation of the State of California

By:______________________________
Name:____________________________
Title:_____________________________

O:\5\5950\53445\Trans\Exhibits to Museum Trans agrmt\Exhibit O.doc

EXHIBIT O

CATELLUS

December 3, 2003

Mr. Ron Weatherford
H.R. Weatherford
600 West Broadway
Suite 310
San Diego, California 92101

RE: San Diego Santa Fe Depot-Baggage Building
Cost Transfer Approval Letter
Webcor Change Order No. 004

Dear Ron:

Webcor the Shell and Core Contractor executed all of the following items at the behest of the Tenant, the Museum of Contemporary Art (MCA). Per our telephone conversation today during the weekly Owner- Architect-Contractor meeting at approximately 10:00 am we settled on the following values as MCA's share of the cost.

Cost Catellus Owes to the Museum of Contemporary Art	
Credit for fire sprinkler	$+38,190
Credit for interior slab-on-grade (sog)	$+91,820
Credit for back-flow preventer and 20' of piping	$ +4,500
Cost the Museum of Contemporary Art Owes to Catellus	
Shotcrete block-outs per RFI #4	$ -2,541
Shift steel columns to building exterior	$ - 750
Demo existing column footings	$ - 804
Saw-cut existing interior walls	$ - 4,500
Underground wet utilities to Museum	
Installation of Baggage Bldg domestic water	$ - 3,023
Installation of Baggage Bldg storm water	$ - 154
Installation of Baggage Bldg fire service	$ - 2,150
Installation of REA Bldg north sewer	$ - 2,567
Underground dry utilities to Museum	
Installation of Baggage Bldg electrical	$ - 1,000
Installation of Baggage Bldg gas	$ - 9,000
Installation of Baggage Bldg electrical	$ - 5,400
Installation of Baggage Bldg gas	$ - 1,000
Webcor Soft Cost	$ - 2,181
Total that Catellus Owes to the MCA	$99,440

Please indicate your acceptance by signing in the appropriate signature block below and returning two fully executed copies to Catellus Urban Development Corporation for our files.

Thank you in advance for your cooperation. If you have any questions please feel free to call me at (213) 473-3122 fax at (213) 626-0948 or e-mail at: van_buckner@catellus.com.

EXHIBIT P

ENVIRONMENTAL REPORTS
Santa Fe Depot
Baggage Building and REA site

San Diego, CA

1. Redevelopment Agency of the City of San Diego, **4/12/83**: Final Environmental Impact Report for the Proposed Santa Fe Properties Development Plan

2. Woodward-Clyde Consultants, **3/26/85**: Phase I Geotechnical Investigation, Santa Fe Depot Properties, San Diego, CA *[This report has appeared on some lists incorrectly dated 3/26/95]*

3. CTL Environmental Services, **9/9/88**: Asbestos Report, 1020 and 1050 Kettner Blvd., CA0731752, San Diego, CA *[This report has appeared on some lists incorrectly dated 9/2/88]*

4. McLaren, **1/12/89**: Property Transaction Environmental Assessment and Phase II Soil Sampling of ATSF Depot and Ace Parking, 1050 Kettner Blvd., Pacific Coast Highway and B Street, San Diego, CA (CA0731752 AND CA0731712)

5. Leroy Crandall, **5/26/89**: Report of Preliminary Geotechnical Investigation, Santa Fe Depot Development Area, Between Kettner Blvd, Ash Street, Pacific Highway and Broadway, San Diego, CA

6. Woodard-Clyde Consultants, **5/22/91 (Revised 11/15/91)**: Environmental Site Assessment, Catellus Downtown San Diego Property

7. CTL Environmental Services, **4/93**: Project Record, Asbestos Survey, 1050 Kettner Blvd., San Diego, CA, CA0731752

8. Weston, **6/93**: Phase I Environmental Assessment, 1050 Kettner Blvd, San Diego, CA, CA0731752

9. Weston, **8/26/93**: Letter Re: 1050 Kettner Blvd., San Diego, CA, CA0731752

10. CTL Environmental Services, **9/93**: Project Manual, Asbestos Abatement for 1050 Kettner Blvd., San Diego, CA, CA0731752

11. CTL Environmental Services, **10/93**: Asbestos-Abatement Air Monitoring and Contractor Observation Close-Out Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

12. Weston, **12/29/93**: Letter Re: 1050 Kettner Blvd. (CA0731752), Outstanding Issues

13. CTL Environmental Services, **9/94**: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

14. CTL Environmental Services, 3/95: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

15. CTL Environmental Services, 9/95: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

16. CTL Environmental Services, 1/96: Asbestos-Abatement Air Monitoring and Contractor Observation Close-Out Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

17. CTL Environmental Services, 2/96: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

18. CTL Environmental Services, 10/96: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

19. CTL Environmental Services, 2/97: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

20. CTL Environmental Services, 7/14/97: Suspect Lead-Based Paint Sampling at 1050 Kettner Blvd., San Diego, CA, CA0731752

21. CTL Environmental Services, 9/97: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

22. Winzler & Kelly, 8/7/02: REA Building – Pre-Demolition Hazardous Materials Survey

23. Testing Engineers, 5/28/03: Geotechnical Evaluation, [proposed] Museum of Contemporary Art, 1050 Kettner Blvd., San Diego, CA

24. Winzler & Kelly, 11/23/03: Lead and Asbestos-Containing Material Removal Closeout Document for Santa Fe Depot Baggage Building Seismic and Shell Improvement, 1050 Kettner Blvd., San Diego, CA

25. Iris, 11/24/03: Phase I Environmental Site Assessment, Santa Fe Depot Baggage Building and Former REA Building, 1050 Kettner Boulevard, San Diego, CA

EXHIBIT Q

LIMITED VEHICULAR ACCESS EASEMENT

For valuable consideration, Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation (Museum) does hereby grant to National Rail Passenger Corporation, a corporation organized and existing under National Rail Service Act and the laws of the District of Columbia (Amtrak) a non-exclusive easement (for so long as Amtrak occupies space as a tenant in the New Museum Building constructed or to be constructed on Parcel 4 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land (Parcel 4)) over and across the northerly eight feet of Parcel 4 for the purpose of ingress and egress to the space occupied by Amtrak in the New Museum Building to and from Kettner Avenue, subject to the following limitations:

(1) No vehicle (other than an emergency vehicle such as a fire truck) using such vehicular ingress and egress shall be larger than nine feet wide and twenty-two feet long;

(2) The Public Pedestrian Pathway (the combined 16 feet thereof, which includes the southerly 8 feet of the property adjacent to the northerly boundary of Parcel 4) shall be maintained by Amtrak (such maintenance to include sweeping, removal of trash, and cleaning [including the removal of oil stains and the like], repairing and reconstructing the pavers as necessary to keep the pathway in a safe, clean and attractive condition); and

(3) No vehicle may be parked, and nothing can be stored or maintained (including without limitation trash containers) on any portion of the Public Pedestrian Pathway (or any portion of the landscaped area south of the Public Pedestrian Pathway, or the arcade to the east of the Premises (which is an area owned by Museum which it intends to use primarily for sculpture, art exhibitions and other Museum purposes).

With the exception that this Limited Vehicular Access Easement ("Easement") shall in no event be construed to require indemnification by Amtrak to a greater extent than permitted by the laws and the public policy of the State of California or any applicable Federal law, and without in any manner limiting Museum's rights and remedies in the event of a breach of this Easement, Amtrak agrees to indemnify, defend, and hold harmless Museum, the City of San Diego, a municipal corporation (City), and the Redevelopment Agency of the City of San Diego (Agency), and their respective officers, agents, employees, affiliated parent and subsidiary companies, lenders, members, managers, successors and assigns (individually, "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, causes of action, liabilities, losses, costs, damages and/or expenses in law or equity (including, without limitation, attorneys' fees and expenses) of every kind and nature whatsoever (collectively, "Claims") arising out of or in connection with this Easement, and any and all access and operations permitted hereunder, provided that the Claim (i) is based upon or relating to personal or bodily injury to or death of any person or persons, or damage to or loss of property of any kind whatsoever, including, without limitation, loss of use thereof, or the violation of any California law or regulation or any Federal law, and (ii) is caused in whole or in part by any act or omission to act or any willful misconduct by Amtrak, anyone directly or indirectly employed by Amtrak or anyone for whose acts Amtrak may be liable, regardless of whether such injury, death or damage is caused or contributed to by any act or omission to act by any Indemnified Party, anyone directly or indirectly employed by any Indemnified Party, or anyone for whose acts any Indemnified Party may be liable. Amtrak's obligation to indemnify and hold the Indemnified Parties harmless shall apply with full force and effect regardless of any active and/or passive negligent act or omission by any Indemnified Party or its agents or employees and regardless of any concurrent negligence, whether active or passive, primary or secondary, by any Indemnified Party, by anyone directly or indirectly employed by any Indemnified Party, or by anyone for whose acts any Indemnified Party may be liable. However, Amtrak shall have no obligation to indemnify any Indemnified Party against liability for death, injury or damage or other loss, damage or expense arising solely from the negligence or willful misconduct of such Indemnified Party.

Dated: ________________, 2004

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation

By:________________________________
Name:______________________________
Title:______________________________

AMTRAK:

NATIONAL RAIL PASSENGER CORPORATION, a corporation organized and existing under National Rail Passenger Service Act and the laws of District of Columbia

By:________________________________

(RA-2004-138)

REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NUMBER R-03790

ADOPTED ON JUN 29 2004

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO APPROVING THE REPLACEMENT TRANSFER AGREEMENT AND ESCROW INSTRUCTIONS BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, THE CITY OF SAN DIEGO, CATELLUS DEVELOPMENT CORPORATION AND MUSEUM OF CONTEMPORARY ART, SAN DIEGO.

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 Centre City Redevelopment Project [Project]; and

WHEREAS, the Agency and Catellus Development Corporation [Catellus] have entered into the Amended and Restated Owner Participation Agreement dated April 9, 1993, the First Implementation Agreement to Owner Participation Agreement dated March 5, 1996, the Second Implementation Agreement to Owner Participation Agreement dated December 4, 1997, and the Third Implementation Agreement dated February 10, 2003 [the Agreement] and propose to enter into a Fourth Implementation Agreement to Owner Participation Agreement for the development of certain property located in the Columbia Sub Area of the Centre City Redevelopment Project area as described in the Agreement [Site]; and

WHEREAS, the Third Implementation Agreement and Transfer Agreement and Escrow Instructions authorized by the Agency concurrently with the Third Implementation Agreement (but not executed by the Agency) contemplated the transfer of the Baggage Building and the REA property within the site to the City of San Diego; and

WHEREAS, the Agreement provides that Catellus shall transfer the Baggage Building to the City or to any governmental agency or non-profit entity designated by the City and the City now desires to designate the Museum of Contemporary Art, San Diego [Designee] as transferee instead of the City of San Diego; and

WHEREAS, in order to carry out and implement such Redevelopment Plan, and the Agreement, the Agency proposes to enter into a replacement Transfer Agreement and Escrow Instructions with the City of San Diego, Catellus and the Museum of Contemporary Art, San Diego, in order to effectuate Catellus' obligation to transfer the Baggage Building within the Site to the Designee of the City of San Diego; and;

WHEREAS, Catellus also proposes to transfer the REA property within the Site to the Designee of the City of San Diego; and

WHEREAS, Catellus has submitted to the Agency copies of the proposed replacement Transfer Agreement and Escrow Instructions in a form desired by Catellus; and

WHEREAS, Centre City Development Corporation, Inc., has reviewed and discussed the proposed replacement Transfer Agreement and Escrow Instructions and has recommended that the Agency enter into such Transfer Agreement and Escrow Instructions; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed Transfer Agreement and Escrow Instructions and believes that the transfer of the Baggage Building and the REA property within the Site to Designee pursuant to the terms of the replacement Transfer Agreement and Escrow Instructions are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law and requirements; NOW, THEREFORE,

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

1. That the terms and conditions of the proposed replacement Transfer Agreement and Escrow Instructions are approved.

2. That the Executive Director of the Agency, or his designee, is authorized to execute for and on behalf of the Agency the replacement Transfer Agreement and Escrow Instructions. A copy of the replacement Transfer Agreement and Escrow Instructions is on file in the office of the Secretary to the Agency as Document No. 03790.

3. That the Executive Director of the Agency, or his designee, is authorized on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement the replacement Transfer Agreement and Escrow Instructions.

APPROVED: CASEY GWINN, General Counsel

By Elisa A. Cusato
Elisa A. Cusato
Deputy Counsel

EAC:ai
06/09/04
Or.Dept:CCDC
Aud.Cert:n/a
RA-2004-138
Council:n/a

Passed and adopted by The Redevelopment Agency of The City of San Diego JUN 2 9 2004
by the following vote:

Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	☑	☐	☐	☐
Michael Zucchet	☑	☐	☐	☐
Toni Atkins	☑	☐	☐	☐
Charles Lewis	☑	☐	☐	☐
Brian Maienschein	☑	☐	☐	☐
Donna Frye	☑	☐	☐	☐
Jim Madaffer	☑	☐	☐	☐
Ralph Inzunza	☑	☐	☐	☐
Chair Murphy	☑	☐	☐	☐

AUTHENTICATED BY:

DICK MURPHY
Chair of The Redevelopment Agency of The City of San Diego, California

CHARLES G. ABDELNOUR
Secretary of The Redevelopment Agency of The City of San Diego, California

(Seal)

By Jeannette J. Santos Deputy

Office of The Redevelopment Agency, San Diego, California

Resolution Number R-03790 Adopted JUN 2 9 2004

(R-2004-1370)

RESOLUTION NUMBER R- 299406

ADOPTED ON JUN 29 2004

A RESOLUTION OF COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE REPLACEMENT TRANSFER AGREEMENT AND ESCROW INSTRUCTIONS BETWEEN THE CITY OF SAN DIEGO, THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, CATELLUS DEVELOPMENT CORPORATION AND THE MUSEUM OF CONTEMPORARY ART, SAN DIEGO.

WHEREAS, in 1993 the City and Agency executed an Amended and Restated Development Agreement and an Amended and Restated Owner Participation Agreement, respectively, with Catellus which revised development entitlements first granted in 1983 to Catellus's predecessor for the approximately 17 acres in the environs of the Santa Fe Depot. The 1993 Agreements revised the 1983 Agreements to accommodate transit related needs of MTDB and NCTD and updated the development entitlements to bring them into conformance with the Centre City Community Plan adopted in 1992; and

WHEREAS, under the terms of the Catellus Development/Owner Participation Agreements, as amended over time, Catellus was required, by December 7, 2003, to seismically retrofit and complete base building improvements to the Baggage Building and to then transfer title to the Baggage Building to the City or to any governmental agency or non profit entity designated by the City for use as a museum or other cultural use. Catellus was obligated to install new curb, gutter, sidewalks, etc. on the entire Kettner frontage; and

WHEREAS, the transfer of the Baggage Building for a cultural use at a minimum must include the building itself, its colonnade, the land under the building and the colonnade, an

access easement through the Breezeway connecting the Baggage Building to the Depot itself, and street frontage along Kettner Boulevard for the length of the Baggage Building; and

WHEREAS, Catellus's obligations for the level of improvements to the Baggage Building include seismic retrofit for cultural use, and "shell improvements" including stub out of electricity, water, sewer and telephone to the interior; structurally sound walls and roof; curb, gutter and sidewalk improvements on the Kettner frontage; and repair of the facade. Obligations of the user of the Baggage Building, therefore, would be typical tenant improvements and specialized improvements for the new use; and

WHEREAS, on December 10, 2002, the City Council authorized a Transfer Agreement and Escrow Instructions with the City of San Diego, Catellus and the Museum of Contemporary Art, San Diego providing for the transfer for the Baggage Building (and Catellus' transfer of the REA property within the site) to the City of San Diego and the City's lease of the properties to the Museum of Contemporary Art, San Diego for a term ending July 31, 2091; and

WHEREAS, such Transfer Agreement and Escrow Instructions has not been executed by the parties and the City of San Diego now desires to designate the Museum of Contemporary Art, San Diego [Designee] as transferee of the properties instead of the City of San Diego; and

WHEREAS, Catellus has submitted to the City copies of a proposed replacement Transfer Agreement and Escrow Instructions providing for the transfer of the Baggage Building and REA property to Designee and providing for a City option for the City to acquire the properties at no cost on or after July 31, 2091, or earlier in the event of a default by Designee; and

WHEREAS, City staff has reviewed the proposed replacement Transfer Agreement and Escrow Instructions and recommends that the City enter into a replacement Transfer Agreement and Escrow Instructions; NOW, THEREFORE,

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

1. That the terms and conditions of the proposed replacement Transfer Agreement and Escrow Instructions are approved.

2. That the City Manager, or his designee, is authorized to execute for and on behalf of the City the replacement Transfer Agreement and Escrow Instructions. A copy of the replacement Transfer Agreement and Escrow Instructions is on file in the office of the City Clerk as Document No. R-299406

3. That the City Manager, or his designee, is authorized on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the replacement Transfer Agreement and Escrow Instructions.

APPROVED: CASEY GWINN, City Attorney

By Elisa A. Cusato
Elisa A. Cusato
Deputy City Attorney

EIC:ai
06/09/04
Or.Dept: CCDC
R-2004-1370

Passed and adopted by the Council of San Diego on **June 29, 2004** by the following vote:

YEAS:	**PETERS, ZUCCHET, ATKINS, LEWIS, MAIENSCHEIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.**
NAYS:	**NONE.**
NOT PRESENT:	**NONE.**

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: **Mary A. Cepeda**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R- 299406**, passed and adopted by the Council of The City of San Diego, California on **June 29, 2004**.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Mary A. Cepeda Deputy
Mary A. Cepeda

September 8, 2006

The City of San Diego
Office of the City Clerk
San Diego, California 92101

Redevelopment Agency of
The City of San Diego
600 B Street, Fourth Floor
San Diego, California 92101

Re: Amtrak Lease and First Amendment to Amtrak Lease Between Museum of Contemporary Art, San Diego, and National Railroad Passenger Corporation

Pursuant to Section 1.16 (e) and Section 2.1.3 of that certain Transfer Agreement and Escrow Instructions made as of July 2, 2004, among Catellus Operating Limited Partnership, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware Corporation, the City of San Diego, a municipal corporation of the State of California, the Redevelopment Agency of the City of San Diego, a public body corporate and politic of the State of California, the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation (Museum), and Commonwealth Land Title Company, the undersigned, Museum and National Railroad Passenger Corporation, a corporation organized and existing under National Rail Passenger Service Act and the laws of District of Columbia (Amtrak), hereby submit for your approval: (1) a duplicate original of Amtrak Lease executed as of February 1, 2006, between Museum and Amtrak, and (2) a copy of the First Amendment to Amtrak Lease.

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO,
a California non-profit public benefit corporation

By: Mary Berglund
Its: President, Board of Trustees

[Signatures continued on next page]

AMTRAK:

NATIONAL RAILROAD PASSENGER CORPORATION,
a corporation organized and existing under National Rail
Passenger Service Act and the laws of District of Columbia

By: William G. [signature]
Its: Acting Vice President Real Estate Development

THE UNDERSIGNED HEREBY APPROVE AND CONSENT to the attached Lease and First Amendment to Amtrak Lease, and City agrees that City shall honor and be bound by the terms of the Lease, as amended, if City becomes the owner of the new museum building (the Copley Building) during the Lease term.

CITY OF SAN DIEGO, a municipal corporation
of the State of California

By: [signature]
Name: JAMES T. WARING
Title: DEPD

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO, a public body corporate and politic of
the State of California

By: [signature]
Name: JAMES T. WARING
Title: ASS'T EX DIR

FIRST AMENDMENT TO AMTRAK LEASE

This FIRST AMENDMENT TO AMTRAK LEASE (First Amendment) is made as of September 8, 2006, between the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation ("Museum"), and National Railroad Passenger Corporation, a corporation organized and existing under National Rail Passenger Service Act and the laws of District of Columbia ("Amtrak"), who agree as follows:

1. This First Amendment is made and entered into with reference to the following facts and circumstances:

a. Amtrak and Museum are parties to that certain Amtrak Lease executed as of February 1, 2006 ("Lease"), pursuant to which Museum has leased to Amtrak certain space in the Copley Building (currently under construction) (the "Premises") in San Diego, California. The Lease (including the exhibits attached thereto) is attached hereto as Exhibit A and made a part hereof.

b. The Lease was entered into prior to obtaining the approval of The City of San Diego, a municipal corporation of the State of California (City), and the Redevelopment Agency of The City of San Diego, a public body corporate and politic of the State of California (Agency), as required by Section 1.16 (e) and Section 2.1.3 of the Transfer Agreement and Escrow Instructions made as of July 2, 2004, among Catellus Operating Limited Partnership, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware Corporation, City, Agency, Museum, and Commonwealth Land Title Company (Transfer Agreement).

c. The City and Agency have requested revisions to the Lease to meet the requirements of the Transfer Agreement, and the Museum and Amtrak have agreed to make those revisions which are embodied in this First Amendment. This First Amendment and Lease have been submitted for City and Agency approval and by that letter attached hereto as Exhibit B, the City and Agency have approved this First Amendment and Lease.

d. This First Amendment is entered into by the Museum and Amtrak effective as of the date set forth above, and duplicate originals of the Lease and this First Amendment shall be provided to the City and Agency. Capitalized terms used herein which are not defined in this First Amendment shall have the definitions as set forth in the Lease.

2. The Lease is hereby amended in the following particulars only:

a. Paragraph 1 is deleted in its entirety and is replaced with the following:

1. LEASE OF PREMISES

Museum hereby leases the Premises, as of the date of substantial completion ("Substantial Completion") of the Copley Building ("Term Start Date"), to Amtrak, and Amtrak leases the Premises from Museum, upon the provisions and conditions set forth herein. Substantial Completion shall occur when Museum provides to Amtrak a certificate of occupancy (or other appropriate governmental permission for occupancy of the Premises) plus a certification from Museum's engineer or architect certifying to Amtrak that the Premises have been substantially completed pursuant to the Plans, and Amtrak, in its sole discretion, determines that the Premises are ready for Amtrak's "Use", as hereinafter defined, pursuant to the Plans. The Parties acknowledge that Amtrak has reviewed and approved the attached Plans, Exhibit "III" and Exhibit "IIIA", and that any amendment or modification, other than insignificant ones, to such Plans or Exhibits which affect the Premises must be approved by Amtrak. In addition, Amtrak shall have a non-exclusive right with Museum to access Museum's loading area in the Copley Building ("Loading Area") but not for its garbage removal service (which can be accomplished only through the arcade area). Amtrak shall not permit parking, storage, engine idling, or garbage in the Loading Area. Amtrak's access to the Museum Loading Area for other purposes will be reasonably accommodated by the Museum by prior arrangement with the Museum, or by Museum's successors in interest by prior arrangement with such successor. The Museum shall not have access to the Premises, but is entitled to vehicular access to the "Public Pedestrian Pathway", as hereinafter defined, for purposes related to maintenance of the arcade and outdoor sculpture.

b. Paragraph 4 is deleted in its entirety and is replaced with the following:

4. USE

The Premises shall be used for any lawful purpose reasonably related to the operation of a railroad and Amtrak's business operations, including but not limited to storage, maintenance, and related railroad purposes ("Use"), and for no other use without the prior written consent of Museum. Amtrak shall not do or permit anything to be done which will invalidate or increase the cost of any fire, extended coverage, fine arts insurance, or other insurance policy covering the Copley Building or Museum's property (or art in the possession of Museum by reason of an art loan agreement or similar arrangements) located therein. Amtrak shall not do or permit anything to be done in or about the Premises which in any way unreasonably interferes with the use by the Museum or the remainder of the Copley Building as a museum and related uses (which includes, without limitation, the generation of a level of noise, odors, or vibrations incompatible with the operation of a museum). The 22' area immediately north of the Copley Building owned by Museum is intended to be improved by the City or Agency with the southerly 14' thereof to be a landscaped and paved area (generally as shown in Exhibit K to the Transfer Agreement, a copy of which is also attached hereto as Exhibit K), and with the northerly 8' thereof (in conjunction with the southerly 8' of the adjacent owner's property, if such arrangements can be made) to be a public pedestrian pathway (such reference to include all 16' as indicated) ("Public Pedestrian Pathway"). Agency has informed Museum that it is uncertain as to when the contemplated Public Pedestrian Pathway can or will be constructed, so Museum will install a driveway and walkway reasonably adjacent to the Copley Building to be utilized by Museum and Amtrak (and the public for pedestrian purposes); such driveway and walkway (Driveway) shall be deemed to and shall constitute the Public Pedestrian Pathway until the one desired by Agency, as above described, is constructed. The Driveway or Public Pedestrian Pathway can be utilized by Amtrak for vehicular ingress and egress consistent with the following: (1) no vehicle (other than an emergency vehicle such as a fire truck) using such vehicular ingress and egress shall be larger than nine feet wide and twenty-two feet long; (2) the Driveway or Public Pedestrian Pathway shall be maintained by Amtrak with respect to sweeping; removal of trash; cleaning (which shall include only the removal of oil stains and the like caused by Amtrak's vehicles) and repairing and reconstructing the pavers as necessary and only if required due to use by Amtrak's vehicles (with the other aspects of maintenance of the Driveway or Public Pedestrian Pathway to be the responsibility of Museum or MTDB); and (3) no vehicle may be parked, and nothing can be stored or maintained (including without limitation trash containers) on any portion of the Driveway or Public Pedestrian Pathway (or any portion of the landscaped area south of the Driveway or Public Pedestrian Pathway, or the arcade to the east of the Premises (which is an area owned by Museum which it intends to use primarily for sculpture, art exhibitions and other Museum purposes). Amtrak and Museum agree that the purpose of their respective performance of their maintenance obligations is to maintain the Driveway or Public Pedestrian Pathway in a safe, clean, and attractive condition. The Driveway or Public Pedestrian Pathway may be utilized by Museum for vehicular ingress or egress, and either or both may be constructed (if Museum so elects) in such manner as to preclude (with posts or other barriers) vehicular traffic other than Museum's or Amtrak's, providing that Museum shall indemnify Amtrak and pay for all damage to property or persons, including cleaning (which shall include the removal of oil stains and the like caused by Museum's vehicles) and repairing and reconstructing the pavers, due to Museum's use of the Driveway or Public Pedestrian Pathway. Museum and Amtrak shall, to the extent necessary, work out a lock or other mechanism arrangement to permit Amtrak to have temporary access for vehicular ingress and egress consistent with the foregoing, and Amtrak shall have priority (to the extent necessary) to use the Driveway or Public Pedestrian Pathway for Amtrak's regularly scheduled trash pick-up. No such posts or other barriers may be installed without the prior written consent of City. Amtrak acknowledges that the exact configuration of the Public Pedestrian Pathway may later differ from that described by the foregoing provisions, and that for an undetermined period of time the Driveway will be the only means of such access.

c. The incorrect reference (10.a(ii)) in line three of paragraph 9.A.(ii)) is corrected to read "pursuant to this subsection 9.A.(ii). . ."

d. Subparagraph 9.B. is deleted.

e. Paragraph 14. Exhibit "I" is corrected as follows:

Exhibit "I" – Jacobs Building and REA Site Legal Description.

3. Except as expressly amended herein, the Lease shall remain in full force and effect. In the event of any inconsistencies between the provisions and conditions of the Lease and this First Amendment, the provisions and conditions of this First Amendment shall govern.

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO,
a California non-profit public benefit corporation

By: Mary Berglund
Its: President, Board of Trustees

AMTRAK:

NATIONAL RAILROAD PASSENGER CORPORATION,
a corporation organized and existing under National Rail Passenger Service Act and the laws of District of Columbia

By: William G. Sfida
William G. Sfida
Acting Vice President Real Estate Development

ORIGINAL

AMTRAK LEASE

This Amtrak Lease ("Lease") is executed as of February 1, 2006 ("Effective Date"), between the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation ("Museum") and National Railroad Passenger Corporation, a corporation organized and existing under National Rail Passenger Service Act and the laws of District of Columbia ("Amtrak"), who agree as follows:

RECITALS

A. On July 29, 2004, Museum acquired, pursuant to a Grant Deed recorded in the Official Records of the San Diego County Recorder as Document No. 2004-0711683 (as provided in the Transfer Agreement and Escrow Instructions ("Transfer Agreement") dated July 1, 2004 by and between Catellus Operating Limited Partnership, a Delaware corporation ("Catellus"), the City of San Diego, a municipal corporation of the State of California ("City"), the Redevelopment Agency of the City of San Diego, a public body corporate and politic of the State of California ("Agency"), and Museum,) the real property as set forth in Exhibit "I", attached hereto and made a part hereof. The real property consists of the existing baggage building ("Jacobs Building ") located adjacent to the railway depot in San Diego, California and a lot, adjacent to and located north of the Jacobs Building commonly known as the "REA Site". Museum is constructed and will thereafter operate, for uses ancillary to a museum (which Museum will be primarily located in the Jacobs Building), a building on the REA Site ("Copley Building"). The legal description of the REA Site is Parcel 4 of Parcel Map No. 19378 filed in the Official Records of San Diego County, California on November 26, 2003 as File No. 2003-

1418318; said Parcel 4, on which the Copley Building will be located, includes a portion of the Arcade which runs parallel to the tracks located adjacent to Parcel 4.

B. The Copley Building shall contain approximately 13,563 square feet.

C. Museum desires to let and Amtrak desires to lease for its exclusive use a portion of the Copley Building , such portion to consist of approximately 2,755 square feet as set forth in Exhibit "II" attached hereto and made a part hereof ("Premises").

D. The Copley Building shall be constructed in accordance with plans and specifications prepared for Museum and set forth on Exhibit "III" and Exhibit "III A" attached hereto and made a part hereof ("Plans") and within the time period designated by Museum ("Construction Schedule"), also set forth on Exhibit III. Museum shall be required to provide at its own cost and expense within the Premises only such improvements and finish items as are so designated in the Plans, which, among other things, will include separate utility services for the Premises.

1. <u>LEASE OF PREMISES</u>

Museum hereby leases the Premises, as of the date of substantial completion ("Substantial Completion") of the Copley Building ("Term Start Date"), to Amtrak, and Amtrak leases the Premises from Museum, upon the provisions and conditions set forth herein. Substantial Completion shall occur when Museum provides to Amtrak a certificate of occupancy (or other appropriate governmental permission for occupancy of the Premises) plus a certification from Museum's engineer or architect certifying to Amtrak that the Premises has been substantially completed pursuant to the Plans and Amtrak, in its sole discretion, determines that the Premises are ready for Amtrak's "Use", as herein after defined, pursuant to the Plans.

The Parties acknowledge that Amtrak has reviewed and approved the attached Plans, Exhibit III and Exhibit III A, and that any amendment or modification, other than insignificant ones, to such Plans or Exhibits which affect the Premises must be approved by Amtrak. In addition, Amtrak shall have a non-exclusive right with Museum to access Museum's loading area in the Copley Building ("Loading Area") but not for its garbage removal service (which can be accomplished only through the arcade area). Amtrak shall not permit parking, storage, engine idling, or garbage in the Loading Area. Amtrak's access to the Museum Loading Area for other purposes will be reasonably accommodated by the Museum by prior arrangement with the Museum. If at anytime the Copley Building is assigned, leased, subleased, sold or in any other manner transferred or used by any other entity or party other than the Museum, Amtrak shall have priority use of the Loading Area. The Museum shall not have access to the Premises, but is entitled to vehicular access to the "Public Pedestrian Pathway", as herein after defined, for purposes related to maintenance of the arcade and outdoor sculpture.

2. <u>TERM</u>

The term of this Lease ("Term") shall commence on the Term Start Date, which is anticipated to be March 1, 2007, and expire on July 31, 2091 ("Expiration Date"), but the Lease is effective as of the Effective Date. At any time during the Term, Amtrak may by the giving of written notice to Museum, elect to terminate the Lease ninety (90) days after the giving of such notice ("Early Termination"). In the event of an Early Termination, except as provided in Paragraph 9, Amtrak shall not be entitled to the return of any amounts paid to Museum.

3. <u>FINANCIAL OBLIGATIONS OF AMTRAK</u>

A. Amtrak shall pay $850,000 to Museum as Amtrak's agreed share of the costs of construction of the Copley Building as follows: After the construction commences, Museum shall by the tenth of the following month send to Amtrak a certified statement (signed by an officer or executive of Museum) setting forth the total cost of construction and the dollar value of the construction work completed within the prior month. The certified statement shall show the total construction completed within the prior month, as a percentage of $850,000. Amtrak shall be required to pay the amount so computed to Museum within thirty days after the certified statement is sent to Amtrak. In no event shall the total of all such payments requested of Amtrak exceed $850,000.

B. If Amtrak fails to make any payment to Museum in accordance with the schedule described in 3.A. above, then Amtrak shall be in default of this Lease.

C. Amtrak and Museum have agreed that Museum shall install during the construction of the Copley Building the modifications specified on Exhibit IV, for an agreed cost (in addition to the amounts specified in Paragraph 3.A) not to exceed $87,228.40 (but not to be less than $79,848.95, the difference depending on the actual amount of the contingency which is needed), which shall be paid to Museum when such modifications have been installed.

4. USE

The Premises shall be used for any lawful purpose reasonably related to the operation of a railroad and Amtrak's business operations, including but not limited to storage, maintenance, and related railroad purposes ("Use"), and for no other use without the prior written consent of Museum. Amtrak shall not do or permit anything to be done which will invalidate or increase the cost of any fire, extended coverage, fine arts insurance, or other insurance policy covering the Copley Building or Museum's property (or art in the possession of Museum by reason of an art loan agreement or similar arrangements) located therein. Amtrak shall not do or permit anything to be done in or about the Premises which in any way unreasonably interferes with the use by the Museum or the remainder of the Copley Building as a museum and related uses (which includes, without limitation, the generation of a level of noise, odors, or vibrations incompatible with the operation of a museum). The 22' area immediately north of the Copley Building owned by Museum is intended to be improved by the City or Agency with the southerly 14' thereof to be a landscaped and paved area (generally as shown in Exhibit K to the Transfer Agreement, a copy of which is also attached hereto as Exhibit K), and with the northerly 8' thereof (in conjunction with the southerly 8' of the adjacent owner's property, if such arrangements can be made) to be a public pedestrian pathway (such reference to include all 16' as indicated) ("Public Pedestrian Pathway"). Agency has informed Museum that it is uncertain as to when the contemplated Public Pedestrian Pathway can or will be constructed, so Museum will install a driveway and walkway reasonably adjacent to the Copley Building to be utilized by Museum and Amtrak (and the public for pedestrian purposes); such driveway and walkway (Driveway) shall be deemed to and shall constitute the Public Pedestrian Pathway until the one desired by Agency, as above described, is constructed. The Driveway or Public Pedestrian Pathway can be utilized by Amtrak for vehicular ingress and egress consistent with the following: (1) no vehicle (other than an emergency vehicle such as a fire truck) using such vehicular ingress and egress shall be larger than nine feet wide and twenty-two feet long; (2) the Driveway or Public Pedestrian Pathway shall be maintained by Amtrak with respect to sweeping; removal of trash; cleaning (which shall include only the removal of oil stains and the like caused by Amtrak's vehicles) and repairing and reconstructing the pavers as necessary and only if required due to use by Amtrak's vehicles (with the other aspects of maintenance of the Driveway or Public Pedestrian Pathway to be the responsibility of Museum or MTDB); and (3) no vehicle may be parked, and nothing can be stored or maintained (including without limitation trash containers) on any portion of the Driveway or Public Pedestrian Pathway (or any portion of the landscaped area south of the Driveway or Public Pedestrian Pathway, or the arcade to the east of the Premises (which is an area owned by Museum which it intends to use primarily for sculpture, art exhibitions and other Museum purposes). The Driveway or Public Pedestrian Pathway may be utilized by Museum for vehicular ingress or egress, and either or both may be constructed (if Museum so elects) in such manner as to preclude (with posts or other barriers) vehicular traffic other than Museum's or Amtrak's, providing that Museum shall indemnify Amtrak and pay for all damage to property or persons, including cleaning (which shall include the removal of oil stains and the like caused by Museum's vehicles) and repairing and reconstructing the pavers, due to Museum's use of the Driveway or Public Pedestrian Pathway. Museum and Amtrak shall, to the extent necessary, work out a lock or other mechanism arrangement to permit Amtrak to have temporary access for vehicular ingress and egress consistent with the foregoing, and Amtrak shall have priority (to the extent necessary) to use the Driveway or Public Pedestrian Pathway for Amtrak's regularly scheduled trash pick-up. Amtrak acknowledges that the exact configuration of the Public Pedestrian Pathway may later differ from that described by the foregoing provisions, and that for an undetermined period of time the Driveway will be the only means of such access.

5. UTILITIES, SERVICES, MAINTENANCE AND CONSTRUCTION

A. Amtrak shall pay for all utilities and services for the Premises commencing on the Term Start Date; Museum will arrange for same to be separately metered. Museum shall have no obligations with respect thereto, except to provide the services to the Premises as required by the Plans.

B. With respect to the Copley Building Amtrak shall only be required to maintain the interior of the Premises. Museum shall maintain the remainder of the Copley Building including without limitation the roof, windows, structural elements, exterior walls, plumbing, drainage, and sewage systems, and the loading area. If Museum does not maintain the Copley Building as required by this Section and such lack of maintenance materially affects the Premises, Amtrak may, but shall not be obligated to (and only after giving thirty (30) days notice to Museum of its intention to do so and such maintenance not being accomplished by Museum within such thirty (30) day period), perform such maintenance for the Copley Building and bill Museum for all costs associated with such maintenance as long a such costs do not exceed $5,000.. Museum shall reimburse Amtrak with in thirty (30) days of receipt of the bill.

6. LIMITATION OF LIABILITY

A. This Lease is made upon the express condition that Museum shall have no liability for claims, causes of action, liabilities, losses, costs, damages and/or expenses in law or equity (including, without limitation, attorneys' fees and expenses) of any kind or nature whatsoever (collectively, "Claims") by reason of any injury to any person or property arising out of or in anyway connected with the Premises except those Claims that are caused by the negligence or willful misconduct of, or violation of any law or ordinance by Museum or any contractor, subcontractor, employee, guest or invitee of Museum, by reason of any injury to any person or property of any kind arising out of or in any way connected with the Premises, or their use or occupancy, during the Term of this Lease or any extensions. Museum shall not be liable under any circumstances for consequential damages or damages or injury to Amtrak's business or potential business.

B. This Lease is made upon the express condition that Amtrak shall have no liability for Claims by reason of any injury to any person or property of any kind arising out of or in any way connected with the Copley Building other than the Premises, and the Public Pedestrian Pathway when being used by Amtrak, except those Claims that are caused by the negligence or willful misconduct of Amtrak (or any of its employees or agents). Amtrak shall not be liable under any circumstances for consequential damages or damages or injury to Museum's business or potential business. Amtrak shall not be liable for damages or injuries to portions (including the loading area) of the Copley Building, other than the Premises, except those damages or injuries that are caused by the negligence or willful misconduct of Amtrak (or any of its employees or agents). Amtrak shall not be liable for the conduct of any visitor, passenger or invitee to the Premises, the Copley Building or the Public Pedestrian Pathway.

7. INDEMNITY

A. With the exception that this Lease shall in no event be construed to require indemnification by Amtrak to a greater extent than permitted by the laws and the public policy of the State of California or any applicable Federal law, and without in any manner limiting Museum's rights and remedies in the event of a breach of this Lease by Amtrak, Amtrak agrees to indemnify, defend, and hold harmless Museum, City, and the Agency, and their respective officers, agents, employees, affiliated parent and subsidiary companies, lenders, members, managers, successors and assigns (individually, "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all Claims arising out of or in connection with this Lease, the Premises (including the loading area) the Public Pedestrian Pathway, to the extent and only to the extent Amtrak is responsible pursuant to the Lease, provided that the Claim (i) is based upon or relating to bodily injury to or death of any person, or damage to or loss of property of any kind whatsoever, including, without limitation, loss of use thereof, and (ii) is caused by sole negligence or willful misconduct of an Amtrak employee or agent

B. With the exception that this Lease shall in no event be construed to require indemnification by Museum to a greater extent than permitted by the laws and the public policy of the State of California or any applicable Federal law, and without in any manner limiting Amtrak's rights and remedies in the event of a breach of this Lease by Museum, Museum agrees to indemnify, defend, and hold harmless Amtrak, City, and the Agency, and their respective officers, agents, employees, affiliated parent and subsidiary companies, lenders, members, managers, successors and assigns (individually, "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all Claims arising out of or in connection with this Lease, the Premises (including the loading area) the Public Pedestrian Pathway, the landscaped areas, the arcade, or the Copley Building to the extent but only to the extent Museum is responsible pursuant to the Lease, provided that the Claim (i) is based upon or relating to bodily injury to or death of any person, or damage to or loss of property of any kind whatsoever, including, without limitation, loss of use thereof, and (ii) is caused by the negligence or willful misconduct of the Museum or any employee or agent of Museum.

8. IMPROVEMENTS AND ALTERATIONS

Except for construction of the Copley Building pursuant to the Plans, Museum has made no promise to alter or improve the Premises, except that Museum will require its general contractor to construct the Copley Building in accordance with the Plans and the Construction Schedule. As provided in 5.B. Amtrak shall only be required to maintain the interior of the Premises which shall be maintained in good condition and repair (normal wear and tear excepted) and shall not make any penetrations through the walls of the Premises. Amtrak will not cause the Premises (including, without limitation, the exterior of the Copley Building) to be damaged or defaced in any manner whatsoever (although Amtrak shall have the right to install one or more small signs for directional purposes only (if needed), with the design, size and location of such sign(s) to be subject to the reasonable approval of Museum), and Amtrak shall immediately repair any damage it solely causes to the Copley Building. Amtrak will return the Premises at the end of the Term in the same condition and repair as when Amtrak took possession, except for normal wear and tear, or destruction of the Premises because of an occurrence beyond Amtrak's control.

9. DESTRUCTION OF PREMISES, EMINENT DOMAIN

A. In the event of destruction or substantial damage to the Premises during the Term which renders the Premises unusable to Amtrak, Museum shall have the option of:

(i) Museum shall notify Amtrak within thirty days after such damages or destruction of Museum's decision to rebuild the Copley Building including the Premises or declining to rebuild. During the 180-day repair or replacement period identified in Subparagraph A(iii) below, Amtrak shall have no obligation to: (1) pay any costs or expenses associated with the Premises required under this Lease; or (2) provide any services to the Premises required under this Lease.

(ii) Declining to replace or rebuild, in which event Amtrak shall have the option of terminating this Lease by written notice. If Amtrak elects to terminate this Lease pursuant to this subsection 10.a. (ii) during the first fifteen (15) years of the Term and Museum receives casualty insurance proceeds related to the destruction of the Copley Building , then Museum shall pay to Amtrak, in full compensation for all amounts paid by Amtrak hereunder, a portion of the insurance proceeds actually received by Museum related to the reconstruction of the Copley Building (and not related to the personal property, including art displayed or stored in the Copley Building) equal to the amount paid by Amtrak hereunder as related to the cost of the construction of the Copley Building (e.g. if the cost of the Copley Building is $17,000,000 and Amtrak paid $850,000, then Amtrak would be entitled to received 5% of the insurance proceeds actually received by the Museum directly related to the Copley Building structure.

(iii) Within one hundred eighty days after such damage or destruction, replacing or rebuilding the Copley Building , including the Premises, and in such manner and according to such plans and specifications which would restore the Copley Building , including the Premises, to substantially the same condition as immediately before its destruction or substantial damage.

B. If by reason of the damage or destruction of the Copley Building, the City or any third party becomes the owner of the REA Site,. Amtrak shall have the right to cause the Premises to be reconstructed. If the reconstruction does not occur within a reasonable period of time, to the extent Museum has the power to grant such rights, Amtrak shall have the right to occupy the land upon which the Premises were constructed so as to have a place to locate its necessary facilities for its operations. Museum shall have no involvement with such arrangements.

10. INSURANCE

A. Unless Amtrak makes the election permitted by 10.B., Amtrak shall, at its sole expense, obtain and maintain at all times during the Term of this Lease (1) commercial general liability insurance coverage, on "occurrence" type forms acceptable to Museum, specifically relating to the Premises including without limitation the loading area, the Public Pedestrian Pathway, the landscaped areas, and that portion of the Arcade owned by the Museum, and providing annual limits of liability of at least $3,000,000 per occurrence and $3,000,000 in the aggregate; and (2) commercial property insurance coverage, on forms acceptable to Museum, for the full replacement value of the Premises as determined by an independent commercial property appraiser as of the effective date of this Agreement. Amtrak shall ensure that Museum is named as an Additional Insured on all general liability policies obtained pursuant to this requirement, and that all such policies are expressly endorsed to be primary and non-contributing with any coverage maintained by Museum. The coverage provided by such general liability and property insurance policies may be adjusted at least every five years, as market conditions may require. Prior to occupying the Premises, Amtrak shall furnish Museum with Certificates of Insurance and Additional Insured endorsements evidencing the above coverages. On written request of Museum, Amtrak shall also provide complete copies of all policies responding to the requirements herein.

B. Amtrak may elect to self-insure its obligations under this Lease provided Amtrak has in place, prior to its occupancy of the Premises, nationwide, a comprehensive and properly funded self-insurance program, provided that Amtrak has delivered to Museum an appropriate letter from Amtrak's risk-management department. If Amtrak makes such election, it shall, upon Museum's written request, provide Museum with documentation evidencing the existence and principal aspects of such self-insurance program insofar as they pertain to the Premises.

C. Prior to commencement of construction on the REA Site, Museum shall, at its sole expense, obtain and maintain at all times during construction, a builder's risk insurance policy covering the risk of direct physical loss of or damage to the Copley Building and all materials, supplies, fixtures, and equipment to be used in or consumed during construction. Builder's risk coverage shall be provided on an "all-risk" policy form and shall include, without limitation, coverage for physical loss or damage due to fire, theft, collapse, vandalism, malicious mischief, faulty workmanship or materials, windstorm, explosion, mechanical or electrical breakdown or failure, delay, testing and startup. Coverage shall be provided on a replacement cost basis.

D. Museum shall, at its sole expense, obtain and maintain at all times during the term of this Lease (1) commercial general liability insurance coverage specifically relating to the Copley Building and providing annual limits of liability of at least $3,000,000 per occurrence and $3,000,000 in the aggregate; and (2) commercial property insurance coverage for the full replacement value of the Copley Building, less the value of the Premises as determined by Museum in its sole discretion. The coverage provided by such policies shall be increased within the sole discretion of Museum. Museum shall ensure that Amtrak is named as an Additional Insured on all general liability policies obtained pursuant to this requirement.

E. All insurance policies obtained pursuant to the above requirements shall, if possible, provide sixty (60) days' prior written notice to the Named Insured prior to any cancellation of substantive change in coverage. All such policies shall be in effect on or before the Effective Date of the Lease, except that the builder's risk policy shall be in force on commencement of construction on the REA Site.

11. <u>ASSIGNMENT AND SUBLETTING</u>

A. Amtrak may not transfer or assign this Lease, or sublet the Premises or any part thereof, without Museum's written approval. These prohibitions shall not apply to a transfer or assignment by Amtrak to a successor entity resulting from Congressional or judicial action. The rights and obligations of this Lease shall benefit and burden all successors and assigns of this Lease.

B. Museum may not transfer or assign this Lease, or sublet the Copley Building or any part thereof, without Amtrak's written approval. The rights and obligations of this Lease shall benefit and burden all successors and assigns of this Lease.

12. DEFAULTS

Neither party shall be deemed to be in default under this Lease unless and until it has failed to perform any obligation within thirty days after receipt of written notice from the other specifying the manner in which it has failed to perform such obligation; provided, however, that if the nature of such obligation is such that more than thirty days are required for its performance, then the party receiving such written notice shall not be deemed to be in default if it shall commence performance within such thirty day period and thereafter diligently prosecute the same to completion. Amtrak may, if the circumstances warrant such action, exercise self-help in resolving a default by Museum (in which event Amtrak must timely report to the Museum the circumstances and the actions taken).

13. MISCELLANEOUS

A. Amtrak shall permit Museum and its agents at all reasonable times to enter the Premises as may be necessary or desirable for the operation or improvement of the Premises or in order to comply with the laws, orders or requirements of governmental or other authorities; an Amtrak employee must accompany the Museum representative except in an emergency situation.

B. Amtrak shall not affix, paint, erect or inscribe any sign (except as otherwise permitted), projection, awning, signal or advertisement of any kind to any part of the Premises, or the Copley Building , including, without limitation, the inside or outside of windows or doors, without the written consent of Museum.

C. Museum acknowledges it is aware that pursuant to 494.S.C. § 2430, Amtrak is exempt from all State and local taxes, surcharge or fees.

D. The parties shall promptly take such actions to give effect to the provisions of this Lease.

E. This Lease shall be governed by and construed in accordance with the laws of the State of California. Proper venue for any action shall be in the federal courts of San Diego, California.

F. Time is of the essence with respect to the performance of every provision of this Lease.

G. If any condition or provision of this Lease shall be held invalid or unenforceable to any extent under any applicable law or by any court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

H. This Lease, along with any exhibits affixed hereto, constitutes the entire and exclusive agreement between Museum and Amtrak relative to the Premises.

I. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

Museum of Contemporary Art, San Diego
Attention: Dr. Hugh M. Davies
700 Prospect Street
La Jolla, California 92037

AMTRAK
National Railroad Passenger Corporation
30th Street Station
Fourth Floor, South Tower
Philadelphia, Pennsylvania 19104
Attention: Vice President Real Estate Development

National Railroad Passenger Corporation
530 Water Street
Oakland, California 94607
Attention: Real Estate Department

CITY OF SAN DIEGO
Redevelopment Agency
600 B Street
San Diego, California 92101

or, at such appropriate address designated in writing by the respective party.

J. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.

K. Amtrak shall not record this Lease or any short form memorandum referring to this Lease.

14. EXHIBITS.

Exhibit I	-	Jacobs Building and Rea Site Legal Description
Exhibit II	-	Copley Building

Exhibit III and Exhibit IIIA -- Plans/Specifications and Construction Schedule

Exhibit IV - Amtrak Modifications

Exhibit K - Copy of Exhibit K to Transfer Agreement

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO,
a California non-profit public benefit
corporation

By: Mary S. Beebe
Its: President

AMTRAK:

NATIONAL RAILROAD PASSENGER CORPORATION,
a corporation organized and existing under National Rail
Passenger Service Act and the laws of District of Columbia

By: Sally J. Scott

In consideration of the terms herein and for other valuable consideration which receipt is acknowledged, the undersigned acknowledges and agrees to be bound by the terms set forth in Paragraph 9B herein.

CITY OF SAN DIEGO,
a municipal corporation of the State of California

By:______________________________

Exhibit "I"

All that certain real property situated in the County of San Diego, State of California, described as follows:

Parcel A: Baggage Building Fee Parcel (now known as Jacobs Building)

Being all of Parcel 3 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land.

Parcel B: REA Site

Being all of Parcel 4 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land.

Assessor's Parcel Number: **[533-472-02] (Portion)**

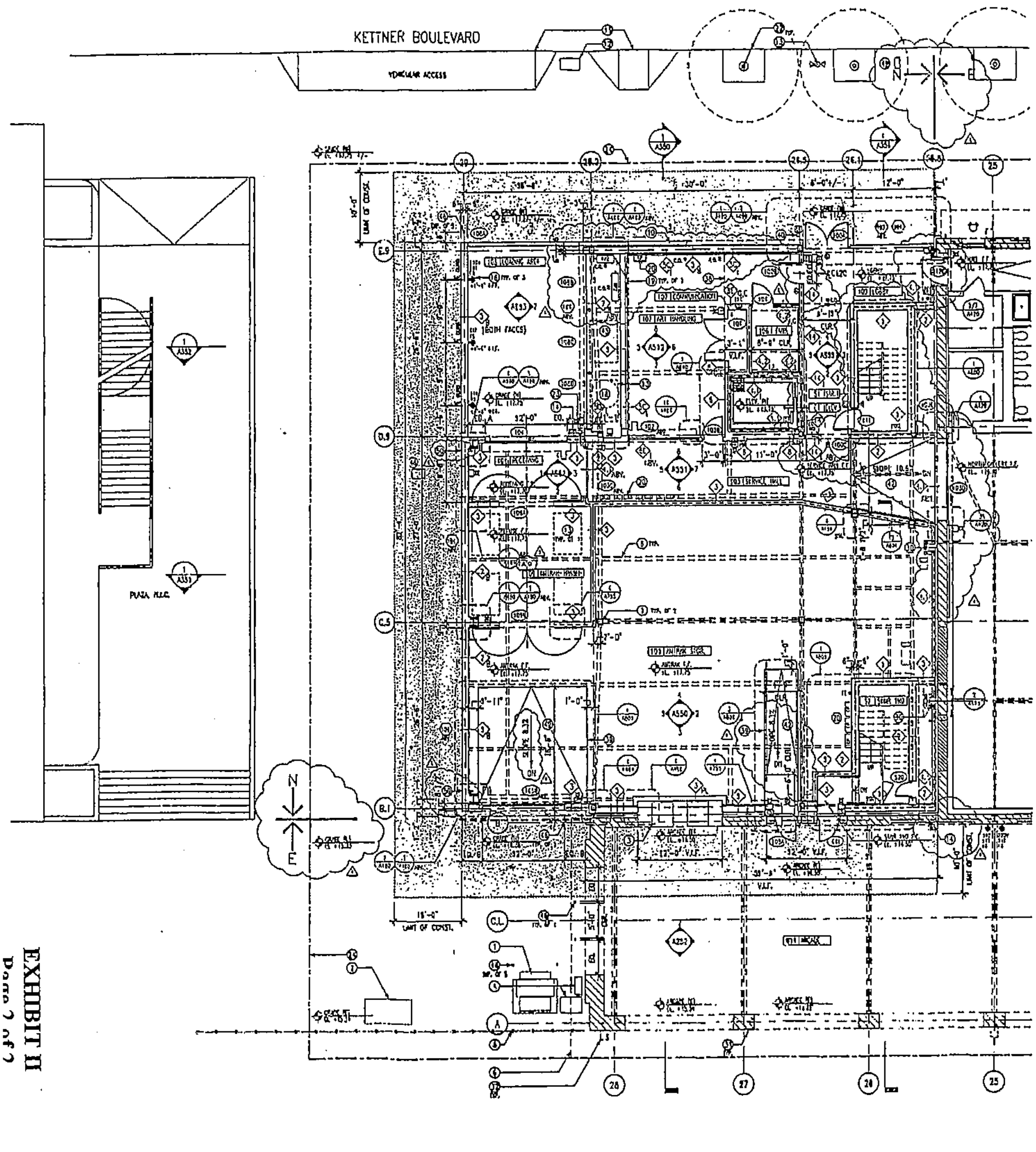
EXHIBIT 'II'

COPLEY BUILDING

All that certain real property situated in the County of San Diego, State of California, described as follows:

Being all of Parcel 4 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land.

Assessor's Parcel Number: **[533-472-02] (Portion)**



GENERAL FLOOR PLAN NOTES—(DESIGN):

1. REFER TO GENERAL PLAN NOTES ON SHEET A101 FOR ADDITIONAL INFORMATION, TYP.
2. PLAZA IMPROVEMENTS AND THE S STREET ALLEY ARE NOT IN THE SCOPE OF THIS PROJECT.
3. MAINTAIN A CONTINUOUS MINIMUM 1" SEISMIC JOINT BETWEEN THE ADDITION AND THE EX'G BAGGAGE BLDG. AND PROVIDE; REF. STRUCTURAL DWGS FOR ADDT'L INFORMATION.
4. PROVIDE CONTRASTING NOSING STRIPES AT TOP AND BOTTOM TREADS OF EACH STAIR LANDING.
5. ROUTING OF ALL EXPOSED CONDUIT, RACEWAY, J-BOXES, SPRINKLER PIPES, ETC. IS TO BE COORDINATED WITH ARCHITECT TO ENSURE CLEAN INSTALLATION.
6. DIMENSIONS ARE FROM FINISH FACE. REFER TO FINISH SCHEDULE, ENLARGED FLOOR PLANS AND RCP FOR ADDT'L INFORMATION REGARDING DIMENSIONS.
7. REF. S615 FOR TYPICAL MASONRY DETAILS.
8. ALL EXPOSED ARCHITECTURAL CONCRETE CORNERS TO RECEIVE MINIMUM 1/2" CHAMFER, TYP.
9. ALL CEILINGS ARE SUSPENDED CEIL TYP. U.O.N.
10. ALL CEILINGS ARE 17'-1" A.F.F., TYP. U.O.N.
11. REF. A003 FOR TYPICAL FIREPROOFING NOTES.

RATING SEPARATION(S)

ONE-HOUR
TWO-HOUR

SHEET NOTES—(CODING):

EX'G SDG&E TRANSFORMER TO BE REPOSITIONED ON NEW CONC. PAD
EX'G SDG&E METER CABINET SERVING TRAIN PLATFORMS TO REMAIN. PROTECT AS REQ'D.
NEW SDG&E METER CABINETS
EX'G ELECTRICAL EQUIPMENT TO REMAIN. PROTECT AS REQ'D.
EX'G FENCE TO REMAIN. PROTECT AS REQ'D.
EX'G OVERHANG AT ARCADE.
SPRAY APPLIED CEMENTITIOUS FIREPROOFING AT EXPOSED COLS.
STRUCTURE ABV. REF. REFLECTED CEILING PLANS, TYP.
MECHANICAL SHAFT, REF. MECH. DWGS.
MANUALLY OPERATED ROLLING GATE AT LOADING AREA, REF. A192 FOR ADDT'L INFORMATION.
EX'G CURB CUT, N.I.C.
EX'G TRAFFIC SIGNAL, N.I.C.
EX'G FIRE HYDRANT, N.I.C. MAINTAIN CLEAR ACCESS FOR SDFD AS REQ'D.
RECESSED/CAST-IN-PLACE HOSE BIBB, REF. PLUMBING DWGS.
RECESSED/CAST-IN-PLACE LIGHT FIXTURE, REF. ELEC. DWGS.
RECESSED/CAST-IN-PLACE OUTLET, REF. ELEC. DWGS.
DRAIN AND OVERFLOW DRAIN, REF. PLUMB. DWGS.
ELEVATOR PIT DRAIN HOLDING TANK BELOW, REF. PLUMB. DWGS. FOR ADDT'L INFORMATION.
WALL MTD. BACKFLOW PREVENTOR, REF. PLUMB. DWGS. FOR ADDT'L INFORMATION.
WALL MTD. PANELS, REF. ELEC. DWGS. FOR ADDT'L INFORMATION.
STEP DOWN TRANSFORMER, REF. ELEC. DWGS. FOR ADDT'L INFORMATION.
EX'G TREE AND PLANTER BY CATELLUS, N.I.C. PROTECT AS REQ'D.
ROLL-UP GENERATOR CONNECTION, REF. ELEC. DWGS. FOR ADDT'L INFORMATION.
PROPERTY LINE
OPEN TO BELOW
RECESSED JACK FOR PROGRAM SPEAKER. COORDINATE W/ CLP CONC. WALL. REF. A/V DWGS FOR ADDT'L INFORMATION
CONT. SEISMIC JOINT
EX'G PARAPET, PROTECT AS REQ'D.
EX'G GUTTER, PROTECT AS REQ'D.
EX'G STEEL SEISMIC COLUMN, REF. S/A101.
EX'G RAIN WATER LEADER, N.I.C.
EX'G HISTORIC LIGHT FIXTURE, N.I.C.
CLASS A BUILT-UP-ROOF OVER TAPERED RIGID INSULATION
PTD. ALUM. LOUVERED MECHANICAL SCREEN
CONT. PTD. SHT. MTL. FLASHING OVER STL. ANGLE AT PARAPET
CMU PARAPET WALL
FIRE-RESISTIVE ROOF HATCH, REF. 3/A411
MEZZANINE ABV.
PTD. STL. GUARDRAIL AT RAMPS / S.STL. GUARDRAIL AT TERRACE
SECURITY PYLON BY SDCCC OR APPROVED EQUAL (CONTAINING CARD READER, SPEAKER, SDFD KNOX BOX, ETC.)
EAST FACE OF EXPOSED CONC. TERRACE OVERHANGS 3" BEYOND THE FACE OF THE CONCRETE WALL BELOW.
CONCRETE RAMP
REFUSE BIN, N.I.C.
ELEV. SHAFT VENT PER CBC SECTION 3004, REF. 3/A111.
CONC. CURB FOR COMPACTOR
REMOVEABLE 4" DIA. PTD. STL. BOLLARDS, 3'-0" HIGH, REF. 1/A483.
CONC. DAILY SHD. MTL. DUCT COVER, REF. A112
PROPOSED SDG&E CUT LINER VAULT LOCATION
EX'G CURB BOX FOR FUTURE WATER METER
OVERFLOW DRAIN OUTLET, REF. PLUMB. DWGS.

GENERAL NOTE:
ALL DRAWINGS, SPECIFICATIONS, PLANS, IDEAS, ARRANGEMENTS AND DESIGNS REPRESENTED OR REFERRED TO ARE THE PROPERTY OF AND OWNED BY GLUCKMAN MAYNER ARCHITECTS WHETHER THE PROJECT FOR WHICH THEY ARE MADE IS EXECUTED OR NOT. THEY WERE CREATED, EVOLVED, DEVELOPED AND PRODUCED FOR THE SOLE USE ON AND IN CONNECTION WITH THIS PROJECT AND NONE OF THE ABOVE MAY BE DISCLOSED OR GIVEN TO OR USED BY ANY PERSON, FIRM OR CORPORATION FOR ANY USE OR PURPOSE WHATSOEVER INCLUDING ANY OTHER PROJECT, EXCEPT UPON WRITTEN PERMISSION AND DIRECTION OF GLUCKMAN MAYNER ARCHITECTS.

NO.	DATE	SUBMISSION
1.	8 DEC 2004	ISSUED TO SDCCDC
A.	10 FEB 2005	SDCCDC REVISION
C.	18 MAY 2005	SDCCDC REVISION
2.	1 JUN 2005	ISSUED FOR PERMIT
3.	25 JUL 2005	ISSUED FOR CONSTRUCTION

ARUP
Ove Arup & Partners Consulting Engineers PC

HERITAGE ARCHITECTURE & PLANNING

GLUCKMAN MAYNER ARCHITECTS

MUSEUM OF CONTEMPORARY ART SAN DIEGO

PROJECT NO. 01001

PLAN
GROUND FLOOR
ADDITION

SCALE: 1/8"=1'-0"
DATE: 13 NOVEMBER 2001
DRAWN: JC
CAD FILE: A151-plan-ground floor

A151

EXHIBIT II
Page 2 of 2

DRAWING LIST

Drawing Number	Drawing Title	Date
A000	Cover Sheet	8-Dec-04
A001	Drawing List	8-Dec-04
A002	Drawing Symbols and Abbreviations	8-Dec-04
BD001	General Notes	8-Dec-04
BD002	General Notes	8-Dec-04
BD101	Evacuation Plan - Baggage Building	8-Dec-04
BD151	Evacuation Plan - Addition	8-Dec-04
BD200	Accessibility Compliance Diagrams	8-Dec-04
C.1	Public Improvements	8-Dec-04
C.2	Public Improvements	8-Dec-04
C.3	Erosion Control Plan	8-Dec-04
D101	Ground Floor, Baggage Building	8-Dec-04
D102	Clerestory Level, Baggage Building	8-Dec-04
A010	Vicinity Plan	8-Dec-04
A020	Site Plan	8-Dec-04
A101	Plan - Ground Floor, Baggage Building	8-Dec-04
A102	Plan - Clerestory Level, Baggage Building	8-Dec-04
A104	Plan - Roof, Baggage Building	8-Dec-04
A111	Power and Signal Plan - Ground Floor, Baggage Building	8-Dec-04
A112	Power and Signal Plan - Clerestory, Baggage Building	8-Dec-04
A151	Plan - Ground Floor, Addition	8-Dec-04
A152	Plan - Second Floor, Addition	8-Dec-04
A153	Plan - Third Floor, Addition	8-Dec-04
A154	Plan - Roof, Addition	8-Dec-04
A161	Power and Signal Plan - Ground Floor, Addition	8-Dec-04
A162	Power and Signal Plan - Second Floor, Addition	8-Dec-04
A163	Power and Signal Plan - Third Floor, Addition	8-Dec-04
A121	Furniture Plan - Ground Floor, Baggage Building	8-Dec-04
A171	Furniture Plan - Ground Floor, Addition	8-Dec-04
A172	Furniture Plan - Second Floor, Addition	8-Dec-04
A173	Furniture Plan - Third Floor, Addition	8-Dec-04
A200	Elevation - East, Baggage Building	8-Dec-04
A201	Elevation - South, Baggage Building	8-Dec-04
A202	Elevation - West, Baggage Building	8-Dec-04
A250	Elevation - East, Addition	8-Dec-04
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A252	Elevation - West, Addition	8-Dec-04
A253	Elevation - North, Addition	8-Dec-04
A300	Section, Looking North - Baggage Building	8-Dec-04
A301	Section, Looking North - Baggage Building	8-Dec-04
A302	Section, Looking West - Baggage Building	8-Dec-04
A350	Section, Looking South - Addition	8-Dec-04
A351	Section, Looking South - Addition	8-Dec-04
A352	Section, Looking West - Addition	8-Dec-04
A353	Section, Looking West - Addition	8-Dec-04
A420	Exterior Details - Baggage Building	8-Dec-04
A440	Entry - Baggage Building	8-Dec-04
A441	Entry Details - Baggage Building	8-Dec-04
A442	Clerestory Details - Baggage Building	8-Dec-04

A443	Clerestory Details - Baggage Building	8-Dec-04
A444	Clerestory Details - Baggage Building	8-Dec-04
A450	Exterior Wall Sections, Norht - Addition	8-Dec-04
A451	Exterior Wall Sections, East - Addition	8-Dec-04
A452	Exterior Wall Sections, South - Addition	8-Dec-04
A453	Exterior Wall Sections, West - Addition	8-Dec-04
A460	Exterior Wall Types - Addition	8-Dec-04
A470	Exterior Wall Details - Addition	8-Dec-04
A471	Exterior Wall Details - Addition	8-Dec-04
A472	Exterior Wall Details - Addition	8-Dec-04
A473	Exterior Wall Details - Addition	8-Dec-04
A474	Exterior Wall Details - Addition	8-Dec-04
A475	Exterior Wall Details - Addition	8-Dec-04
A476	Exterior Wall Details - Addition	8-Dec-04
A477	Exterior Wall Details - Addition	8-Dec-04
A478	Exterior Wall Details - Addition	8-Dec-04
A479	Exterior Wall Details - Addition	8-Dec-04
A480	Exterior Wall Details - Addition	8-Dec-04
A481	Exterior Wall Details - Addition	8-Dec-04
A482	Exterior Wall Details - Addition	8-Dec-04
A483	Exterior Wall Details - Addition	8-Dec-04
A484	Exterior Wall Details - Addition	8-Dec-04
A485	Exterior Wall Details - Addition	8-Dec-04
A490	Entry and Canopy - Addition	8-Dec-04
A491	Entry and Canopy Details - Addition	8-Dec-04
A492	Gate Details - Addition	8-Dec-04
A493	Loading Dock and Trash - Addition	8-Dec-04
A500	Interior Elevations - Baggage Building	8-Dec-04
A501	Interior Elevations - Baggage Building	8-Dec-04
A502	Interior Elevations - Baggage Building	8-Dec-04
A503	Interior Elevations - Baggage Building	8-Dec-04
A504	Interior Elevations - Baggage Building	8-Dec-04
A505	Interior Elevations - Baggage Building	8-Dec-04
A506	Interior Elevations - Baggage Building	8-Dec-04
A507	Interior Elevations - Baggage Building	8-Dec-04
A508	Interior Elevations - Baggage Building	8-Dec-04
A509	Interior Elevations - Baggage Building	8-Dec-04
A550	Interior Elevations - Addition	8-Dec-04
A551	Interior Elevations - Addition	8-Dec-04
A552	Interior Elevations - Addition	8-Dec-04
A553	Interior Elevations - Addition	8-Dec-04
A554	Interior Elevations - Addition	8-Dec-04
A555	Interior Elevations - Addition	8-Dec-04
A556	Interior Elevations - Addition	8-Dec-04
A557	Interior Elevations - Addition	8-Dec-04
A558	Interior Elevations - Addition	8-Dec-04
A601	RCP, Ground Floor - Baggage Building	8-Dec-04
A602	RCP, Clerestory Level - Baggage Building	8-Dec-04
A651	RCP, Ground Floor - Addition	8-Dec-04
A652	RCP, Second Floor - Addition	8-Dec-04
A653	RCP, Third Floor - Addition	8-Dec-04
A700	Door Schedule - Baggage Building	8-Dec-04
A701	Door Schedule - Addition	8-Dec-04
A702	Window Schedule	8-Dec-04
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A704	Partition Types	8-Dec-04
~~A705~~	~~Partition Types~~	~~8-Dec-04~~
A710	Interior Details - Baggage Building	8-Dec-04
A711	Interior Details - Baggage Building	8-Dec-04
A712	Interior Details - Baggage Building	8-Dec-04
A713	Interior Details - Baggage Building	8-Dec-04
A714	Interior Details - Baggage Building	8-Dec-04
A715	Interior Details - Baggage Building	8-Dec-04
A716	Interior Details - Baggage Building	8-Dec-04
A717	Interior Details - Baggage Building	8-Dec-04
A718	Interior Details - Baggage Building	8-Dec-04
A720	Interior Details - Baggage Building	8-Dec-04
A725	Interior Details - Baggage Building	8-Dec-04
A726	Interior Details - Baggage Building	8-Dec-04
A727	Interior Details - Baggage Building	8-Dec-04
A730	Interior Details - Baggage Building	8-Dec-04
A740	Interior Details - Addition	8-Dec-04
A741	Interior Details - Addition	8-Dec-04
A750	Interior Details - Addition	8-Dec-04
A751	Interior Details - Addition	8-Dec-04
A755	Interior Details - Addition	8-Dec-04
A756	Interior Details - Addition	8-Dec-04
A757	Interior Details - Addition	8-Dec-04
A760	Interior Details - Addition	8-Dec-04
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A771	Interior Details - Addition	8-Dec-04
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A802	Stair Details - Addition	8-Dec-04
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A806	Ramp Details - Addition	8-Dec-04
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DOCUMENT 00010

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Section 05500	Metal Fabrications	
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Section 05530	Gratings ~~and Catwalks~~	
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Section 07115	Bituminous Dampproofing
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Section 15171	Variable Frequency Drives
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Section 15790	Electric Heating ~~Reheat~~ Coils
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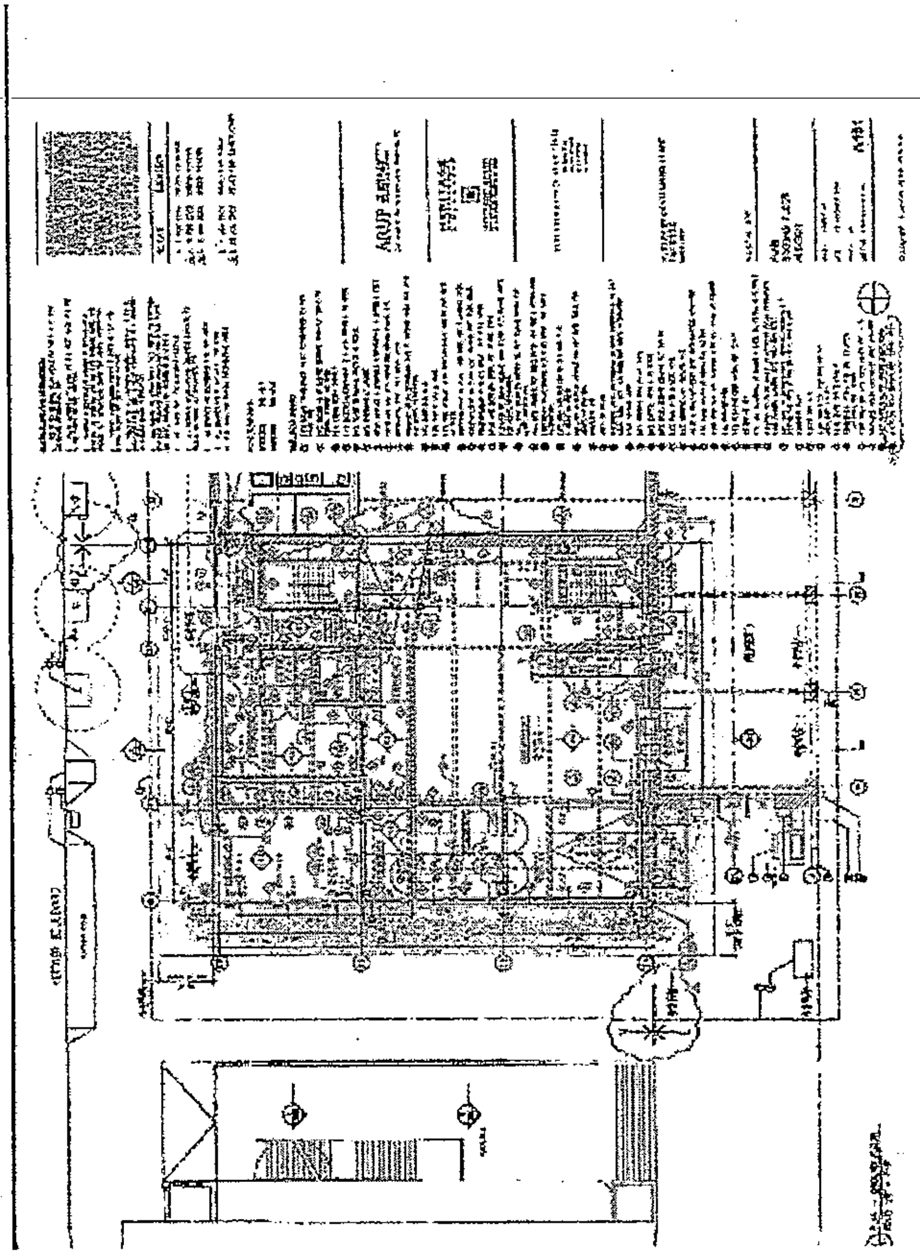
Attachment C
Agenda Item: G.1
Meeting Date: July 16, 2026



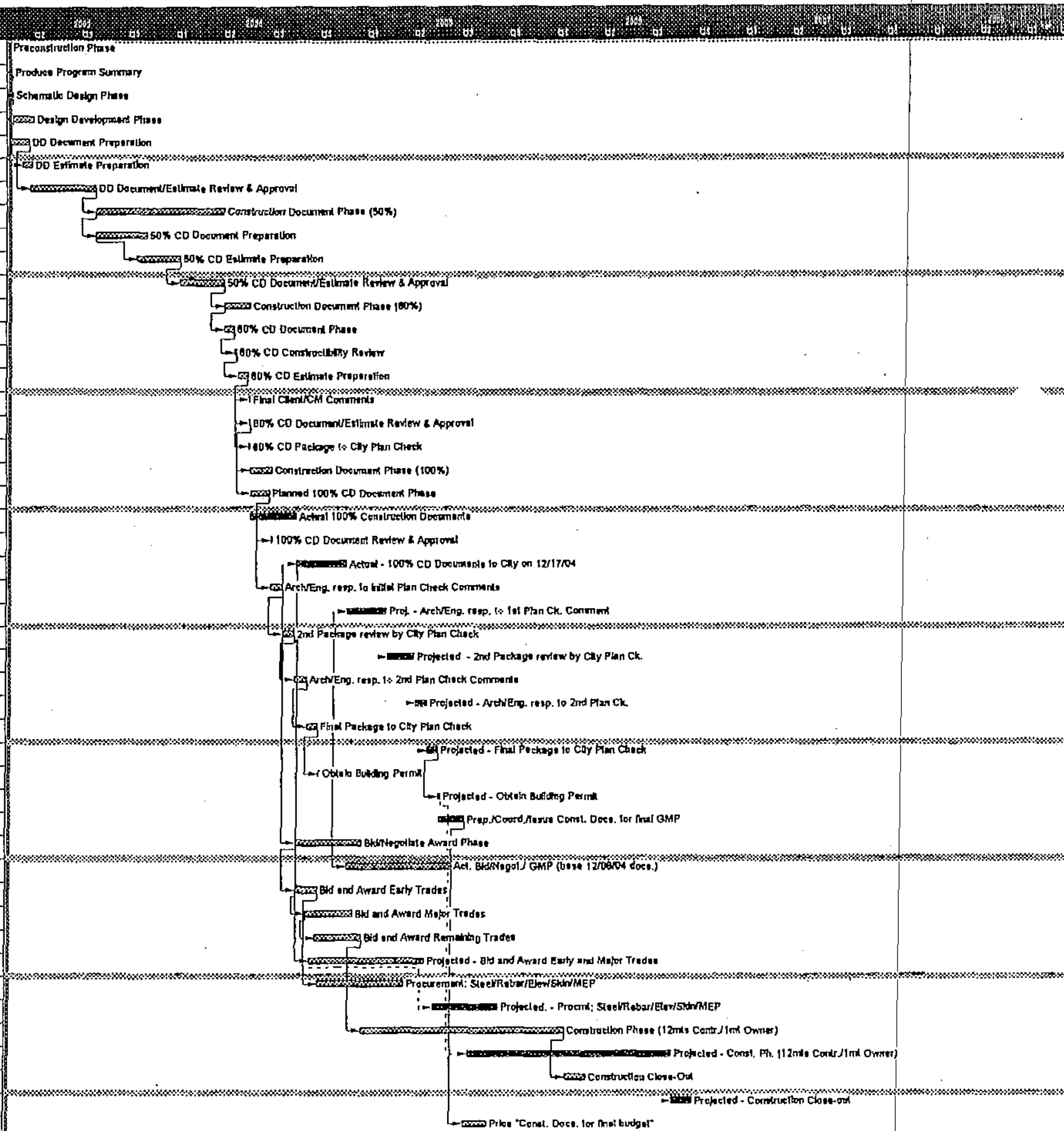
Amtrak Space

Prev Next Close

Attachment C
Agenda Item: G.1
Meeting Date: July 16, 2026

Exhibit IIIA

Act ID	Description	Orig Dur	Rem Dur	Early Start	Early Finish
1000	Preconstruction Phase	1	1	21MAR03	21MAR03
1010	Produce Program Summary	1	1	24MAR03	24MAR03
1020	Schematic Design Phase	1	1	25MAR03	25MAR03
1030	Design Development Phase	29	29	26MAR03	05MAY03
1040	DD Document Preparation	26	26	21MAR03	25APR03
1050	DD Estimate Preparation	15	15	14APR03	02MAY03
1060	DD Document/Estimate Review & Approval	90	90	28APR03	01SEP03
1070	Construction Document Phase (50%)	78	175	02SEP03	05MAY04
1080	50% CD Document Preparation	72	72	02SEP03	10DEC03
1090	50% CD Estimate Preparation	57	57	21NOV03	11FEB04
1100	50% CD Document/Estimate Review & Approval	60	60	12FEB04	05MAY04
1110	Construction Document Phase (80%)	35	35	06MAY04	23JUN04
1120	80% CD Document Phase	13	13	06MAY04	24MAY04
1130	80% CD Constructibility Review	4	4	25MAY04	28MAY04
1140	80% CD Estimate Preparation	15	15	31MAY04	18JUN04
1150	Final Client/CM Comments	3	3	21JUN04	23JUN04
1160	80% CD Document/Estimate Review & Approval	3	3	21JUN04	23JUN04
1170	80% CD Package to City Plan Check	3	3	21JUN04	23JUN04
1180	Construction Document Phase (100%)	30	30	24JUN04	04AUG04
1190	Planned 100% CD Document Phase	27	27	24JUN04	30JUL04
1191	Actual 100% Construction Documents	63	63	24JUN04 *	20SEP04
1200	100% CD Document Review & Approval	3	3	02AUG04	04AUG04
1210	Actual - 100% CD Documents to City on 12/17/04	70	70	21SEP04	27DEC04
1220	Arch/Eng. resp. to initial Plan Check Comments	17	17	02AUG04	24AUG04
1222	Proj. - Arch/Eng. resp. to 1st Plan Ck. Comment	55	55	28DEC04	14MAR05
1230	2nd Package review by City Plan Check	17	17	25AUG04	16SEP04
1232	Projected - 2nd Package review by City Plan Ck.	39	39	15MAR05	06MAY05
1240	Arch/Eng. resp. to 2nd Plan Check Comments	17	17	17SEP04	11OCT04
1242	Projected - Arch/Eng. resp. to 2nd Plan Ck.	17	17	09MAY05	31MAY05
1250	Final Package to City Plan Check	16	16	12OCT04	02NOV04
1252	Projected - Final Package to City Plan Check	16	16	01JUN05	22JUN05
1260	Obtain Building Permit	3	3	03NOV04	05NOV04
1262	Projected - Obtain Building Permit	3	3	23JUN05	27JUN05
1264	Prep./Coord./Issue Const. Docs. for final GMP	36	35	24JUN05 *	12AUG05
1220	Bid/Negotiate Award Phase	93	93	21SEP04	27JAN05
1272	Act. Bid/Negot./ GMP (base 12/08/04 docs.)	146	145	28DEC04	19JUL05
1280	Bid and Award Early Trades	32	32	21SEP04	03NOV04
1290	Bid and Award Major Trades	66	66	11OCT04	10JAN05
1300	Bid and Award Remaining Trades	65	65	29OCT04	27JAN05
1302	Projected - Bid and Award Early and Major Trades	160	160	19OCT04	30MAY05
1310	Procurement: Steel/Rebar/Elev/Skin/MEP	120	120	04NOV04	20APR05
1312	Projected. - Procmt: Steel/Rebar/Elev/Skin/MEP	90	90	18JUN05	20OCT05
1320	Construction Phase (12mts Contr./1mt Owner)	280	280	28JAN05	24FEB06
1322	Projected - Const. Ph. (12mts Contr./1mt Owner)	280	280	22AUG05	18SEP06
1324	Construction Close-Out	30	30	27FEB06	07APR06
1326	Projected - Construction Close-out	30	30	10SEP06	30OCT06
326	Price "Const. Docs. for final budget"	35	35	15AUG05	30SEP05



Start date	21MAR03
Finish date	20OCT06
Data date	21MAR03
Run date	01SEP05

HR Weatherford Company
Museum of Contemporary Art San Diego

Early bar
Progress bar
Critical bar
Summary bar
Start milestone point

EXHIBIT III A
Page 1 of 5

Attachment C
Agenda Item: C-1

Act ID	Description	Orig Dur	Rem Dur	Early Start	Early Finish
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1050	DD Estimate Preparation	15	15	14APR03	02MAY03
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1070	Construction Document Phase (50%)	75	175	02SEP03	05MAY04
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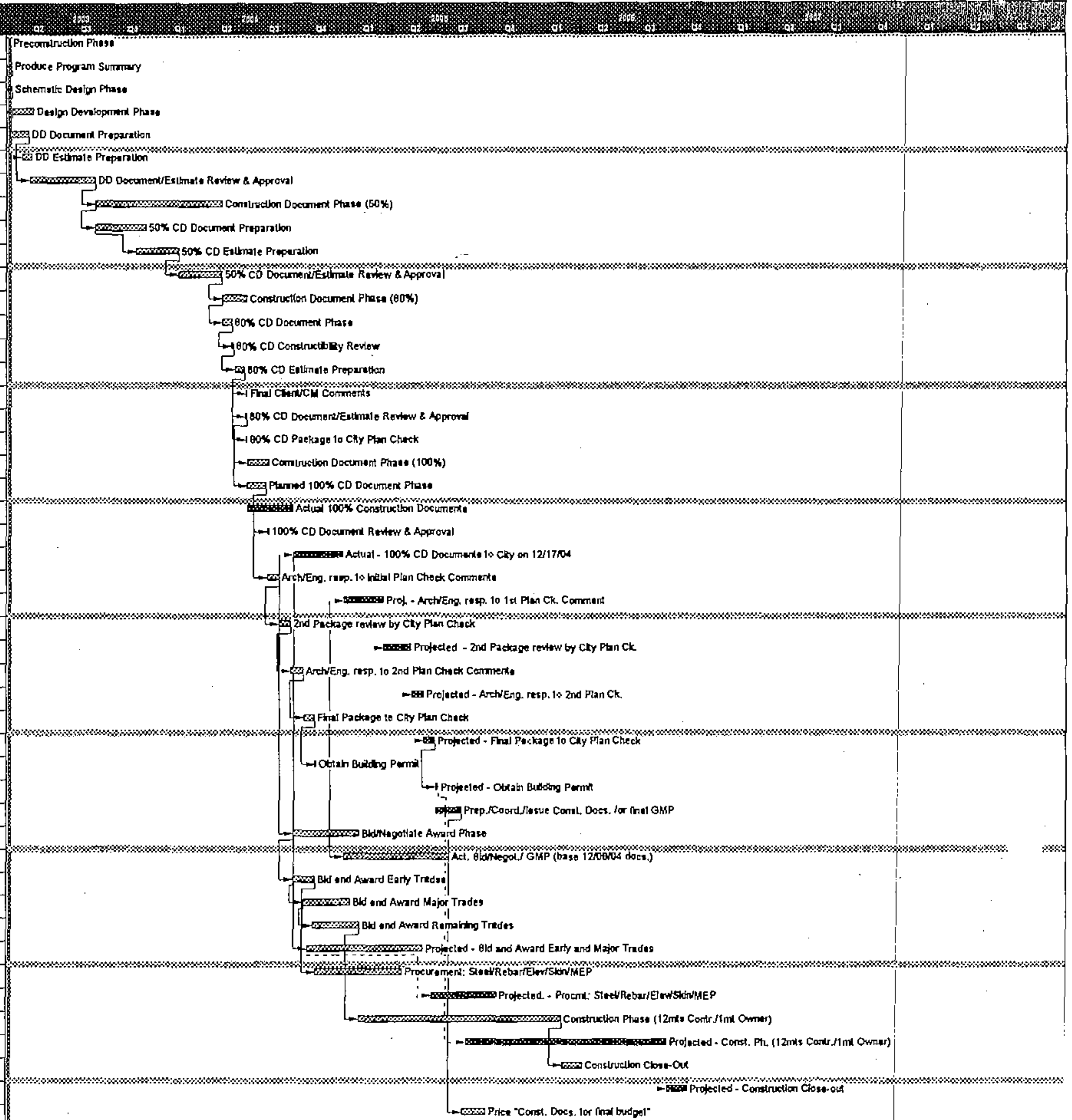
1326	Projected - Construction Close-out	30	30	18SEP06	30OCT06
1328	Price "Const. Docs. for final budget"	35	35	15AUG05	30SEP05



Start date	21MAR03
Finish date	30OCT06
Data date	21MAR03
Run date	01SEP05
Page number	1A

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HR Weatherford Company
Museum of Contemporary Art San Diego

Early bar
Progress bar
Critical bar
Summary bar
Start milestone point
Finish milestone point

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1060	DD Document/Estimate Review & Approval	90	90	28APR03	01SEP03
1070	Construction Document Phase (50%)	75	175	02SEP03	05MAY04
1080	50% CD Document Preparation	72	72	02SEP03	10DEC03
1090	50% CD Estimate Preparation	57	57	21NOV03	11FEB04
1100	50% CD Document/Estimate Review & Approval	60	60	12FEB04	05MAY04
1110	Construction Document Phase (80%)	35	35	08MAY04	23JUN04
1120	80% CD Document Phase	13	13	06MAY04	24MAY04
1130	80% CD Constructibility Review	4	4	25MAY04	28MAY04
1140	80% CD Estimate Preparation	15	15	31MAY04	18JUN04
1150	Final Client/CM Comments	3	3	21JUN04	23JUN04
1160	80% CD Document/Estimate Review & Approval	3	3	21JUN04	23JUN04
1170	80% CD Package to City Plan Check	3	3	21JUN04	23JUN04
1180	Construction Document Phase (100%)	30	30	24JUN04	04AUG04
1190	Planned 100% CD Document Phase	27	27	24JUN04	30JUL04
1191	Actual 100% Construction Documents	63	63	24JUN04 *	20SEP04
1200	100% CD Document Review & Approval	3	3	02AUG04	04AUG04
1210	Actual - 100% CD Documents to City on 12/17/04	70	70	21SEP04	27DEC04
1220	Arch/Eng. resp. to Initial Plan Check Comments	17	17	02AUG04	24AUG04
1222	Proj. - Arch/Eng. resp. to 1st Plan Ck. Comment	55	55	28DEC04	14MAR05
1230	2nd Package review by City Plan Check	17	17	25AUG04	16SEP04
1232	Projected - 2nd Package review by City Plan Ck.	38	30	15MAR05	06MAY05
1240	Arch/Eng. resp. to 2nd Plan Check Comments	17	17	17SEP04	11OCT04
1242	Projected - Arch/Eng. resp. to 2nd Plan Ck.	17	17	09MAY05	31MAY05
1250	Final Package to City Plan Check	16	16	12OCT04	02NOV04
1252	Projected - Final Package to City Plan Check	16	18	01JUN05	22JUN05
1260	Obtain Building Permit	3	3	03NOV04	05NOV04
1262	Projected - Obtain Building Permit	3	3	23JUN05	27JUN05
1264	Prep./Coord./Issue Const. Docs. for final GMP	35	35	24JUN05 *	12AUG05
1270	Bid/Negotiate Award Phase	03	93	21SEP04	27JAN05
1272	Act. Bid/Negot./ GMP (base 12/08/04 docs.)	145	145	28DEC04	19JUL05
1280	Bid and Award Early Trades	32	32	21SEP04	03NOV04
1290	Bid and Award Major Trades	68	68	11OCT04	10JAN05
1300	Bid and Award Remaining Trades	65	65	29OCT04	27JAN05
1302	Projected - Bid and Award Early and Major Trades	160	160	19OCT04	30MAY05
1310	Procurement: Steel/Rebar/Elev/Skin/MEP	120	120	04NOV04	20APR05
1312	Projected. - Procmt: Steel/Rebar/Elev/Skin/MEP	00	90	16JUN05	20OCT05
1320	Construction Phase (12mts Contr./1mt Owner)	280	280	28JAN05	24FEB06
1322	Projected - Const. Ph. (12mts Contr./1mt Owner)	280	280	22AUG05	18SEP06
1324	Construction Close-Out	30	30	27FEB06	07APR06
1326	Projected - Construction Close-out	30	30	19SEP06	30OCT06
1328	Price "Const. Docs. for final budget"	35	35	15AUG05	30SEP05

Start date	21MAR03
Finish date	30OCT06
Data date	21MAR03
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Page number	1A

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HR Weatherford Company
Museum of Contemporary Art San Diego

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Summary bar
Start milestone point
Finish milestone point

EXHIBIT III A

Attachment C
Agenda Item: G.1

Act ID	Description	Orig Dur	Rem Dur	Early Start	Early Finish
1000	Preconstruction Phase	1	1	21MAR03	21MAR03
1010	Produce Program Summary	1	1	24MAR03	24MAR03
1020	Schematic Design Phase	1	1	25MAR03	25MAR03
1030	Design Development Phase	29	29	26MAR03	05MAY03
1040	DD Document Preparation	26	26	21MAR03	25APR03
1050	DD Estimate Preparation	15	15	14APR03	02MAY03
1060	DD Document/Estimate Review & Approval	80	90	28APR03	01SEP03
1070	Construction Document Phase (50%)	75	175	02SEP03	05MAY04
1080	50% CD Document Preparation	72	72	02SEP03	10DEC03
1090	50% CD Estimate Preparation	57	57	21NOV03	11FEB04
1100	50% CD Document/Estimate Review & Approval	60	60	12FEB04	05MAY04
1110	Construction Document Phase (80%)	35	35	06MAY04	23JUN04
1120	80% CD Document Phase	13	13	06MAY04	24MAY04
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1170	80% CD Package to City Plan Check	3	3	21JUN04	23JUN04
1160	Construction Document Phase (100%)	30	30	24JUN04	04AUG04
1190	Planned 100% CD Document Phase	27	27	24JUN04	30JUL04
1191	Actual 100% Construction Documents	63	63	24JUN04 *	20SEP04
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1232	Projected - 2nd Package review by City Plan Ck.	39	39	15MAR05	06MAY05
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1270	Bid/Negotiate Award Phase	93	93	21SEP04	27JAN05
1272	Act. Bid/Negot./ GMP (base 12/08/04 docs.)	145	145	28DEC04	19JUL05
1280	Bid and Award Early Trades	32	32	21SEP04	03NOV04
1290	Bid and Award Major Trades	66	66	11OCT04	10JAN05
1300	Bid and Award Remaining Trades	65	65	29OCT04	27JAN05
1302	Projected - Bid and Award Early and Major Trades	160	160	19OCT04	30MAY05
1310	Procurement: Steel/Rebar/Elev/Skin/MEP	120	120	04NOV04	20APR05
1312	Projected. - Procmt: Steel/Rebar/Elev/Skin/MEP	90	90	16JUN05	20OCT05
1320	Construction Phase (12mts Contr./1mt Owner)	280	280	28JAN05	24FEB06
1322	Projected - Const. Ph. (12mts Contr./1mt Owner)	280	280	22AUG05	18SEP06
1324	Construction Close-Out	30	30	27FEB06	07APR06
1326	Projected - Construction Close-out	30	30	19SEP06	30OCT06
1328	Price "Const. Docs. for final budget"	35	35	15AUG05	30SEP05

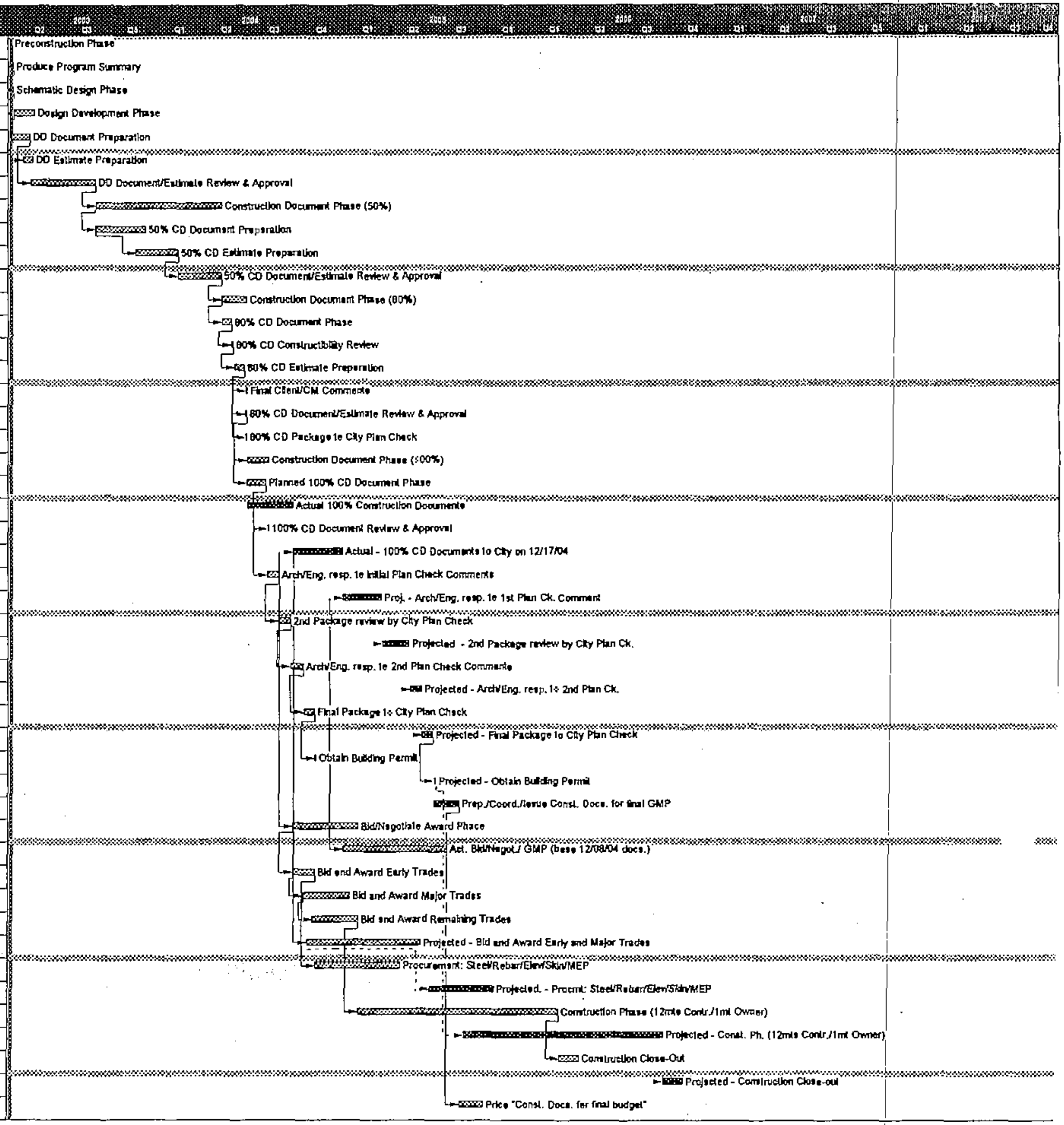

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EXHIBIT III A

Attachment C
Agenda Item: G.1

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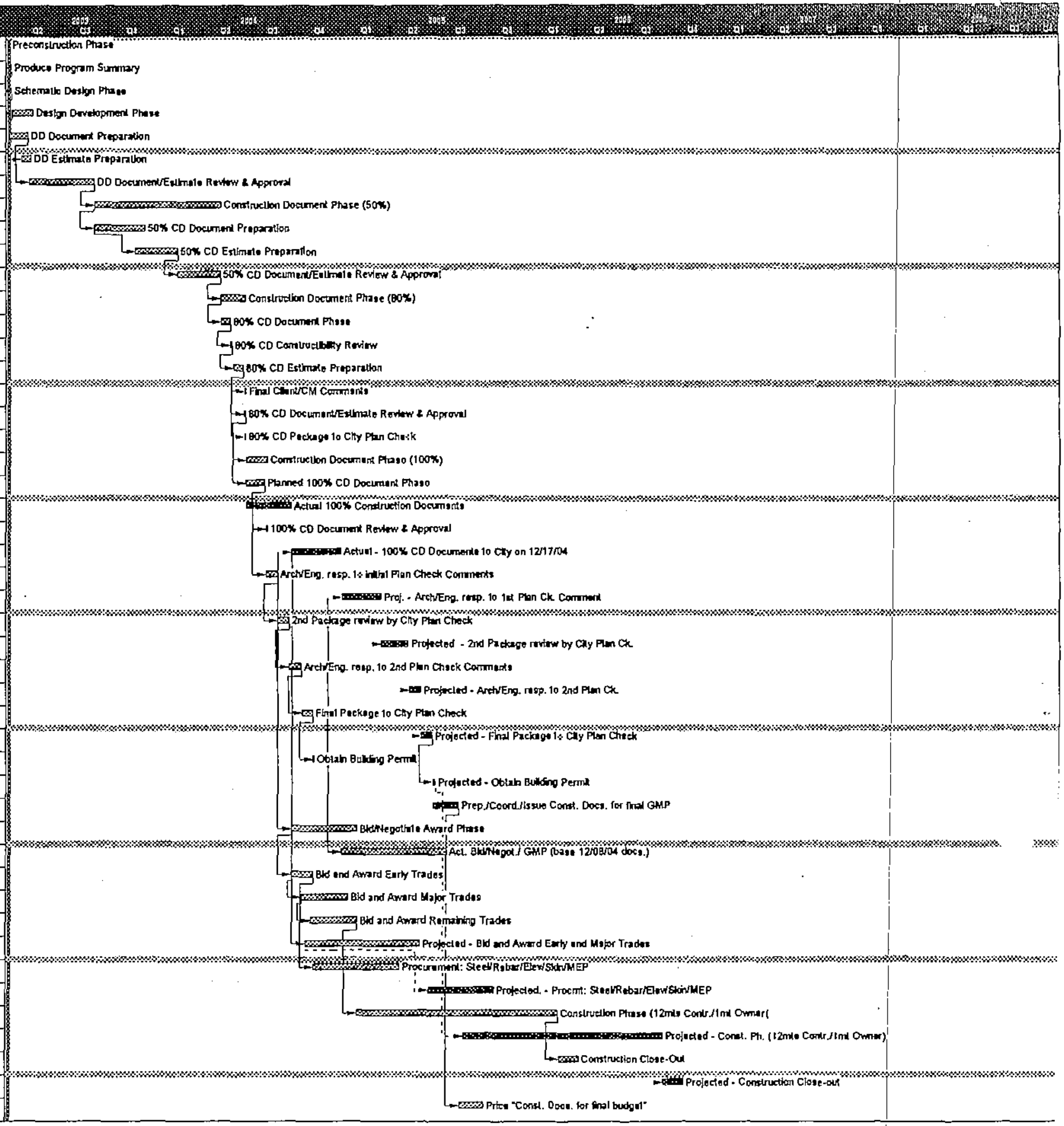

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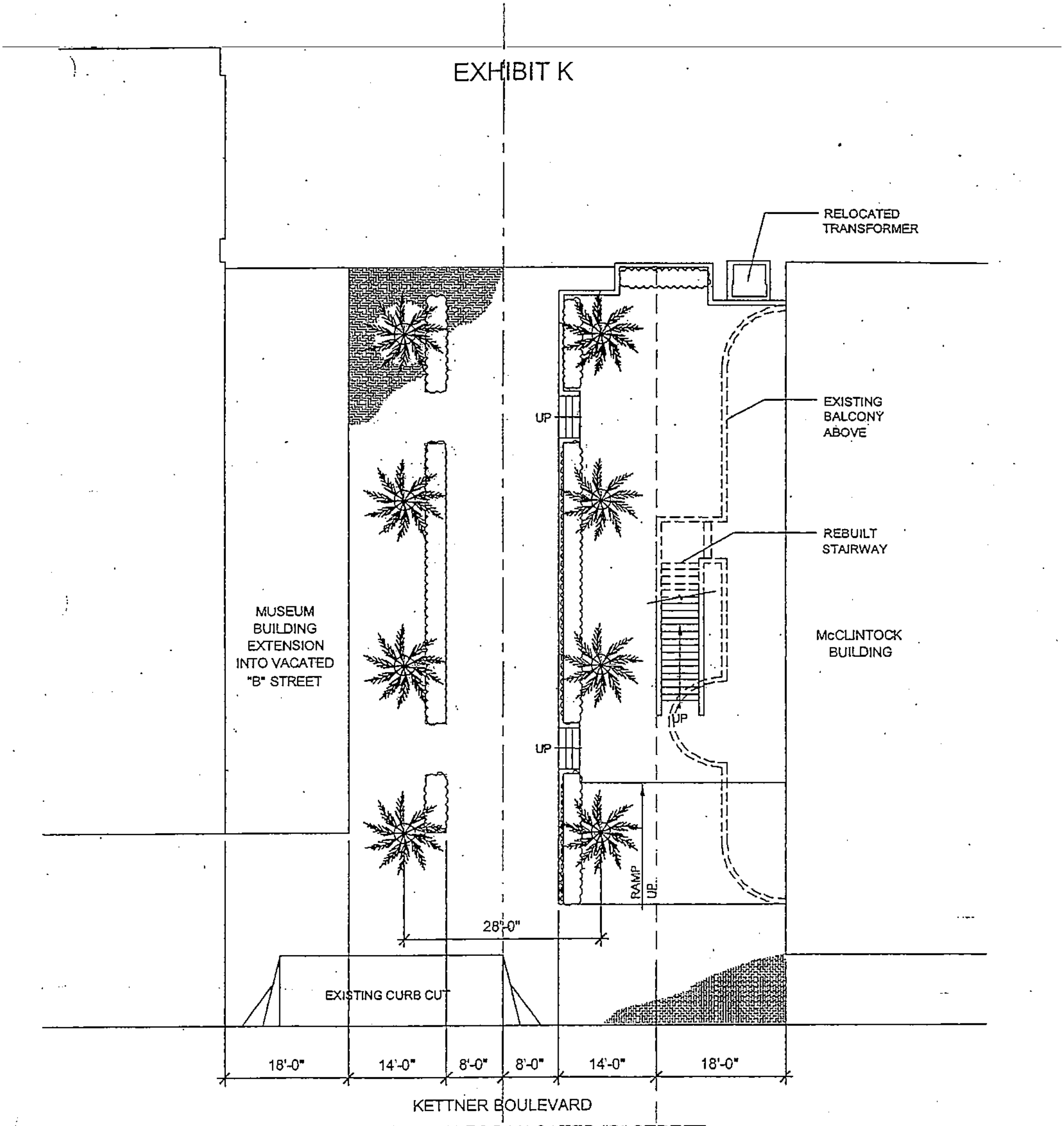
EXHIBIT III A

EXHIBIT K



PRELIMINARY PLAN FOR VACATED "B" STREET
PATHWAY IMPROVEMENTS

MAY 5, 2004

EXHIBIT K
(of Transfer Agreement)

Attachment C
Agenda Item: G.1
Meeting Date: July 16, 2026

_______________, 2006

The City of San Diego
Office of the City Clerk
San Diego, California 92101

Redevelopment Agency of
The City of San Diego
600 B Street, Fourth Floor
San Diego, California 92101

Re: Amtrak Lease and First Amendment to Amtrak Lease Between Museum of Contemporary Art, San Diego, and National Railroad Passenger Corporation

Pursuant to Section 1.16 (e) and Section 2.1.3 of that certain Transfer Agreement and Escrow Instructions made as of July 2, 2004, among Catellus Operating Limited Partnership, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware Corporation, the City of San Diego, a municipal corporation of the State of California, the Redevelopment Agency of the City of San Diego, a public body corporate and politic of the State of California, the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation (Museum), and Commonwealth Land Title Company, the undersigned, Museum and National Railroad Passenger Corporation, a corporation organized and existing under National Rail Passenger Service Act and the laws of District of Columbia (Amtrak), hereby submit for your approval: (1) a duplicate original of Amtrak Lease executed as of February 1, 2006, between Museum and Amtrak, and (2) a copy of the First Amendment to Amtrak Lease.

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO,
a California non-profit public benefit corporation

By: Mary Berglund
Its: President, Board of Trustees

[Signatures continued on next page]

AMTRAK:

NATIONAL RAILROAD PASSENGER CORPORATION,
a corporation organized and existing under National Rail
Passenger Service Act and the laws of District of Columbia

By: William G. [signature]
Its: Acting Vice President Real Estate Development

THE UNDERSIGNED HEREBY APPROVE AND CONSENT to the attached Lease and First Amendment to Amtrak Lease, and City agrees that City shall honor and be bound by the terms of the Lease, as amended, if City becomes the owner of the new museum building (the Copley Building) during the Lease term.

CITY OF SAN DIEGO, a municipal corporation
of the State of California

By: ______________________________
Name: ______________________________
Title: ______________________________

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California

By: ______________________________
Name: ______________________________
Title: ______________________________

SS00 11-19-24

(R-2025-208)

RESOLUTION NUMBER R- 315903

DATE OF FINAL PASSAGE NOV 1 9 2024

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THAT CERTAIN AGREEMENT SATISFYING AND TERMINATING OBLIGATIONS UNDER 2004 TRANSFER AGREEMENT AND AMENDING 2004 CITY OPTION, IN RELATION TO THE MUSEUM SITE AT 1100 KETTNER BOULEVARD IN DOWNTOWN SAN DIEGO, AND AUTHORIZING RELATED ACTIONS.

RECITALS

The Council of the City of San Diego (Council) adopts this Resolution based on the following:

A. The City of San Diego (City), the former Redevelopment Agency of the City of San Diego (Former RDA), the Museum of Contemporary Art, San Diego, a California nonprofit public benefit corporation (Museum), and Catellus Operating Limited Partnership (Catellus) entered into that certain Transfer Agreement and Escrow Instructions dated July 1, 2004 (2004 Transfer Agreement), on file in the Office of the City Clerk as Document No. RR-299406.

B. Under the 2004 Transfer Agreement, (i) Catellus transferred to the Museum (as the City's designated entity) fee title ownership of the real property located at 1100 Kettner Boulevard near the Santa Fe Depot in downtown San Diego, consisting of the "Baggage Building Site" and the "REA Site" as defined in the 2004 Transfer Agreement (collectively, Property); (ii) the Museum constructed and opened a new building featuring a contemporary art museum (New Museum Building) on the REA Site; (iii) with the consent of the City and the Former RDA, the Museum and National Railroad Passenger Corporation, also known as Amtrak, entered into that certain Amtrak Lease dated February 1, 2006, as amended by that certain First Amendment to Amtrak Lease dated September 8, 2006, for Amtrak's occupancy of a portion of the New Museum Building (collectively, Amtrak Lease); (iv) the Museum agreed, for the City's benefit, to continuously operate a contemporary art museum in the New Museum Building, except for the portion subject to the Amtrak Lease, featuring exhibitions and public programs exploring contemporary art forms and media; and (v) the Museum agreed to pay $150,000 to the Former RDA to assist in funding certain public pathway and landscaping improvements between Kettner Boulevard and the Transit Courtyard within the vacated B Street right of way (Public Access Improvements), as further described in Section 10.22 of the 2004 Transfer Agreement. The City, in its capacity as the designated successor agency to the Former RDA (Successor Agency), is administering the completion of the Public Access Improvements.

C. The parties to the 2004 Transfer Agreement caused two contracts to be signed in connection with the transfer of Property ownership from Catellus to the Museum: (1) the Grant Deed from Catellus to the Museum, recorded in the Official Records of the San Diego County Recorder's Office (Official Records) as Document No. 2004-0711683 on July 29, 2004 (2004 Grant Deed); and (2) the City Option dated July 20, 2004, between the City and the Museum (2004 City Option).

D. Section 2.1 of the 2004 Grant Deed required the Museum and its successors and assigns to use and manage the Property only as a museum or for other "Cultural or Institutional Uses" (defined in Section 2.1.1 of the 2004 Grant Deed to include "uses by institutions displaying or preserving objects of interest in one or more of the arts and sciences, such as museums, libraries and art galleries") and allowed a portion of the Property to be used for certain ancillary purposes, such as a café, a gift shop, and certain pathway and landscaping improvements (as further described in Sections 2.1 and 2.1.2 of the 2004 Grant Deed).

E. In Section 1.2 of the 2004 City Option, the Museum granted an option to the City to acquire the Property either: (a) in the event the Museum commits a "Default" (defined in

Section 1.3 of the 2004 City Option generally to include the Museum's failure to comply with any substantive covenant or condition under the 2004 Transfer Agreement required to be performed by the Museum); or (b) on or after July 31, 2091. In Section 3 of the 2004 City Option, the Museum agreed to perform all its obligations under the 2004 Transfer Agreement, for the City's benefit. In Resolution R-299406 (June 29, 2004), the Council approved the 2004 Transfer Agreement and confirmed that the City's acquisition of the Property upon the City's exercise of the 2004 City Option would occur at no cost to the City.

F. The Museum now proposes to sell the Property to The Regents of the University of California, a California corporation (The Regents), which operates various public educational institutions, including the University of California San Diego. To facilitate the Property sale, the City, the Museum, and The Regents (collectively, Parties) negotiated the proposed Agreement Satisfying and Terminating Obligations under 2004 Transfer Agreement and Amending 2004 City Option (Agreement). The Successor Agency is not a party to the Agreement because the Successor Agency administratively transferred to the City all land use plans and functions pertaining to the Property, including the 2004 Transfer Agreement, as permitted by California Health and Safety Code section 34173(i).

G. Under the Agreement, the Parties will agree to the following terms and carry out the following obligations in connection with the closing of the Property sale: (i) the Museum will instruct the escrow agent to disburse $150,000 to the City from the Museum's gross Property sale proceeds, in satisfaction of the Museum's financial obligation toward the Public Access Improvements and for the Successor Agency's use in completing the Public Access Improvements; (ii) the 2004 City Option will be amended to substitute The Regents in place of the Museum, to grant to the City an exclusive option to acquire fee title ownership of the

Property from The Regents on July 31, 2091, at no cost to the City, and to remove the City's ability to acquire the Property upon a default of the applicable use covenants (collectively, Amended Option); (iii) the Museum and The Regents will sign and record a new grant deed in the Official Records, in the form of Attachment 1 to the Agreement (New Grant Deed), modifying the use covenants on the Property to allow a slightly broader array of cultural, institutional, and educational uses and confirming that those modified covenants will inure to the City's benefit; (iv) the City and The Regents will sign and record a memorandum in the Official Records, in the form of Attachment 2 to the Agreement (New Memorandum), providing notice of the City's rights under the Amended Option; (v) the City will not have the right to regulate The Regents' use of the Property, except to enforce the use covenants set forth in the New Grant Deed; (vi) the City will release all rights it may possess now or in the future in relation to the Amtrak Lease, or to declare a default by The Regents of any unrecorded obligations relating to the Property; and (vii) the City will consent to the Museum's sale of the Property to The Regents.

H. The Office of the City Attorney prepared this Resolution based on the information provided by City staff (including information provided by affected third parties and verified by City staff), with the understanding that this information is complete and accurate.

ACTION ITEMS

Be it resolved by the Council of the City of San Diego:

1. The Council approves the Agreement.

2. The Mayor, or designee, is authorized and directed to sign the Agreement on the City's behalf. When signed by all parties, the Agreement will be placed on file in the Office of the City Clerk as Document No. RR-315903.

3. The Mayor, or designee, is authorized and directed to take all actions and sign all documents (including the New Memorandum) necessary to implement the Agreement.

4. The Chief Financial Officer is authorized and directed to establish a separate interest-bearing account for the B Street Corridor Fund and, upon the City's receipt of the $150,000 escrow disbursement from the Museum's sale of the Property, to accept and deposit $150,000 into this separate account, which will be earmarked and limited for the Successor Agency's completion of the Public Access Improvements as defined in the Agreement.

APPROVED: MARA W. ELLIOTT, City Attorney

By Kevin Reisch
Kevin Reisch
Senior Deputy City Attorney

KJR/jdf
10/23/24
Or. Dept: Econ. Dev.
Doc. No.: 3854587

I certify that the Council of the City of San Diego adopted this Resolution at a meeting held on NOV 19 2024.

DIANA J.S. FUENTES
City Clerk

By Krystell Medina
Deputy City Clerk

Approved: 11/19/24
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: ______________
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on NOV 19 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	X			
Jennifer Campbell	X			
Stephen Whitburn	X			
Henry L. Foster III	X			
Marni von Wilpert	X			
Kent Lee	X			
Raul A. Campillo			X	
Vivian Moreno			X	
Sean Elo-Rivera	X			

Date of final passage NOV 19 2024.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Krystell Medina, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-315903

Resolution No: OB-2026-17
Meeting Date: 07/16/2026

A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING A CONTRACT BETWEEN THE CITY OF SAN DIEGO ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY AND CIVIC SAN DIEGO FOR THE B STREET PEDESTRIAN CORRIDOR PROJECT.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, under California's redevelopment dissolution laws, the Former RDA dissolved as of February 1, 2012, at which time the City, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations and commenced winding down the Former RDA's operations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with Assembly Bill x1 26 (AB 26), as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, the Dissolution Laws specify that the Oversight Board and the California Department of Finance (DOF) must review and approve certain actions and decisions of the Successor Agency, including the Successor Agency's approval of each Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, among other things, each ROPS shows the estimated payments owed by the Successor Agency to third parties for enforceable obligations during the upcoming fiscal period and identifies the funding sources that will be used to make such payments; and

WHEREAS, California Health and Safety Code (Code) section 34177.3(a) states that successor agencies "shall lack the authority to, and shall not, create new enforceable obligations or begin redevelopment work, except in compliance with an enforceable obligation . . . that existed prior to June 28, 2011"; and

WHEREAS, Code section 34177.3(b) permits successor agencies to "create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance"; and

WHEREAS, Code section 34171(d)(1)(E) defines "enforceable obligation" to include "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy"; and

WHEREAS, Code section 34171(d)(1)(F)(i) further defines "enforceable obligation" to include "[c]ontracts or agreements for the administration or operation of the successor agency, in accordance with this part . . . ."; and

WHEREAS, Code section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and Code section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation; and

WHEREAS, the DOF issued a letter dated November 8, 2013 (November 2013 Letter) that effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond; and

WHEREAS, the DOF also issued a letter dated April 1, 2014 (April 2014 Letter), interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with Code section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with Code section 34171(d)(1)(F)(i); and

WHEREAS, Civic San Diego (CivicSD) performs certain administrative functions on the Successor Agency's behalf related to winding down the Former RDA's operations; and

WHEREAS, to comply with the November 2013 Letter and the April 2014 Letter, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, the Compensation Agreement (Agreement) between the City of San Diego and CivicSD for the completion of certain pedestrian pathway improvements in the B Street corridor in downtown San Diego (Project) pursuant to an enforceable obligation, as described further below; and

WHEREAS, in 1993, the Former RDA and Catellus Development Corporation (Catellus) entered into the Amended and Restated Development Agreement and the Amended and Restated Owner Participation Agreement (collectively, Development/Owner Participation Agreement), which revised development entitlements first granted in 1983 to Catellus' predecessor for approximately 17 acres of land near the Santa Fe Depot in downtown San Diego; and

WHEREAS, the Development/Owner Participation Agreement required Catellus to retrofit and complete base building improvements to the Santa Fe Depot Baggage Building (Baggage Building) and transfer title of the Baggage Building to the City, or any other governmental agency or non-profit entity designated by the City, for use as a museum or other cultural use; and

WHEREAS, in 2004, the Former RDA, an affiliate of Catellus, and the Museum of Contemporary Art, San Diego (Museum) entered into the Transfer Agreement and Escrow Instructions (Transfer Agreement), by which Catellus transferred title of the Baggage Building to the City and the City leased the Baggage Building to the Museum; and

WHEREAS, Section 10.22 of the Transfer Agreement requires the Successor Agency, as successor to the Former RDA, to pay for the design, development, construction, and installation of the pedestrian pathway and landscaping improvements in the B Street corridor (Project), as further described in the staff report accompanying this Resolution; and

WHEREAS, the City entered into an Agreement Satisfying and Terminating Obligations Under 2004 Transfer Agreement and Amending 2004 City Option, between the Museum and the Regents of the University of California (Regents), effectively transferring all obligations of the Museum to Regents, including the $150,000 (Project Contribution) stipulated in the Transfer Agreement; and

WHEREAS, the $150,000 Project Contribution is currently held in a dedicated account by City for the Project; and

WHEREAS, under Resolution No. OB-2019-025 adopted on September 19, 2019, the Oversight Board approved the original Professional Services Agreement between CivicSD and Kimley Horn and Associates (KHA), regarding the maximum expenditure of $49,600 in ROPS-approved funds for an initial phase of civil engineering consulting services, which included schematic design, preliminary cost estimate, and public outreach associated with the Project; and

WHEREAS, under Resolution No. OB-2021-020 adopted on October 21 2021, the Oversight Board approved the First Amendment to the Professional Services Agreement between CivicSD and KHA, increasing the compensation by $140,747.75 from the previous amount of

$49,600 for a total amount of $190,347.75 to complete the second phase of civil engineering consulting services for the Project; and

WHEREAS, under Resolution No. OB-2025-023 adopted on October 16 2025, the Oversight Board approved the Second Amendment to the Professional Services Agreement between CivicSD and KHA, increasing the compensation by $100,000 from the previous amount of $190,347.75 for a total amount of $290,347.75 to complete the final design of the Project and obtain permit ready documents for construction of the Project; and

WHEREAS, the Compensation Agreement will benefit the local taxing entities and will be in their best interests, in that it will permit the Successor Agency to carry out its contractual obligation under the Transfer Agreement, a pre-AB 26 contract, to complete the design, development, construction, and installation of the Project, and will avoid the Successor Agency's breach of its contractual obligation; and

WHEREAS, the Compensation Agreement is necessary for the operation or administration of the Successor Agency because it permits the Successor Agency to complete the final design, development, construction, and installation of the Project and to fulfill its contractual obligation under the Transfer Agreement related to the Project; and

WHEREAS, the maximum expenditure amount under the Compensation Agreement is $2,162,288 funded from ROPS line item 164 and the Project Contribution of $150,000.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Board finds, under Code section 34181(e), that the Compensation Agreement is in the best interests of the local taxing entities.

2. The Board finds, under Code section 34171(d)(1)(F)(i), that the provision of services under the Compensation Agreement is necessary for the administration or operation of the Successor Agency.

3. The Compensation Agreement is approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on July 16, 2026.

Approved as to Form and Legality
By Steve Mattas, Oversight Board Counsel

____
Scott Buxbaum
Chair, Oversight Board

PENDULUM
PROPERTY PARTNERS

January 21, 2026

Mayor Todd Gloria
City of San Diego
202 C Street, 11th Floor
San Diego, CA 92101
mayortoddgloria@sandiego.gov

Re: Offers to Purchase the Leased Fee Interest in Liberty Station (Former Naval Training Center)

Dear Honorable Mayor Gloria:

On behalf of Seligman Liberty Station, LLC, I am writing today to reinstate our offer to purchase the Ground Leased Fee Interest in our properties and submit *offers from other property owners* at Liberty Station to purchase their ground Leased Fee interest in fully developed properties at Liberty Station. These offers present a purchase price of a portion of the properties in the City's Appraised Value by ***7 times*** (see Exhibit B attached – highlighted properties).

The appraised value supports the City's offer in a draft Compensation Agreement the City of San Diego prepared and submitted to the County of San Diego (see Exhibit A), one of 14 Affected Taxing Entities (ATE's). These ATE's would be the recipients of the proceeds of sale/compensation for the ground Leased Fee interest in the above-named former Redevelopment Agency properties at Liberty Station, the former Naval Training Center San Diego. (Affected Taxing Entities – Set forth in Exhibit B of this Letter). As per the City Appraisal in Exhibit B, the *City of San Diego is offering the Taxpayer, $390,000* for the properties represented in the three attached offers. However, the three offers from *other property owners at Liberty Station herein combined, amount to proceeds of $2,737,000* (see Exhibits C, D and E, attached) to the Taxpayer. This is *over 700% of the offer set forth in the City's draft Compensation Agreement* to the County of San Diego.

As the San Diego Region experiences extensive budgetary challenges at all levels of government, we are confident the offers set forth herein will benefit the Taxpayer and the ATE's far beyond the benefits offered by the compensation agreement the City of San Diego presented to the County of San Diego. We also encourage the City of San Diego to solicit offers from the open market on the other Liberty Station properties in the appraisal. Such an effort *could also generate 7-times the City's offer or potentially in excess of $10,000,000*.

The current ground leases in place have 44 years remaining. As cited in a *London Moeder Advisors report studying ground leases at Liberty Station dated March 2025*, if the Liberty Station ground leases continue to be held by the City until 2070, *"The ground lease is estimated to cost the City and the taxing agencies $99.6 Million to $131.7 Million in lost tax revenues."* The ground leases also cause other detrimental factors over time, as cited in the report.

The Redevelopment Agency and the Dissolution Act

As a background, all redevelopment agencies in California were dissolved in 2012 pursuant to AB 26 ("Dissolution Act"). In response to the Dissolution Act, as supplemented by AB 1484, the City created the Successor Agency to the San Diego Redevelopment Agency ("RDA") which prepared the Amended and Restated Long-Range Property Management Plan ("ARPMP") identifying and categorizing properties formerly held by the RDA.

The ARPMP, approved by the State Department of Finance in 2015, identifies all of the former RDA's non-housing properties and places them into one of four categories involving: (1) transfer to the City for governmental use; (2) transfer to the City for future development; (3) retention by the Successor Agency to fulfill an enforceable obligation; or (4) liquidation by the Successor Agency per H&S Code §34191.5(c)(2). The approved ARPMP categorizes all properties in Liberty Station as "Future Development."

The Successor Agency transferred all "Future Development" properties to the City. The ARPMP allows the City to sell any "Future Development" if the City is unable to negotiate a compensation agreement with the other taxing agencies having an interest in the property. As we understand it, the City was unable to negotiate such an agreement covering the 22 properties (including Liberty Station) categorized "Future Development" in the ARPMP. As a result, the City has initiated the sale of at least 10 of the 22 properties pursuant to its obligations under the Dissolution Act.

Although the City's current intentions with respect to the properties in Liberty Station are unclear, there is little justification to maintaining the properties in "Future Development" status because the properties Seligman purchased have been fully developed for over 15 years and represent only a portion of what the master developer formerly owned. The use of this portion of Liberty Station is regulated an established comprehensive set of land use entitlements and subject to a 66-year lease. Eventually, all of the properties in "Future Development" status must be sold or a compensation agreement must be formed with the Affected Taxing Entities (ATE's) to comply with the Dissolution Act.

Offer to Purchase

We respectfully request your consideration and focus on these three offers (attached Exhibits C, D and E) which provide over 7 times the amount offered in the draft Compensation Agreement referenced. We do feel these offers, if transacted, will benefit the Taxpayer and Liberty Station as a whole for decades to come. Please contact me at your earliest convenience to discuss these three purchases.

Sincerely,

Joe Haeussler, Executive Vice President
Pendulum Property Partners
2495 Truxton Road, Suite 207
San Diego, California 92106

Cc: Ms. Paola Avila, City of San Diego, Mayor Todd Gloria - Chief of Staff
Ms. Jennifer Campbell, City of San Diego, Council
Ms. Christina Bibler, City of San Diego, Director, Economic Development Department
Mr. Michael Wong, Program Manager, City of San Diego, Economic Development Dept.
Mr. David Cohn, Manager, Davles, LLC
Mr. David Marks, SVP, Tower Investments
ATTACHED Exhibit F – Taxing Entities Distribution List

EXHIBIT A

City Draft Compensation Agreement

COMPENSATION AGREEMENT FOR PROPERTY RETAINED BY THE CITY OF SAN DIEGO FOR FUTURE DEVELOPMENT
(Naval Training Center)

This Compensation Agreement for Property Retained by the City of San Diego for Future Development ("Agreement") pertains to certain properties located at the area bounded by Rosecrans Street, Barnett Avenue, Cushing Road, and Womble Road, and also Harbor Drive between Laning and Kinkaid Roads, comprising substantial portions of the former Naval Training Center (NTC), now known as Liberty Station, in San Diego, California (collectively, "Property"). This Agreement is entered into by and among the City of San Diego, County of San Diego, Lemon Grove School District, San Ysidro School District, Grossmont Union High School District, Sweetwater Union High School District, San Diego Unified School District, Grossmont-Cuyamaca Community College District, San Diego Community College, Southwestern Community College, San Diego County Office of Education, Grossmont Healthcare District, and San Diego County Water Authority (collectively, "Taxing Entities" or "Parties"). This Agreement shall take effect after all Parties have signed this Agreement. The effective date of this Agreement is ____________________, 20___, which is the date on which the last Party has signed this Agreement ("Effective Date").

RECITALS

The Parties enter into this Agreement with reference to the following circumstances:

A. Pursuant to Assembly Bill xl 26 enacted June 28, 2011, and subsequent legislation (collectively, the "Dissolution Laws"), the Redevelopment Agency of the City of San Diego ("Former RDA") dissolved as of February 1, 2012, and the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA ("Successor Agency"), became responsible for fulfilling the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Former RDA.

B. On December 2, 2013, the Successor Agency received the finding of completion from the California Department of Finance ("DOF"), confirming that the Successor Agency had completed three payments of unencumbered funds to the San Diego County Auditor and Controller ("County Auditor") for pro rata distribution to the local taxing entities in accordance with the Dissolution Laws. Under California Health and Safety Code ("Code") section 34191.1, the DOF's issuance of the finding of completion entitled the Successor Agency to, among other things, prepare and submit the Long-Range Property Management Plan ("PMP") for the orderly disposition of the Former RDA's non-housing assets.

C. The Oversight Board for the Successor Agency ("Oversight Board") approved the Successor Agency's original PMP in April 2014. The Successor Agency thereafter submitted the original PMP to the DOF for approval. The DOF did not approve the PMP, but instead provided the Successor Agency with various comments and proposed revisions to the PMP. The Successor Agency then prepared the Amended and Restated PMP ("ARPMP"), incorporating the DOF's comments and proposed revisions. On September 21, 2015, the Oversight Board adopted Resolution No. OB-2015-14, approving the ARPMP. On October

15, 2015, the DOF issued a letter unconditionally approving the ARPMP. A copy of the approved ARPMP has been provided to each Party.

D. Consistent with Code section 34191.5(c)(2), the ARPMP requires the Successor Agency to dispose of the Former RDA's properties through four categories: (1) transfer to the City for governmental use; (2) liquidation or sale to a third party; (3) transfer to the City for future development in accordance with historical redevelopment objectives; and (4) fulfillment of an enforceable obligation.

E. Based on the DOF's feedback on the PMP, the ARPMP identifies the Property in the future development disposition category, as Item FD-16. The Property consists of Assessor Parcel Numbers 450-830-25, 450-830-26, 450-830-27, 450-830-28, 450-830-29, 450-830-30, 450-830-31, 450-830-32, 450-830-33, 450-830-34, 450-830-35, 450-830-36, 450-830-37, 450-830-38, 450-840-05, 450-840-06, 450-840-07, 450-840-08, 450-840-09, 450-840-10, 450-840-13, 450-840-14, 450-840-15, 450-840-16, 450-840-17, 450-840-18, 450-840-19 (Lot A), 450-840-20, 450-840-21, 450-840-23, 450-840-24, 450-840-25, 450-841-01, 450-841-02, 450-841-03, 450-841-04, 450-841-05, 450-841-06, 450-841-07, 450-841-08, 450-841-09, 450-841-10 (Lot 19), 450-841-11 (Lot B), 450-842-01, 450-842-02, 450-842-03, 450-842-04, 450-842-05, 450-842-06, 450-842-07, 450-842-08, 450-842-09, 450-842-10, 450-842-11, 450-842-12, 450-842-13, 450-842-14, 450-842-15, 450-842-16, 450-842-17, 450-842-18, 450-842-19, 450-842-24, 450-842-29, 450-842-30, 450-842-31, and 450-842-32.

F. Under Code section 34180(f), in exchange for the City retaining the Property in the future development disposition category, the Parties must enter into a compensation agreement under which the City compensates the other local taxing entities in accordance with their proportional shares of base property tax revenues, as determined pursuant to Code section 34188, for the value of the Property. Under Code section 34180(f), if no agreement is reached on valuation of the Property, the value will be the fair market value as of the 2011 property tax lien date as determined by an independent appraiser approved by the Oversight Board. This Agreement will constitute the compensation agreement referenced in the ARPMP and the Dissolution Laws with respect to the entire Property. The ARPMP does not contemplate the City's disposition of the Property to a third party, except as required under any contract predating the enactment of the Dissolution Laws. Accordingly, the Parties have negotiated the City's payment of compensation to the Taxing Entities on a specific future date, rather than contingent on the City's future disposition of the Property to a third party.

G. On September 2, 2016, the Successor Agency conveyed the Property to the City. The Parties have been unable to reach agreement on the value of the Property under Code section 34180(f)(1) and, accordingly, will rely on the default method of valuation under Code section 34180(f)(2). Consistent with Code section 34180(f)(2), a qualified appraiser approved by the Oversight Board has completed an appraisal determining that the fair market value of the Property as of the 2011 property tax lien date is One Million, Eight-Hundred, Ninety-Five Thousand Dollars ($1,895,000.00).

H. Consistent with the ARPMP, the City intends to retain the Property as a future development site in fulfillment of its redevelopment objectives.

NOW, THEREFORE, to comply with the applicable provision of the Dissolution Laws, the Parties agree as follows:

Section 1. Compensation Amount.

The Parties agree that the appraised fair market value of the Property as of the 2011 lien date is One Million, Eight-Hundred, Ninety-Five Thousand ($1,895,000.00) ("2011 Property Value"). The Parties further agree that the City has incurred the cost of $65,000.00 for appraising the 2011 value of the Property ("Appraisal Cost"). Therefore, the Parties agree that the total compensation amount payable by the City to the Taxing Entities for the Property ("Compensation Amount") will equal the 2011 Property Value, minus the Appraisal Cost, for a net total of $1,830,000.00. Upon request from any other Party, the City must provide written evidence (e.g., paid invoices) substantiating the Appraisal Cost.

Section 2. Allocation of Proportional Shares.

The Parties agree that, on or before January 1, 2027, the City will distribute the Compensation Amount to the Taxing Entities in proportion to each Taxing Entity's share of the base property tax as determined pursuant to Code section 34188 and by the County Auditor as set forth below:

IMPACTED TAXING ENTITIES	**FUND IMPACT RATIOS**
COUNTY OF SAN DIEGO	0.15685551
LEMON GROVE SCHOOL DISTRICT	0.00074028
SAN YSIDRO SCHOOL DISTRICT	0.00681131
GROSSMONT UNION HIGH SCHOOL DISTRICT	0.00073908
SWEETWATER UNION HIGH SCHOOL DISTRICT	0.00347844
SAN DIEGO UNIFIED SCHOOL DISTRICT	0.43659975
GROSSMONT CUYAMACA COMMUNITY COLLEGE DISTRICT	0.00028006
SAN DIEGO COMMUNITY COLLEGE DISTRICT	0.06315968
SOUTHWESTERN COMMUNITY COLLEGE DISTRICT	0.00093726
SAN DIEGO COUNTY OFFICE OF EDUCATION	0.01594158
EDUCATIONAL REVENUE AUGMENTATION FUND	0.14192002
CITY OF SAN DIEGO	0.17102183
GROSSMONT HEALTHCARE DISTRICT	0.00006822
SAN DIEGO COUNTY WATER AUTHORITY	0.00144700
TOTAL	**1.00**

Section 3. Effective Date and Term.

The term of this Agreement shall commence on the Effective Date and shall remain in effect until the City has distributed the entirety of the Compensation Amount to the Taxing Entities under Section 2 above. If any balance of the Compensation Amount is unpaid and outstanding after June 30, 2027, the unpaid balance will accrue simple interest from and after July 1, 2027 at a rate of four percent per annum until the amount is fully paid. Notwithstanding any other provision contained in this Agreement, once the City makes a payment to a Taxing Entity corresponding to the Compensation Amount, the payment is irrevocable.

Section 4. Miscellaneous Provisions.

(a) Notices. All notices, statements, or other communications made pursuant to this Agreement to another Party or Parties shall be in writing, and shall be sufficiently given and served upon the Party if sent by (1) United States certified mail, return receipt requested, postage prepaid, or (2) nationally recognized overnight courier, with charges prepaid or charged to sender's account, and addressed to the applicable Party in the manner specified in the attached Exhibit A. Any Party may change its address for notice purposes by written notice to the other Parties prepared and delivered in accordance with the provisions of this paragraph.

(b) No Third Party Beneficiaries. No person or entity, other than the Parties and their permitted successors and assigns, is an intended third party beneficiary under this Agreement or shall have any right of action under this Agreement.

(c) Attorneys' Fees. If any Party brings an action to interpret or enforce its rights under this Agreement, the unsuccessful Party or Parties shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.

(d) Common Defense. In the event litigation is initiated to attack the validity of this Agreement, each Party shall in good faith defend and seek to uphold this Agreement.

(e) State Law; Venue. This Agreement, and the rights and obligations of the Parties, shall be construed and enforced in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Diego County, California.

(f) Entire Agreement; Amendment. This Agreement constitutes the entire and integrated agreement of the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only in writing and only if signed by all of the Parties.

(g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Any executed counterpart of this Agreement may be delivered to the other Parties by facsimile or electronic mail and shall be deemed as binding as if an originally signed counterpart was delivered.

(h) Non-Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the waiving Parties.

(i) No Partnership. Nothing contained in this Agreement shall be construed to constitute any Party as a partner, employee, joint venturer, or agent of any other Party. Ambiguities. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

(j) Schedules and Exhibits. The schedules and exhibits attached to this Agreement are incorporated fully by reference into this Agreement.

(l) Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

(m) Action or Approval. Whenever action or approval by the City is required under this Agreement, the Mayor or designee may act on or approve such matter unless specifically provided otherwise, or unless the Mayor or designee determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

(n) Educational Revenue Augmentation Fund (ERAF). The ERAF may be entitled to a distribution of monies pursuant to Section 2 above and Code section 34188. There is no need for a separate entity to sign this Agreement on behalf of the ERAF because the ultimate beneficiaries of any distribution of monies to the ERAF are Taxing Entities that are signatories to this Agreement.

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EXHIBIT B

City Enacted Appraisal by Schneider Valuation Consultants dated 11/22/25

APPRAISAL REPORT

Naval Training Center Properties
San Diego, California

PREPARED FOR

Jeff Zinner
Vice President, Community Development
Civic San Diego
8989 Rio San Diego Drive, Suite 100
San Diego, CA 92108

DATE OF VALUATION

January 1, 2011

DATE OF REPORT

November 22, 2025

PREPARED BY

SCHNEIDER VALUATION CONSULTANTS, INC.

ATTACHMENT B

SCHNEIDER
VALUATION
CONSULTANTS, INC.

Schneider Valuation Consultants, Inc.
Appraisal, Appraisal Review, and Advisory
11440 West Bernardo Court, Suite 300
San Diego, California 92127
858.208.3175
Connect@SchneiderVC.com
www.SchneiderVC.com

November 22, 2025

Jeff Zinner
Civic San Diego
8989 Rio San Diego Drive, Suite 100
San Diego, CA 92108

Re: Naval Training Center Leased Fee Appraisal

Dear Mr. Zinner:

At your authorization and request, I have performed an appraisal of the referenced property. The purpose of this appraisal is to develop an opinion of the market value of the leased fee interest. You are the client as representative of Civic San Diego. Civic San Diego is the intended user of this report. Additional intended users include the City of San Diego. The intended use of this appraisal is to provide value documentation related to the City's obligation to reach a compensation agreement pursuant to the California Health and Safety Code ("HSC") § 34180. The effective date of the appraisal, commonly known as the date of value, is January 1, 2011. As described herein, this is a retrospective appraisal.

This appraisal report presents summary discussions of the data, reasoning, and analyses that were used in the appraisal process. Supporting documentation concerning the data, reasoning, and analyses is contained herein. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated herein. I am not responsible for the unauthorized use of this report.

This report conforms to the current Uniform Standards of Professional Appraisal Practice ("USPAP") as well as relevant laws and regulations. This appraisal is subject to certain assumptions and limiting conditions that are made a part of this report. Acceptance and use of this report by the client or any other intended user constitutes acceptance of these assumptions and limiting conditions.

Thank you for this opportunity to be of service. Please contact me if you have any questions or if I may be of further service.

Sincerely,

Eric C. Schneider, MAI, SRA, AI-GRS, R/W-AC
AG040624

Aggregate Value Summary

Number On Map	Address	Building No.	APNs	Present Value Conclusion
1, 2, and 3	2495-2534 Truxtun Road	28 and 29	450-840-23, 450-840-24, 450-840-25	$40,000
4	2675 Rosecrans Street	D	450-841-01	$35,000
5	2735 Rosecrans Street	C	450-841-02	$30,000
6	2755 Rosecrans Street	B	450-841-03	$30,000
7	2801 Rosecrans Street	A	450-841-04	$35,000
8	2722-2724 Truxtun Road	6 and 7	450-841-05	$50,000
9	2790 Truxtun Road	195	450-841-06	$40,000
10	2960-2970 Truxtun Road	9 and 10	450-841-07	$30,000
11 and 12	2701 Lytton Street and 3001 Barnett Avenue	20 and 21	450-841-08, 450-841-09	$5,000
13, 14, 15	Roosevelt Road and Historic Decatur Road	Not Applicable	450-841-10, 450-840-19, 450-841-11	$5,000
16	2445-2447 Truxtun Road	27 and 158	450-840-10	$20,000
17	2881 Roosevelt Road	208	450-840-13	$15,000
18	2880 Roosevelt Road	178	450-840-14	$35,000
19	2875 Dewey Road	177	450-840-15	$45,000
20	2820 Roosevelt Road	201	450-840-16	$30,000
21	2640 Historic Decatur Road	200	450-840-17	$60,000
22	2825 Dewey Road	202	450-840-18	$30,000
23	2970 Roosevelt Road	198	450-840-05	$10,000
24	Rosecrans Street	Not Applicable	450-840-06	$15,000
25	2590 Truxtun Road	176	450-840-07	$40,000
26	2620 Truxtun Road	35	450-840-08	$45,000
27	2650 Truxtun Road	175	450-840-09	$40,000
28	2750 Dewey Road	193	450-842-19	$40,000
29	2695 Truxtun Road	18	450-842-01	$10,000
30	2730 Historic Decatur Road	16	450-842-10	$20,000
31	2750 Historic Decatur Road	15	450-842-11	$20,000
32	2770 Historic Decatur Road	14	450-842-12	$15,000
33	2816 Historic Decatur Road	1	450-842-13	$65,000
34	2690 Historic Decatur Road	19	450-842-14	$15,000
35	2885 Perry Road	11	450-842-15	$10,000
36	2860 Sims Road	23	450-842-16	$5,000
37	2855 Perry Road	8	450-842-17	$5,000
38	2835 Perry Road	194	450-842-18	$10,000
39	2751 Roosevelt Road	210	450-840-20	$40,000
40	2721 Truxtun Road	25	450-842-02	$10,000
41	2863 Historic Decatur Road	32	450-842-24	$10,000
42	No Address	Not Applicable	450-842-03	$5,000
43	No Address	Not Applicable	450-842-31	$5,000
44	2965 Historic Decatur Road	24	450-842-29	$25,000
45	2780 Historic Decatur Road	12	450-842-30	$5,000
46	2797 Truxtun Road	26	450-842-04	$10,000
47	2725 Truxtun Road	5	450-842-05	$10,000
48	2745 Truxtun Road	4	450-842-06	$10,000
49	2765 Truxtun Road	3	450-842-07	$10,000
50	2785 Truxtun Road	2	450-842-08	$10,000
51	2710 Historic Decatur Road	17	450-842-09	$10,000
52	Putting Green	Not Applicable	450-842-32	$30,000
53	Ingram Plaza	Not Applicable	450-840-21	$75,000
54	2600 Laning Road	623	450-830-25	$45,000
55	2560 Laning Road	A	450-830-26	$45,000
56	2556 Laning Road	B	450-830-27	$25,000
57	2558 Laning Road	C	450-830-28	$15,000
58	2562 Laning Road	D	450-830-29	$20,000
59	Laning Road	430	450-830-30	$15,000
60	2576 Laning Road	Not Applicable	450-830-31	$110,000
61	2592 Laning Road	Not Applicable	450-830-32	$100,000
62	2592 1/2 Laning Road	Not Applicable	450-830-33	$10,000
63	Lee Court	Not Applicable	450-830-34	$40,000
64	Lee Court	Not Applicable	450-830-35	$40,000
65	Lee Court	Not Applicable	450-830-36	$100,000
66	Lee Court	Not Applicable	450-830-37	$95,000
67	Lee Court	Not Applicable	450-830-38	$70,000
Total				$1,895,000

EXHIBIT C

Davles, LLC Letter of Intent

DAVLES, LLC

2225 Hancock Street
San Diego, California 92110

January 9, 2026

Dear Mayor Gloria:

Davles, LLC has a leased fee interest in 2790 Truxtun Road, San Diego (Liberty Station), Building 195; Assessor Parcel No. 450-841-06 (the "Property"). Subject to a mutually agreeab purchase and sale agreement (the "Agreement"), I hereby submit this non-binding letter of inte to purchase the Property from the City of San Diego RDA Successor Agency for a purchase price of $280,000, payable in cash at the close of escrow. Subject to the terms of the Agreemer the close of escrow would be on or before July 1, 2026.

If you have any questions please let me know.

Sincerely,

David Cohn
Manager
Davles, LLC
(619) 236-1299 x206

EXHIBIT D

Tower Investments Letter of Intent

Tower Investments, LLC
250 West Main St., Suite 101
Woodland, CA 95695
Phone: (530) 668-1000
Fax: (530) 666-5574
www.towerinv.com

January 9, 2026

Mayor Todd Gloria
c/o San Diego City Hall
202 C Street, 11th Floor
San Diego, CA 92101
(619) 236-6330
mayortoddgloria@sandiego.gov

RE: Liberty Station

Dear Mayor Gloria:

I am writing you to let you know that our company desires to purchase building 210's Leased Fee Interest from the City of San Diego RDA Successor Agency in Liberty Station. We own the building on this land.

Subject to a mutually agreeable purchase and sale agreement we are prepared to purchase the property under to following terms:

1. Leased Fee Interest in 2751 Roosevelt Road, San Diego (Liberty Station), Building 210; Assessor Parcel No. 450-840-20
2. Close of Escrow on or Before July 1, 2026
3. Purchase Price - $280,000 – All Cash at the Close of Escrow

Sincerely,

TOWER INVESTMENTS, LLC.

David Marks
Senior Vice President
davidmarks@towerinv.com

EXHIBIT E
Seligman <u>Letter of Intent</u>

(Insert date)

(Insert addressee)
(Insert title)
City of San Diego
202 C Street, __ Floor, MS-___
San Diego, CA 92101

Re: Letter of Intent – the Purchase of Liberty Station Retail Properties

Dear _____.

Seligman Liberty Station, LLC and/or its affiliates or assigns ("Buyer)" is prepared to purchase the properties in Liberty Station, San Diego, California described in Exhibit 1, attached hereto (the "Property") from the City of San Diego ("Seller"). Subject to the conditions stipulated below, Buyer will acquire the Property from Seller which shall include all land, improvements, appurtenances, rights and easements, subject to existing leases.

Buyer's purchase from the Seller will be based on the following terms and conditions:

1.	**Agreement:**	Buyer and Seller will work in good faith to negotiate a Purchase and Sale Agreement (the "Agreement") that is consistent with the terms outlined in this LOI, within 30 days of mutual execution of this letter.
2.	**Buyer:**	Seligman Liberty Station, LLC and/or its affiliates or assigns
3.	**Seller:**	City of San Diego as successor-in-interest to the Successor Agency to the San Diego Redevelopment Agency, pursuant to the Dissolution Act (AB 26)
4.	**Property:**	As described in Attachment A, attached hereto
5.	**Purchase Price:**	The purchase price to be paid by Buyer to Seller for the Property will be $2,217,000 (the "Purchase Price"). The Purchase Price will be paid by Buyer to Seller on the Closing Date.
6.	**Fees and Expenses:**	The Seller and Buyer will each be responsible for one half of escrow fees. Seller will be responsible for costs relating to Transfer Taxes, and standard coverage title policy premiums. Notwithstanding the foregoing, each party will be responsible for its own legal fees.
7.	**Earnest Money:**	$100,000 upon execution of a mutually acceptable Purchase and Sale Agreement. Earnest money shall be fully non-refundable upon Buyer's approval of its due diligence investigation and the

expiration of the Due Diligence Period. Upon expiration of the Due Diligence Period, Buyer shall deposit an additional $150,000, which shall be non-refundable. The total combined deposits totaling $250,000 will be credited against the Purchase Price at closing.

8. **Due Diligence:** The closing will be conditioned on Buyer's approval of its due diligence investigation of the Property. Within two (2) days following the signing of the Agreement, Seller will deliver to Buyer all documents that pertain to the Property, including maintenance contracts, environmental and geotechnical reports and other documents as more particularly described in the Agreement (collectively called "Due Diligence Materials"). Buyer will have a period of 30 days from the receipt of all Due Diligence Materials ("Due Diligence Period"), to approve in its sole discretion its due diligence investigation of the Property.

9. **Closing Date:** The later of (i) 60 days following Buyer's receipt of the Due Diligence Materials, or (ii) July 1, 2026

If the terms and conditions are acceptable, please sign and return a copy of this letter in the space below. Buyer understands and acknowledges that the signing of the Agreement will be subject to compliance with the requirements of the San Diego Municipal Code.

Thank you,

Seligman Liberty Station, LLC

By: ________________________
Joe Haeussler, Executive Vice President
Pendulum Property Partners

We accept the foregoing terms this __ day of _______, 2026.

CITY OF SAN DIEGO, a Municipal Corporation

By: _______________________
Name: ____________________

Attachment A to Exhibit E

EXHIBIT A

Summary of Liberty Station Properties subject to Ground Leases to be Purchased

Liberty Station - Historic District (Main Area)		
Lot	**Address**	**Project Building Nos**
Lot 16, Unit 5	2960-70 Truxtun Rd	9 & 10
Lots 17/18, Unit 5	N/A Truxtun Rd	20 & 21
Lot 20, Unit 5	2445 Truxtun Rd	27
Lots 21/22, Unit 5	2495 Truxtun Rd	28 & 29
Lot 23, Unit 5	2881 Roosevelt Rd	208
Lot 13, Unit 6	2816 Historic Decatur Rd	1
Lot 15, Unit 6	2885 Perry Rd	11
Lot 16, Unit 6	2860 Sims Rd	23
Lot 17, Unit 6	2855 Perry Rd	8
Lot 18, Unit 6	2835 Perry Rd	194
Lot 20, Unit 6	2750 Dewey Rd	193
Lot 25, Unit 6	2863 Historic Decatur Rd	32
Lot 30, Unit 6	2965 Historic Decatur Rd	24
Lot B, Unit 6	N/A Perry Rd	Vacant

EXHIBIT F
Taxing Entities Distribution List

Taxing Entities Distribution List

County of San Diego Board of Supervisors Terra Lawson-Remer, Chair (District 3) Paloma Aguirre, Chair Pro Tem (District 1) Joel Anderson (District 2) Monica Montgomery Steppe (District 4) Jim Desmond (District 5) c/o Office of the Clerk of the Board of Supervisors Ebony N. Shelton, Chief Administrative Officer County Administration Center 1600 Pacific Highway, Room 402 San Diego, CA 92101 District1community@sdcounty.ca.gov Terra.Lawson-Remer@sdcounty.ca.gov joel.anderson@sdcounty.ca.gov Monica.MontgomerySteppe@sdcounty.ca.gov jim.desmond@sdcounty.ca.gov Ebony.Shelton@sdcounty.ca.gov	Lemon Grove School District Board of Education Dr. Javier Ayala, Board President Yajaira Preciado, Board Vice President Dorinda Miller, Board Member Jasmin Smith, Board Clerk Marianna Vinson, Superintendent 8025 Lincoln Street Lemon Grove, CA 91945 jayala@lemongrovesd.net dmiller@lemongrovesd.net ypreciado@lemongrovesd.net jasmin.smith@lemongrovesd.net mvinson@lemongrovesd.net
San Ysidro School District Board of Education Irene Lopez, Board President Zenaida Rosario, Board Vice-President Martin Arias, Board Clerk Antonio Martinez, Board Member Kenia Peraza, Board Member Dr. Gina A. Potter, Superintendent 4350 Otay Mesa Road San Ysidro, CA 92173 Irene.Lopez@sysdschools.org Zenaida.Rosario@sysdschools.org Martin.Arias@sysdschools.org Antonio.Martinez@sysdschools.org Kenia.Peraza@sysdschools.org Gina.Potter@sysdschools.org	Grossmont Union High School District Dr. Gary Woods, President Robert Shield, Vice President Scott Eckert, Clerk Jim Kelly, Clerk Chris Fite, Member Dr. Kirsten Vital Brulte, Superintendent PO Box 1043 La Mesa, CA 91944 boardmemberwoods@gmail.com rshield@guhsd.net seckert@guhsd.net jameskelly@allstate.com boardmemberfite@gmail.com kvitalbrulte@guhsd.net

Sweetwater Union High School District Board of Trustees Arturo Solis, Board President Rudy Lopez, Board Vice President Dr. Adrian Arancibia, Board Member Marti Emerald, Board Member Elva Lopez-Zepeda, Board Member Dr. Moises G. Aguirre, Superintendent 1130 Fifth Avenue Chula Vista, CA 91911 Arturo.Solis@sweetwaterschools.org rudy.lopez@sweetwaterschools.org Adrian.arancibia@sweetwaterschools.org martha.emerald@sweetwaterschools.org elva.lopez-zepeda@sweetwaterschools.org superintendent@sweetwaterschools.org	San Diego Unified School District Board of Education Richard Barrera, Board President Sabrina Bazzo, Board Vice President Shana Hazan, Board Member Cody Petterson, Board Member Sharon Whitehurst-Payne, Board Member Dr. Fabi Bagula, Superintendent 4100 Normal Street, Room 2231 San Diego, CA 92103 rbarrera1@sandi.net sbazzo@sandi.net shazan@sandi.net cpetterson@sandi.net swhitehurst-payne@sandi.net fbagula@sandi.net
Grossmont-Cuyamaca Community College District Governing Board Debbie Justeson, Board President Julie Schorr, Board Vice President Elena Adams, Board Clerk Brad Monroe, Board Member Cindy Page, Board Member Dr. Lynn Ceresino Neault, Chancellor 8800 Grossmont College Drive El Cajon, California 92020 debbie.justeson@gcccd.edu julie.schorr@gcccd.edu elena.adams@gcccd.edu brad.monroe@gcccd.edu cindy.page@gcccd.edu gabriela.alvarez@gcccd.edu	San Diego Community College District Board of Trustees Geysil Arroyo, Board President Craig Milgrim, Executive Vice President Mariah Jameson, Vice President for Legislative Advocacy Marichu G. Magaña, Vice President for Institutional Effectiveness Dr. Maria Nieto Senour, Vice President for Diversity, Equity, and Inclusion Gregory A. Smith, Chancellor 3375 Camino Del Rio South San Diego, California 92108 garroyo@sdccd.edu cmilgrim@sdccd.edu mjameson@sdccd.edu mmagana@sdccd.edu msenour@sdccd.edu chancellor@sdccd.edu

Southwestern College Governing Board Kristine Galicia Brown, Board President Nicholas Segura, Board Vice President Don Dumas, Governing Board Member Robert Moreno, Governing Board Member Corina Soto, Governing Board Member Dr. Mark Sanchez, Superintendent /President 900 Otay Lakes Road Chula Vista, CA 91910-7297 kbrown2@swccd.edu nsegura@swccd.edu ddumas@swccd.edu rmoreno@swccd.edu csoto@swccd.edu msanchez@swccd.edu	San Diego County Office of Education San Diego County Board of Education Dr. Gregg Robinson, Board President Rick Shea, Board Vice President Guadalupe González, Board Member Alicia Muñoz, Board Member Dr. Erin Evans, Board Member Dr. Gloria E. Ciriza, San Diego County Superintendent of Schools 6401 Linda Vista Road San Diego, CA 92111 gregg.robinson@sdcoe.net rick.shea@sdcoe.net guadalupe.gonzalez@sdcoe.net alicia.munoz@sdcoe.net erin.evans@sdcoe.net superintendent@sdcoe.net
San Diego County Water Authority Board of Directors Nick Serrano, Chair Frank Hilliker, Vice Chair Joy Lyndes, Secretary Dan Denham, General Manager 4677 Overland Avenue San Diego, CA 92123 publiccomments@sdcwa.org ddenham@sdcwa.org	Grossmont Healthcare District Board of Directors Randy Lenac, Board President Maggie T. Watkins, Board Vice President Dr. Nadia Farjood, Board Secretary Virginia Hall, Board Treasurer Robert “Bob” Ayres, Board Member James Sly, Chief Executive Officer 9001 Wakarusa Steet La Mesa, CA 91942 rlenac@grossmonthealthcare.org mwatkins@grossmonthealthcare.org nfarjood@grossmonthealthcare.org vhall@grossmonthealthcare.org rayres@grossmonthealthcare.org jsly@grossmonthealthcare.org