



A G E N D A

IMPERIAL BEACH CITY COUNCIL REDEVELOPMENT AGENCY PUBLIC FINANCING AUTHORITY



OCTOBER 3, 2007

**Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

REGULAR MEETING – 6:00 P.M.

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY,
PLANNING COMMISSION, AND PUBLIC FINANCING AUTHORITY**

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

REGULAR MEETING CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

PLEDGE OF ALLEGIANCE

AGENDA CHANGES

MAYOR/COUNCIL ANNOUNCEMENTS/REIMBURSEMENTS

COMMUNICATIONS FROM CITY STAFF

PUBLIC COMMENT - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

PRESENTATIONS (1.1)

1.1* OVERVIEW OF SANDAG SMART GROWTH TOOLBOX, PRESENTED BY CAROLINA GREGOR. (0140-40)

* No staff report.

CONSENT CALENDAR (2.1 - 2.5) *All matters listed under Consent Calendar are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items, unless a Councilmember or member of the public requests that particular item(s) be removed from the Consent Calendar and considered separately. Those items removed from the Consent Calendar will be discussed at the end of the Agenda.*

2.1 MINUTES.

City Manager's Recommendation: Approve the minutes of the Regular City Council Meeting of August 15, 2007 and the Regular City Council Workshop of August 22, 2007.

2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)

City Manager's Recommendation: Ratify the following registers: Accounts Payable Numbers 64699 through 64867 with the subtotal amount of \$267,240.55; and Payroll Register Numbers 38868 through 38922 for the pay period ending 09/13/07 with the subtotal amount of \$137,441.24; for a total amount of \$404,681.79.

(Continued Next Page)

CONSENT CALENDAR (Calendar)

- 2.3 RESOLUTION NO. 2007-6545 – 24-MONTH EXTENSION TO THE “STATE ROUTE 75 LANDSCAPE MAINTENANCE PROGRAM” AGREEMENT. (0720-10)**
City Manager’s Recommendation: Adopt resolution.
- 2.4 RESOLUTION NO. 2007-6546 – APPROVAL OF BDS ENGINEERING PROPOSAL FOR ENGINEERING SUPPORT WORK – SOUTH SEACOAST DRIVE OVERLAY - CIP S08-101. (0720-10)**
City Manager’s Recommendation: Adopt resolution.
- 2.5 RESOLUTION NO. R-07-132 – AUTHORIZATION TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING FOR ENVIRONMENTAL INITIAL STUDY SERVICES FOR THE BUILDING EXPANSION REGARDING THE PUBLIC WORKS FACILITY MASTER PLAN – CIP F05-101. (0910-30)**
City Manager’s Recommendation: Adopt resolution.

ORDINANCES - INTRODUCTION/FIRST READING (3)

None.

ORDINANCES – SECOND READING & ADOPTION (4.1)

- 4.1 ADOPT ORDINANCE NO. 2007-1057 ADDING CHAPTER 13.10 OF THE IMPERIAL BEACH MUNICIPAL CODE, RELATED TO STATE AND CITY VIDEO FRANCHISES. (0800-10)**
City Manager’s Recommendation:
1. Receive report;
 2. Mayor call for the reading of Ordinance No. 2007-1057, an Ordinance of the City Council of the City of Imperial Beach, California adding Chapter 13.10 of the Imperial Beach Municipal Code, related to State and City video franchises;
 3. City Clerk read the title of Ordinance No. 2007-1057; and
 4. Motion to dispense second reading by title only and adopt Ordinance No. 2007-1057.

WRITTEN COMMUNICATIONS (5)

None.

PUBLIC HEARINGS (6)

None.

REPORTS (7.1 - 7.4)

- 7.1 PROJECT PROPOSALS FOR THE FISCAL YEAR 2008/09 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM. (0650-33)**
City Manager’s Recommendation: Receive staff report and comments.
- 7.2 REDEVELOPMENT AGENCY PROGRESS REPORT. (0640-05)**
City Manager’s Recommendation: Review staff report and provide staff with further direction as needed.
- 7.3 RESOLUTION NO. R-07-131 – AMENDMENT OF REHABILITATION LOAN AGREEMENT WITH SOUTH BAY COMMUNITY SERVICES FOR SUBSTANTIAL REHABILITATION OF 1360 HEMLOCK AVENUE. (0660-65)**
City Manager’s Recommendation: Adopt resolution.
- 7.4 DRAFT DEVELOPMENT AGREEMENT FOR SEACOAST INN. (0660-43)**
City Manager’s Recommendation: .Review and comment upon the Draft Development Agreement.

ITEMS PULLED FROM THE CONSENT CALENDAR (IF ANY)

REPORTS OF MAYOR AND COUNCILMEMBERS

ADJOURNMENT

The Imperial Beach City Council welcomes you and encourages your continued interest and involvement in the City's decision-making process.

For your convenience, the agenda is also available to you on our website at www.cityofib.com.

**A COPY OF THE COUNCIL MEETING PACKET MAY BE VIEWED BY THE PUBLIC
IN THE OFFICE OF THE CITY CLERK AT CITY HALL.**

Copies of this notice were provided on September 27, 2007 to the City Council, San Diego Union-Tribune, I.B. Eagle & Times, and I.B. Sun.

AFFIDAVIT OF POSTING)
STATE OF CALIFORNIA)
CITY OF IMPERIAL BEACH)

I, Jacqueline M. Hald, CMC, City Clerk of the City of Imperial Beach, hereby certify that the Agenda for the Regular Meeting as called by the City Council, Redevelopment Agency, and Public Financing Authority of Imperial Beach was provided and posted on September 27, 2007. Said meeting to be held at 6:00 p.m., October 3, 2007, in the Council Chambers, 825 Imperial Beach Boulevard, Imperial Beach, California. Said notice was posted at the entrance to the City Council Chambers on September 27, 2007 at 1:00 p.m.

Jacqueline M. Hald, CMC
City Clerk

DRAFT

MINUTES

**IMPERIAL BEACH CITY COUNCIL
REDEVELOPMENT AGENCY
PUBLIC FINANCING AUTHORITY**

AUGUST 15, 2007

**Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

**CLOSED SESSION MEETING – 5:30 P.M.
REGULAR MEETING – 6:00 P.M.**

CLOSED SESSION CALL TO ORDER BY MAYOR

MAYOR JANNEY called the Closed Session meeting to order at 5:30 p.m.

ROLL CALL BY CITY CLERK

Councilmembers present:	McLean, Bragg, McCoy
Councilmembers absent:	None
Mayor present:	Janney
Mayor Pro Tem present:	Winter
Staff present:	City Manager Brown; City Attorney Lough; Deputy City Clerk Wolfson

CLOSED SESSION

MOTION BY MCLEAN, SECOND BY MCCOY, TO ADJOURN TO CLOSED SESSION UNDER:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9:
Number of potential cases: 1

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:
Property: 735 Palm Ave., Imperial Beach, CA 91932, APN 626-250-03
Agency Negotiator: City Manager
Negotiating Parties: North Island Federal Credit Union
Under Negotiation: Instruction to Negotiator will concern price and terms of payment

MOTION CARRIED UNANIMOUSLY.

MAYOR JANNEY adjourned the meeting to Closed Session at 5:31 p.m. and he reconvened the meeting to Open Session at 6:00 p.m. Reporting out of Closed Session, MAYOR JANNEY announced Council met earlier in Closed Session and had nothing to announce.

REGULAR MEETING CALL TO ORDER BY MAYOR

MAYOR JANNEY called the Regular Meeting to order at 6:01 p.m.

ROLL CALL BY CITY CLERK

Councilmembers present:	McLean, Bragg, McCoy
Councilmembers absent:	None
Mayor present:	Janney
Mayor Pro Tem present:	Winter
Staff present:	City Manager Brown; City Attorney Lough; Deputy City Clerk Wolfson

PLEDGE OF ALLEGIANCE

MAYOR JANNEY led everyone in the Pledge of Allegiance.

AGENDA CHANGES

None.

MAYOR/COUNCIL ANNOUNCEMENTS/REIMBURSEMENTS

COUNCILMEMBER BRAGG stated she attended the 30th anniversary of Lemon Grove.

COUNCILMEMBER MCCOY also attended; she reminded the audience that tomorrow is the 25th anniversary of the Tijuana Estuarine Research Reserve and she added that speeches will be given at 10:30 a.m. and a children's piñata will be held later in the day.

MAYOR PRO TEM WINTER added that an open house will start at 2 p.m.; she reported that Mendoza Elementary School will host a fall festival; she also attended Lemon Grove's anniversary; she discussed the passing of Carol Kinney who was actively involved in the community (i.e., Mayor's advisory committee), and a service will be held later.

MAYOR JANNEY also attended Lemon Grove's anniversary; he announced the Annual Concert Event, hosted by the City and the Port, will be held at the end of September.

COMMUNICATIONS FROM CITY STAFF

None.

PUBLIC COMMENT

BOB WADHAM requested that the post office in I.B. have a large sign, much like the post office in Paradise Hills.

JACQUELINE SHIELDS spoke about an advertisement on the internet offering short-term vacation rentals at the Boca Rio complex on South Seacoast Drive; she stated the ad includes rates and mentions a 10% TOT tax; she said this issue was brought to the City's attention in January and was told it was an issue for the homeowners association; she presented copies of the internet ad.

CITY MANAGER BROWN said he was advised of this situation by Councilmember McLean on Monday of this week.

MAYOR JANNEY appreciated Ms. Shields' proactive approach, and stated there is a process for code compliance complaints and stressed the importance of the paper trail.

CITY ATTORNEY LOUGH stated his office has taken the issue very seriously.

MARION NOVAK and JOVITA JUAREZ, prevention specialists with South Bay Partnership, a group that offers training for alcohol sales and service, provided a handout regarding the offered training.

MARION NOVAK responded to questions of Council and stated that Poway and National City have implemented the service with success and noted that arrest rates for selling/serving alcohol to minors have decreased 50%.

PRESENTATIONS (1.1 - 1.3)

1.1 RECYCLE ALL-STAR AWARD PRESENTATION. (0270-30)

MAYOR JANNEY, along with LAWRENCE GONZALES, of EDCO, presented the Recycle All-Star Award Certificate, \$100.00 check, City t-shirt, pictorial history book, and used oil recycling premiums to Ralph Calvillo.

1.2 REPORT ON PORT DISTRICT ACTIVITIES FROM PORT COMMISSIONER BIXLER. (0150-70)

CITY MANAGER BROWN introduced the item.

PORT COMMISSIONER BIXLER gave a report on district activities and gave a PowerPoint presentation regarding public art, he stated that sculptures have been defaced and abused by being climbed on and the original work will be refurbished; he spoke about Sufhenge, the mosaic at Pier Plaza; he acknowledged Public Works Director Levien and his team; he expressed his desire for the IB art collection to be an outstanding community asset and for art to be in the vicinity of Seacoast and Palm, and for art pieces to attract a wide range of visitors; he reported on the storm water diversion project, easements on Palm Ave. and Paper St.; he added this item will be a public item at the state lands commission and he expressed his desire for this item to appear under the Consent Calendar; he discussed the State Water Board funding issue; street ends of Dahlia, Ebony and Evergreen, and his desire for a moratorium on the program; he stated he is working with the City on maintenance issues and added that improvements will be made to the light poles within the next few months; he discussed the three-year maintenance agreement for the Tidelands area approved earlier this year and the three-year agreement for police, fire and lifeguard funding; he reported that Pinky's gave notice to vacate their rented property; he commented that there are currently no development opportunities and he will pursue them will they become available; he commented on spending RDA dollars; and he stressed the importance of TOT, sales tax revenues, and visitor serving facilities; and he will meet with Ash Israni of Pacifica.

In response to Councilmember McLean regarding investing in property on the beach,

COMMISSIONER BIXLER stated the Port cannot have residences; he added that the Port has explored private/public partnerships and is forced to operate under the State tidelands act; with regard to a restroom at the Pier and the need for capital improvement, he stated the Port cannot endorse or discourage the installation and he would prepare a letter regarding the need for a restroom at Seacoast Drive.

MAYOR PRO TEM WINTER supported an interpretative pedestal piece and suggested a brochure/walking art walk guide with map of locations.

Discussion ensued regarding public art, a possible plen air festival in the future, the estuary's international reputation, street ends; Seacoast Inn; and ways to increase revenue in the City.

1.3 SHERIFF'S CAPTAIN ANNUAL REPORT. (0260-80)

CITY MANAGER BROWN introduced the item.

SHERIFF'S CAPTAIN PARKER gave a PowerPoint presentation.

In response to Councilmember Bragg's concern regarding number of accidents at intersections and whether large trucks at Palm and Florida streets created limited visibility, CAPTAIN PARKER indicated that she would get the information.

Discussion ensued regarding the decrease in gang activity at Dunes Park, and ways the City can help resolve issues, such as Neighborhood Watch programs and other outreach programs; additional discussion ensued regarding cause of traffic accidents, such as speeding and clearly identified crosswalks.

CITY MANAGER BROWN announced that citizen John Perno helped apprehend two graffiti artists.

Council discussion ensued regarding alcohol establishments and training and additional restrictions.

CONSENT CALENDAR (2.1 - 2.6)

MOTION BY MCCOY, SECOND BYMCLEAN, TO APPROVE CONSENT CALENDAR ITEM NOS. 2.1 THROUGH 2.6. MOTION CARRIED UNANIMOUSLY.

2.1 MINUTES.

Approved the minutes of the Regular City Council Meetings of July 18 and August 1, 2007.

2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)

Ratified the following registers: Accounts Payable Numbers 64358 through 64451 with the subtotal amount of \$533,539.66; and Payroll Register Numbers 38618 through 38680 for the pay period ending 07/19/07 with the subtotal amount of \$147,422.03; for a total amount of \$680,961.69.

2.3 SALE OF SURPLUS PROPERTY. (0380-45)

Adopted Resolution No. 2007-6533, authorizing the sale of certain surplus City equipment.

2.4 CANCELLATION OF THE SEPTEMBER 5, 2007 REGULAR CITY COUNCIL MEETING. (0410-05)

Canceled the September 5, 2007 Regular City Council Meeting.

2.5 CORRECTION OF GANN SPENDING LIMIT FY 06-07 AND 07-08. (0390-05)

Approved Resolution No. 2007-6531 revising the Gann Limit for Fiscal Years 06-07 and 07-08.

2.6 ADOPT RESOLUTION NO. 2007-6532 APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH THE J. SIMMS AGENCY FOR PUBLIC RELATIONS SERVICES. (0160-05)

Adopted resolution.

ITEM PULLED FROM THE CONSENT CALENDAR

None.

ORDINANCES - INTRODUCTION/FIRST READING (3)

None.

ORDINANCES – SECOND READING & ADOPTION (4)

None.

WRITTEN COMMUNICATIONS (5.1)

5.1 WRITTEN CORRESPONDENCE FROM MARK O’GORDEN. (0610-40)

CITY MANAGER BROWN introduced item, and announced that a supplemental staff report regarding 615 9th St. was submitted as Last Minute Agenda Information.

MOTION BY MCLEAN TO REQUIRE THE BUILDER TO NOT SET A PRECEDENT, AS THE BUILT WORK WAS NOT NEEDED, AND TO DO AS RECOMMENDED BY THE CITY MANAGER.

In response to Mayor Janney, CITY MANAGER BROWN stated that Council could receive the correspondence and Last Minute Agenda Information and not take action.

MOTION SECONDED BY MCCOY TO REQUIRE THE BUILDER TO NOT SET A PRECEDENT, AS THE BUILT WORK WAS NOT NEEDED, AND TO DO AS RECOMMENDED BY THE CITY MANAGER.

MARK O’GORDEN spoke about the grassy area and its purpose was to support runoff, and that the grassy area was not on his property; he offered to put back the grassy area so the sidewalk could continue; he added that the sidewalk is already wide enough; he questioned if the grassy area would remain.

CITY MANAGER BROWN confirmed that improvement was done to the public right-of-way and therefore the improvement is now City property; he added the developer still needs to build plans as approved by the City, implementing BMPs for storm water; and that the grassy area can remain.

MAYOR JANNEY discussed the motion and stated that the grass can remain if storm water and other plan requirements have been met; he added that staff can work with the applicant regarding fine details.

VOTES WERE NOW CAST ON THE ORIGINAL MOTION BY MCLEAN, SECOND BY MCCOY, TO REQUIRE THE BUILDER TO NOT SET A PRECEDENT, AS THE BUILT WORK WAS NOT NEEDED, AND TO DO AS RECOMMENDED BY THE CITY MANAGER. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARINGS (6.1)

6.1 LANDO ROSE, LLC: ADMINISTRATIVE COASTAL PERMIT (ACP) 060344, DESIGN REVIEW CASE (DRC) 060345, SITE PLAN REVIEW (SPR) 060346 AND TENTATIVE MAP (TM) 060347 FOR 6 DETACHED HOUSES LOCATED AT 906, 910, 912-914 EMORY STREET AND 931-933 ELM AVENUE, CLASSIFIED AS R-3000 (TWO-FAMILY RESIDENTIAL) ZONE. MF 835. (0600-20)

CITY MANAGER BROWN introduced the item.

CITY PLANNER NAKAGAWA gave a PowerPoint presentation on the item; and he referenced a letter from Bob Vasquez that was submitted as Last Minute Agenda Information.

MAYOR JANNEY declared the public hearing open.

BOB VASQUEZ spoke about improving the perimeter boundary of his property with landscape, fencing, and irrigation; he spoke about the right-of-way and expressed his opinion that it would be better maintained if owned by the adjoining property owners; and he requested the City abandon the right-of-way in front of this property, and others in the future.

GLEN SALCEDO, project designer and representing the owner/applicant, appreciated Mr. Vasquez's comments in his letter; he added that the two basic plans (with and without a turret) were alternated to give variety to the project, and that Mr. Vasquez's suggestion could be implemented.

MAYOR JANNEY closed the public hearing.

Council discussion ensued regarding swapping the turret design to a corner lot; the desire to not use Mexican fan palm trees; landscaping in public rights-of-way; and abandoning the excessive right-of-way adjacent to the subject property and returning the area to the adjoining property owner.

MOTION BY MCLEAN, SECOND BY WINTER, TO ADOPT RESOLUTION NO. 2007-6530, APPROVING ADMINISTRATIVE COASTAL PERMIT (ACP) 060344, DESIGN REVIEW CASE (DRC) 060345, SITE PLAN REVIEW (SPR) 060346 AND TENTATIVE MAP (TM) 060347, WHICH MAKES THE NECESSARY FINDINGS AND PROVIDES CONDITIONS OF APPROVAL IN COMPLIANCE WITH LOCAL AND STATE REQUIREMENTS. MOTION CARRIED UNANIMOUSLY.

REPORTS (7)

None.

REPORTS OF MAYOR AND COUNCILMEMBERS

COUNCILMEMBER WINTER advised there are some bills coming from legislature.

CITY MANAGER BROWN added that one of the bills is an environmental measure and will be ratified at Council's September meeting.

MAYOR JANNEY commented that next week will be a public review of the Seacoast Inn.

ADJOURNMENT

MAYOR JANNEY adjourned the meeting at 8:22 p.m.

James C. Janney, Mayor

Lisa Wolfson
Deputy City Clerk

DRAFT

MINUTES

**IMPERIAL BEACH CITY COUNCIL
REDEVELOPMENT AGENCY
PUBLIC FINANCING AUTHORITY**

AUGUST 22, 2007

**Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

WORKSHOP – 6:00 P.M.

WORKSHOP CALL TO ORDER BY MAYOR

MAYOR JANNEY called the Workshop meeting to order at 6:01 p.m.

ROLL CALL BY CITY CLERK

Councilmembers present:	McLean, McCoy
Councilmembers absent:	None
Mayor present:	Janney
Mayor Pro Tem present:	Winter
Staff present:	City Manager Brown; City Attorney Lough; Deputy City Clerk Wolfson

COMMUNICATIONS FROM CITY STAFF

None.

PUBLIC COMMENT

AIDA NAVARRO, from Wildcoast, expressed concern regarding the recent Sandcastle Competition; she submitted various emails previously sent to Council and staff for the record.

MAYOR JANNEY responded that the emails had been forwarded to the Sandcastle Committee.

SERGE DEDINA expressed concern regarding the sand replenishment project; he submitted a letter requesting a public hearing.

MAYOR JANNEY responded that he had discussed with Mr. Dedina that the public hearing may be in October.

DR. HANS BERTSCH, marine biologist, submitted and read a letter stating opposition to sand dredging.

REPORTS

COUNCILMEMBER BRAGG announced she had a conflict of interest, as her place of employment is within 500 feet of the item, and she left Council Chambers at 6:11 p.m.

1. PROGRESS REPORT RE: SEACOAST INN HOTEL: PACIFICA COMPANIES, OWNER/APPLICANT: SPECIFIC PLAN (GPA 03-095), DESIGN REVIEW (DRC 03-094), REGULAR COASTAL PERMIT (CP 03-091), SITE PLAN REVIEW (SPR 03-093) AND TENTATIVE MAP (TM 03-092) FOR THE REDEVELOPMENT OF AN EXISTING HOTEL LOCATED AT 800 SEACOAST DRIVE IN THE C-2 ZONE. MF 661. (0660-43)

CITY MANAGER BROWN introduced the item and stated the review period is right now.

COMMUNITY DEVELOPMENT DIRECTOR WADE gave background information on the item and stated this is the first of several meetings and opportunities for public comment; he introduced Darrell Gentry, of DWG Consulting; acting as staff liaison for the project.

DARRELL GENTRY, Project Manager, gave a PowerPoint presentation on the item.

ALLISON ROLFE, Pacifica Companies' Director of Planning, gave background information, answered questions of Council, and gave a PowerPoint presentation on the item.

MICHEL DEDINA supported the item and expressed concerns with regard to sand replenishment and subsidized compensation from the City for businesses at the hotel; he expressed his desire for a heated pool.

COMMUNITY DEVELOPMENT DIRECTOR WADE responded to speakers' comments and questions of Council.

ASH ISRANI, Pacifica Companies' President, also spoke about the project and a similar project that has been successful.

GARY TRIESCHMAN supported the item and expressed concerns regarding the Date St. access point, the seawall, parking, and the street ends.

MAYOR JANNEY stated that Mr. Trieschman's concerns have already been discussed with the City Manager and the property owners; he reminded the audience that the drawings presented were conceptual and not final.

CARLEEN HESS spoke in support of the item and spoke favorably of the use of green technology; she expressed concern regarding high tide events.

MS. ROLFE responded that Moffitt & Nichol have been hired to look at high tide events and will determine the worst case scenario.

COUNCILMEMBER MCLEAN supported the project; he expressed concern about the size of the swimming pool and requested it be an additional five feet longer and requested the size of the spa be adequate; he expressed concern regarding wind and sand and asked if there would be a transparent windbreaker around the spa; he expressed concern about the view from the west; he also suggested a workout room; he continued by suggesting additional conveniences, such as a computer in the lobby to check reservations or find another Israni hotel; he expressed a desire for obtaining LEED certification as soon as possible; and he made other suggestions with regard to design features and amenities and ways to increase revenue.

MS. ROLFE reminded those in attendance that everything is conceptual and that the level of

detail will be provided later in the process.

COMMUNITY DEVELOPMENT DIRECTOR WADE commented that the LEED certification application process could not commence until the project is at a certain level of building and plan documentation due to Title 24 requirements.

MAYOR PRO TEM WINTER thanked Mr. Israni and Ms. Rolfe for their attendance and hard work; she expressed pleasure that suggestions from the Survival Plan were incorporated into the project; she also was pleased at the level of energy conservation and green features included; she expressed interest in the two-button flushing for toilets mentioned by Ms. Rolfe; she expressed concern with regard to sewer capacity and diversion system.

PUBLIC WORKS DIRECTOR LEVIEN responded to Mayor Pro Tem Winter's questions and said the sewer capacity only referred to Pump Station 1A, which is the closest one to the project; and a separate study to model the entire system is nearing completion

MS. ROLFE added that the project needs are still under today's pump capacity.

Discussion ensued regarding each room being standard and having standard furniture packages, and that room owners would not be allowed to leave personal items.

COUNCILMEMBER MCCOY expressed her desire for open space with a pool rather than a hotel, but recognized the need for a hotel to increase revenue and ensure survival of the City; she thanked Mr. Israni and Ms. Rolfe and City staff; she stated that she recognized the need to increase revenue in the city and that this hotel would fit within the community and will probably generate the revenues desired; she suggested that Pacifica advertise themselves in the community.

ASH ISRANI, Pacifica president, encouraged visiting Pacifica's website to learn more about the company, and he stated his commitment to the project.

In response to Councilmember McCoy's expressed desire to get approval from the Coastal Commission sooner, Ms. Rolfe said the project may go before the Commission in January when they meet in Long Beach, as it is within relatively close proximity to the project.

COMMUNITY DEVELOPMENT DIRECTOR WADE added that after a notice of final action has been filed, there is a 21 working day period for appeals; he stated that he has been working closely with Commission staff and they will advise of status pertaining to the hearing.

CITY MANAGER BROWN stated the desire to break ground by the end of the year.

MAYOR JANNEY thanked the audience for their input and thanked Pacifica's and city staff; he stated the project is critical for IB in many ways.

ADJOURNMENT

MAYOR JANNEY adjourned the meeting at 7:55 p.m.

James C. Janney, Mayor

Lisa Wolfson
Deputy City Clerk



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY R. BROWN, CITY MANAGER

MEETING DATE: October 3, 2007

ORIGINATING DEPT.: Charles Smith *C.S.*
Interim Finance Director

SUBJECT: RATIFICATION OF WARRANT REGISTER

BACKGROUND:

None

DISCUSSION:

As of April 7, 2004, all large warrants above \$100,000 will be separately highlighted and explained on the staff report.

ENVIRONMENTAL IMPACT

Not a project as defined by CEQA.

The following registers are submitted for Council ratification.

<u>WARRANT #</u>	<u>DATE</u>	<u>AMOUNT</u>
<u>Accounts Payable:</u>		
64699-64702	09/10/07	7,467.45
64703-64732	09/13/07	92,501.06
64733-64739	09/20/07	8,242.39
64740-64867	09/21/07	159,029.65
SUB-TOTAL		<u>\$ 267,240.55</u>

Payroll Checks:

38868-38922	P.P.E. 09/13/07	137,441.24
	SUB-TOTAL	<u>\$ 137,441.24</u>
	TOTAL	<u>\$ 404,681.79</u>

FISCAL IMPACT:

Warrants are issued from budgeted funds.

DEPARTMENT RECOMMENDATION:

It is respectfully requested that the City Council ratify the warrant register.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation



Gary Brown, City Manager

Attachments:

1. Warrant Registers

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	DESCRIPTION	INVOICE	PO #	PER/YEAR	BANK CODE	CHECK AMOUNT
09/10/2007	64674	A FINE TOUCH	1867						4,350.00
408-1920-519.20-06	08/21/2007			FACADE IMPROVEMENT	08-21-2007	080310	02/2008		640.00
408-1920-519.20-06	08/20/2007			FACADE IMPROVEMENT	08-20-2007	080312	02/2008		120.00
408-1920-519.20-06	08/20/2007			FACADE IMPROVEMENT PROGRA	08-20-2007	080312	02/2008		500.00
408-1920-519.20-06	08/26/2007			FACADE IMPROVEMENT	08-26-2007	080312	02/2008		3,090.00
09/10/2007	64675	AT&T	291						91.81
101-0000-221.02-01	08/21/2007			030 326 8685 001	09-16-2007		02/2008		45.79
101-1130-412.27-04	08/25/2007			030 357 0371 001	09-20-2007		02/2008		46.02
09/10/2007	64676	CEPO	743						2,130.00
101-1020-411.28-04	08/30/2007			CEPO LEADERSHIP 2007	07/06/2007		02/2008		2,130.00
09/10/2007	64677	COX COMMUNICATIONS	1073						127.40
503-1923-419.21-04	08/21/2007			PERIOD AUGUST 2007	08-21-2007	080034	02/2008		127.40
09/10/2007	64678	EDAW, INC	1804						4,371.10
405-1260-513.20-06	08/10/2007			PERIOD 06/30/07-07/27/07	1457004	080317	02/2008		4,371.10
09/10/2007	64679	FABRICATED CONCEPTS	1853						878.20
408-1920-519.20-06	08/16/2007			FACADE IMPROVEMENT	368	080307	02/2008		878.20
09/10/2007	64680	FARNUM DEVELOPMENT INC	905						480.00
101-1910-419.21-04	07/30/2007			SHORT IN ELECTRICAL SYSTM	5290	080300	01/2008		480.00
09/10/2007	64681	FEDERAL EXPRESS CORP.	911						44.00
101-1010-411.28-09	08/17/2007			SHIP BOOK COVERS TO JULIE	221015789	F08021	02/2008		44.00
09/10/2007	64682	IMPERIAL BEACH CHAMBER OF COMM	1505						450.00
101-1920-419.29-04	08/06/2007			CITY SPONSORING TRIATHLON	4712	F08009	02/2008		200.00
101-1920-419.29-04	08/13/2007			BEACHFRONT BBQ SPONSOR: P	4713	F08014	02/2008		250.00
09/10/2007	64683	JAMES ALBERT	4						10,450.00
101-0000-221.01-05	09/05/2007			REFUND OF BOND FOR PUBLIC	09-05-2007		03/2008		10,450.00
09/10/2007	64684	JUAN PABLO RODRIGUEZ	1820						1,530.00
503-1923-419.20-06	09/04/2007			HTE SUPPORT AUGUST '07	1006	080150	03/2008		1,530.00
09/10/2007	64685	KANE, BALLMER & BERKMAN	1828						2,556.14
245-1240-413.20-01	08/01/2007			SERVICES THROUGH 07/31/07	11378	080318	02/2008		511.23
405-1260-413.20-01	08/01/2007			SERVICES THROUGH 07/31/07	11378	080318	02/2008		2,044.91
09/10/2007	64686	KEYSER MARSTON ASSOC INC	620						5,229.09
405-1260-413.20-06	08/03/2007			PERIOD 07/01-31/2007	0016229	080306	02/2008		1,104.70
405-1260-413.20-06	08/08/2007			PERIOD 07/01-31/2007	0016324	080320	02/2008		4,124.39
09/10/2007	64687	KONICA MINOLTA BUSINESS SOLUTI	1522						2,274.00
101-1210-413.28-01	07/02/2007			FINANCE SVC/SUPPLY 07/08	41294935	080079	01/2008		1,137.00
101-3020-422.28-01	07/02/2007			FD SERVICE/SUPPLY 07/08	41294934	080079	01/2008		1,137.00

Note: Checks #64674-64698 dated 09-10-07 were reported on 09-19-07 City Council Agenda for a total of \$52,418.18.

CHECK DATE	CHECK NUMBER	VENDOR NAME	TRN DATE	DESCRIPTION	INVOICE	PO #	PER YEAR	CHECK AMOUNT
101-1230-413.27-05	08/26/2007	0626824596-7	07/26-08/25	08-26-2007	02/2008			93.49
101-3020-422.27-05	08/26/2007	0626824596-7	07/26-08/25	08-26-2007	02/2008			74.68
101-3020-422.27-05	08/26/2007	0626824596-7	07/26-08/25	08-26-2007	02/2008			76.53
503-1923-419.30-02	08/26/2007	0626824596-7	07/26-08/25	08-26-2007	02/2008			188.91
101-5020-432.27-05	08/26/2007	0626824596-7	07/26-08/25	08-26-2007	02/2008			74.68
09/10/2007	64698	WAXIE SANITARY SUPPLY	802					182.67
601-5060-436.30-02	08/28/2007	PREFERENCE MULTIFOLD	70211621			080140	02/2008	182.67
09/10/2007	64699	I B FIREFIGHTERS ASSOCIATION	214					202.00
101-0000-209.01-08	09/06/2007	PPE 8/30/07	20070906				03/2008	202.00
09/10/2007	64700	ICMA RETIREMENT TRUST 457	242					5,770.11
101-0000-209.01-10	09/06/2007	PPE 8/30/07	20070906				03/2008	5,770.11
09/10/2007	64701	SEIU LOCAL 221	1821					1,406.41
101-0000-209.01-08	09/06/2007	PPE 8/30/07	20070906				03/2008	1,406.41
09/10/2007	64702	UNITED WAY OF SAN DIEGO COUNTY	1483					88.93
101-0000-209.01-09	09/06/2007	PPE 8/30/07	20070906				03/2008	88.93
09/13/2007	64703	ARC ERGONOMICS	1678					270.45
502-1922-419.20-06	08/13/2007	COMBO KEYBOARD TRAY & ARM	20277			080308	02/2008	270.45
09/13/2007	64704	AT&T	291					292.20
101-1230-413.27-04	08/25/2007	030 357 0356 001	09-20-2007				02/2008	98.93
101-1010-411.27-04	08/25/2007	030 357 0352 001	09-20-2007				02/2008	22.25
101-1920-419.27-04	09/01/2007	030-480-7925-001	09-26-2007				02/2008	12.99
101-3070-427.27-04	09/01/2007	030-480-7925-001	09-26-2007				02/2008	10.96
101-1210-413.27-04	09/01/2007	030-480-7925-001	09-26-2007				02/2008	34.83
101-5020-432.27-04	09/01/2007	030-480-7925-001	09-26-2007				02/2008	84.71
101-1020-411.27-04	09/01/2007	030-480-7925-001	09-26-2007				02/2008	22.09
101-6030-453.27-04	09/01/2007	030-480-7925-001	09-26-2007				02/2008	5.44
09/13/2007	64705	AT&T/MCI	1270					1,302.76
503-1923-419.27-04	08/07/2007	337-257-1583-442	T6916329				02/2008	351.75
101-3020-422.27-04	08/02/2007	619-423-8225-961	T6893697				02/2008	161.77
101-3020-422.27-04	08/04/2007	619-424-7359-120	T6898759				02/2008	75.69
101-6010-451.27-04	08/08/2007	619-575-0336-809	T6922740				02/2008	81.26
101-3020-422.27-04	08/08/2007	619-575-0361-562	T6922741				02/2008	33.16
101-1010-411.27-04	08/04/2007	619-628-1352-133	T6898869				02/2008	71.76
101-3040-424.27-04	08/04/2007	619-628-1357-365	T6898871				02/2008	94.30
101-3070-427.27-04	08/04/2007	619-628-1359-498	T6898872				02/2008	50.77
101-1210-413.27-04	08/04/2007	619-628-1361-670	T6898873				02/2008	222.35
101-6010-451.27-04	08/04/2007	619-628-1385-573	T6898875				02/2008	49.21
101-0000-221.02-01	08/04/2007	619-628-1419-917	T6898876				02/2008	33.09
101-1920-419.27-04	08/04/2007	619-628-2018-437	T6898877				02/2008	26.49
101-3010-421.27-04	08/01/2007	619-628-1485-961	T6883190				02/2008	51.16
09/13/2007	64706	CDW GOVERNMENT INC	725					7,388.71
503-1923-419.50-04	08/24/2007	728B 3G PLUG SAS 10K	GNR8600			080210	02/2008	3,627.55

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	DESCRIPTION	INVOICE	PO #	PER YEAR	BANK CODE	CHECK AMOUNT
ACCOUNT #	TRN DATE								TRN AMOUNT
503-1923-419.50-04	08/24/2007	146GB 3G PLUG SAS 10K		GNT0625		080210	02/2008		3,761.16
09/13/2007	64707	CHRISTOPHER N. NASSER	2		0005919		03/2008		173.00
101-0000-321.72-10	09/13/2007				0005919		03/2008		53.00
101-0000-203.22-00	09/13/2007								120.00
09/13/2007	64708	CHULA VISTA ALARM & MONITORING	797		5788	080098	02/2008		30.00
101-1910-419.20-23	08/01/2007	MONITORING FOR AUG. '07							30.00
09/13/2007	64709	CONSTRUCTION RESIDUE RECYCLING	1009		974569	080149	02/2008		360.00
101-5010-431.30-02	08/31/2007	CONCRETE DUMP 08/9-27/07							360.00
09/13/2007	64710	COUNTY OF SAN DIEGO RCS	1065						8,114.90
101-3010-421.21-25	09/01/2007	NETWORKING DURING AUG. 07		08CTOFIEN02		080198	03/2008		444.00
101-3020-422.21-25	09/01/2007	NETWORKING DURING AUG. 07		08CTOFIEN02		080198	03/2008		106.00
101-5020-432.21-25	09/01/2007	NETWORKING DURING AUG. 07		08CTOFIEN02		080198	03/2008		3,357.90
101-3010-421.21-25	08/01/2007	NETWORKING DURING JULY 07		08CTOFIEN01		080198	02/2008		4,207.00
09/13/2007	64711	COX COMMUNICATIONS	1073						113.66
401-5020-432.20-06	08/30/2007	PERIOD 08/30/2007			08-30-2007	080034	02/2008		113.66
09/13/2007	64712	CPRS AGING SECTION	1						365.00
101-6030-453.28-04	09/10/2007	CPRS "BASS LAKE" TRAINING			09-04-2007		03/2008		365.00
09/13/2007	64713	DATA CAREERS PERSONNEL SERVICE	1839						1,237.50
503-1923-419.21-01	08/27/2007	SANDOVAL, CHRIS 08/26/07		8741		080183	02/2008		562.50
503-1923-419.21-01	07/09/2007	SANDOVAL, CHRIS 07/08/07		8724		080183	01/2008		337.50
503-1923-419.21-01	09/04/2007	SANDOVAL, CRHIS 09/02/07		8744		080183	03/2008		337.50
09/13/2007	64714	DESIGNER BOTANICALS	1792						5,272.32
408-1260-413.20-06	09/05/2007	1237-1239 PALM FACADE IMP		2096		080212	03/2008		2,746.97
408-1920-519.20-06	09/05/2007	FACADE IMPROVEMENT		2097		080328	03/2008		500.08
408-1920-519.20-06	09/05/2007	FACADE IMPROVEMENT		2098		080328	03/2008		2,025.27
09/13/2007	64715	DISCOUNT SEATING.NET	1660						2,100.00
101-6040-454.30-02	08/29/2007	ROUND FRAME LADDER BACK			08-29-2007	080302	02/2008		2,100.00
09/13/2007	64716	EAGLE NEWSPAPER	1204						502.25
101-0000-221.01-02	08/02/2007	LEGAL ADVERTISING 08/02		31308			02/2008		97.50
101-0000-221.01-02	08/09/2007	1/2 H PAGE 08/09/07		31518			02/2008		306.00
101-0000-221.01-02	08/16/2007	LEGAL ADVERTISING 08/16		31751			02/2008		98.75
09/13/2007	64717	FASTSIGNS	1847						13,130.01
408-1920-519.20-06	08/28/2007	FACADE IMPROVEMENT		NC13845			02/2008		2,407.60
408-1920-519.20-06	08/28/2007	FACADE IMPROVEMENT		NC13846			02/2008		2,895.86
408-1920-519.20-06	08/31/2007	"CRYSTAL COVE"		NC13844			02/2008		3,605.79
408-1920-519.20-06	09/11/2007	FACADE IMPROVEMENT		NC14100			03/2008		4,220.76
09/13/2007	64718	FIRE ETC	924						178.87
101-3020-422.30-02	07/18/2007	GLOVES		97159		F08017	01/2008		104.52

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	DESCRIPTION	INVOICE	PO #	PER/YEAR	BANK CODE	CHECK AMOUNT
101-3020-422.30-02	07/16/2007			GLOVES	97104	F08018	01/2008		74.35
09/13/2007	64719	LLOYD PEST CONTROL	814	MAINTENANCE 08/15/2007	1354901	080174	02/2008		286.00
101-1910-419.20-22	08/15/2007			MAINTENANCE 08/15/2007	1354902	080174	02/2008		31.00
101-1910-419.20-22	08/15/2007			MAINTENANCE 08/15/2007	1352899	080174	02/2008		31.00
101-1910-419.20-22	08/23/2007			MAINTENANCE 08/23/2007	1354899	080174	02/2008		45.00
101-1910-419.20-22	08/23/2007			MAINTENANCE 08/23/2007	1358493	080174	02/2008		54.00
101-1910-419.20-22	08/23/2007			MAINTENANCE 08/23/2007	1360798	080174	02/2008		47.00
101-1910-419.20-22	08/27/2007			MAINTENANCE 08/27/2007	1357971	080174	02/2008		47.00
09/13/2007	64720	MASON'S SAW & LAWNMOWER	923	HAND HELD BL, BRUSH DEFEN	104578	080085	02/2008		267.87
101-6020-452.30-02	08/07/2007								267.87
09/13/2007	64721	MICHAEL PIASECKI CONSULTING	1795	LOOKING GLASS SUPPORT	19	080178	03/2008		10,575.00
401-5020-432.20-06	09/01/2007			LOOKING GLASS SUPPORT	19	080178	03/2008		2,789.74
407-1262-413.20-06	09/01/2007			LOOKING GLASS SUPPORT	19	080178	03/2008		2,092.63
602-5061-432.20-06	09/01/2007			GASB 34 SUPPORT & DATABAS	21	080178	03/2008		3,600.00
101-1210-413.20-06	09/01/2007								
09/13/2007	64722	MME EVENT PRODUCTIONS INC	1701	ANNUAL CONCERT EVENT 2ND	1072		01/2008		10,000.00
101-1920-419.21-04	09/06/2007								10,000.00
09/13/2007	64723	NEXTEL COMMUNICATIONS INC	1465	896132755 AUGUST 2007			02/2008		721.99
101-1010-411.27-05	08/29/2007			896132755 AUGUST 2007			02/2008		60.26
101-5020-432.27-05	08/29/2007			896132755 AUGUST 2007			02/2008		269.77
101-5020-432.21-25	08/29/2007			896132755 AUGUST 2007			02/2008		301.57
101-3020-422.27-05	08/29/2007						02/2008		90.39
09/13/2007	64724	PATRICIA SWANSON	1874	CHAMBER BREAKFAST MEETING			02/2008		70.97
101-1010-411.28-04	07/30/2007			CITY ATTORNEY LUNCHEON			02/2008		10.00
101-1110-412.28-04	08/01/2007			CITY ATTORNEY LUNCHEON			02/2008		25.00
101-1110-412.28-04	08/01/2007			POSTAGE STAMPS			02/2008		12.56
101-1110-412.28-09	08/08/2007			POSTAGE			02/2008		8.20
101-1020-411.28-09	08/08/2007			CHAMBER BREAKFAST MEETING			02/2008		5.21
101-1010-411.28-04	08/24/2007						02/2008		10.00
09/13/2007	64725	PRAXAIR DISTRIBUTION INC	1652	AIR BREATHING	26281063	F08016	02/2008		89.25
101-3020-422.30-02	08/21/2007								89.25
09/13/2007	64726	SAN DIEGO GAS & ELECTRIC	1399	08831546949 07/31-08/29			02/2008		16,936.05
101-5010-431.27-01	09/06/2007			10087869371 07/30-08/28			02/2008		26.67
101-3020-422.27-01	09/06/2007			10087869371 07/30-08/28			02/2008		60.21
101-1910-419.27-01	09/06/2007			10088604389 07/26-08/24			02/2008		117.57
101-5010-431.27-01	09/06/2007			19807697764 07/30-08/28			02/2008		40.28
101-3020-422.27-01	09/06/2007			52635219238 07/26-08/24			02/2008		3,522.98
601-5060-436.27-01	09/06/2007			56497714749 07/31-08/29			02/2008		5.58
101-6020-452.27-01	09/06/2007			56497714749 07/31-08/29			02/2008		9.10
101-5010-431.27-01	09/06/2007			85075178464 07/31-08/29			02/2008		6,808.72
101-5010-431.27-01	09/06/2007						02/2008		119.76

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	CHECK AMOUNT
09/21/2007	64805	ACCOUNTemps	70					6,309.04	
101-1210-413.21-01		08/27/2007		CHTBWETH, M'BAYA 08/27	19458486	080016	02/2008	1,087.60	
101-1210-413.21-01		09/28/2007		OCAMPO, MARIA 08/24	19477353	080016	02/2008	1,190.00	
101-1210-413.21-01		09/03/2007		CHTBWETH, M'BAYA 08/31/07	19498149	080016	03/2008	870.08	
101-1210-413.21-01		09/10/2007		OCAMPO, MARIA 08/31/07	19498150	080016	03/2008	952.00	
101-1210-413.21-01		09/10/2007		CHTBWETH, M'BAYA 09/07/07	19569843	080016	03/2008	863.28	
101-1210-413.21-01		09/10/2007		OCAMPO, MARIA 09/07/07	19570430	080016	03/2008	476.00	
101-1210-413.21-01		09/10/2007		UBAJAKA-HARRIS, O. 9/07/07	19569844	080016	03/2008	870.08	
09/21/2007	64806	ADPI WEST INC	1449					152.17	
101-3020-422.20-06		09/19/2007		COLLECTIONS ON EMERGENCY	INV2799		01/2008	152.17	
09/21/2007	64807	ALL TEAM STAFFING, INC	1801					2,634.50	
101-5010-431.21-01		08/27/2007		MARTINEZ, HECTOR	900825	080033	02/2008	445.50	
101-6020-452.21-01		08/27/2007		ARMENDARIZ, JOSE 08/24/07	900824	080097	02/2008	1,298.00	
101-1910-419.21-04		09/04/2007		MARTINEZ, HECTOR 08/31/07	900855	080304	03/2008	891.00	
09/21/2007	64808	AT&T	291					32.51	
101-1110-412.27-04		09/17/2007		030-480-7968-001	09-26-2007		02/2008	32.51	
09/21/2007	64809	AT&T LONG DISTANCE	1379					16.62	
503-1923-419.27-04		09/04/2007		339964 AUGUST 2007	811168384		02/2008	16.62	
09/21/2007	64810	AT&T MOBILITY	1866					399.23	
101-1010-411.27-05		09/18/2007		828273116 08/05-09/04/07	X09122007		02/2008	.03	
101-5020-432.27-05		09/04/2007		828273116 08/05-09/04/07	X09122007		02/2008	399.20	
09/21/2007	64811	BDS ENGINEERING INC	372					2,465.75	
101-0000-221.01-02		09/06/2007		SERVICES 08/01-30/2007	07-02G		03/2008	245.50	
101-0000-221.01-02		09/06/2007		SERVICES 08/01-30/2007	07-02G		03/2008	178.50	
101-0000-221.01-02		09/06/2007		SERVICES 08/01-30/2007	07-02G		03/2008	767.00	
101-0000-221.01-02		09/06/2007		SERVICES 08/01-30/2007	07-02G		03/2008	178.50	
101-0000-221.01-02		09/06/2007		SERVICES 08/01-30/2007	07-02G		03/2008	262.25	
101-0000-221.01-02		09/06/2007		SERVICES 08/01-30/2007	07-02G		03/2008	178.50	
101-0000-221.01-02		09/06/2007		SERVICES 08/01-30/2007	07-02G		03/2008	178.50	
101-0000-221.01-02		09/06/2007		SERVICES 08/01-30/2007	07-02G		03/2008	477.00	
09/21/2007	64812	CALIFORNIA AMERICAN WATER	612					4,838.22	
101-3020-422.27-02		07/23/2007		05-0115211-0 05/17-07/18	08-13-2007		01/2008	224.38	
601-5060-436.27-02		08/16/2007		05-0155649-2 07/18-08/13	09-04-2007		02/2008	254.83	
101-6040-454.27-02		09/12/2007		05-0092998-9 07/06-09/07	10-01-2007		02/2008	642.70	
101-3030-423.27-02		09/12/2007		05-0093911-8 07/06-09/07	10-01-2007		02/2008	237.46	
101-5010-431.27-02		09/12/2007		05-0094000-2 07/06-09/07	10-01-2007		02/2008	55.08	
101-5010-431.27-02		09/12/2007		05-0094041-6 07/06-09/07	10-01-2007		02/2008	39.67	
101-5010-431.27-02		09/12/2007		05-0094076-2 07/06-09/07	10-01-2007		02/2008	39.67	
101-5010-431.27-02		09/12/2007		05-0094163-8 07/06-09/07	10-01-2007		02/2008	134.62	
101-5010-431.27-02		09/12/2007		05-0094234-7 07/06-09/07	10-01-2007		02/2008	39.67	
101-5010-431.27-02		09/12/2007		05-0094268-5 07/06-09/07	10-01-2007		02/2008	188.52	
101-5010-431.27-02		09/12/2007		05-0094293-3 07/06-09/07	10-01-2007		02/2008	126.92	

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN	CHECK AMOUNT
101-5010-431.27-02	09/12/2007	05-0094304-8	07/06-09/07	10-01-2007			02/2008	242.32	
101-5010-431.27-02	09/12/2007	05-0094973-0	07/06-09/07	10-01-2007			02/2008	786.49	
601-5060-436.27-02	09/14/2007	05-0101092-0	07/09-09/11	10-03-2007			02/2008	29.03	
101-5020-432.27-02	09/14/2007	05-0102217-2	07/10-09/11	10-03-2007			02/2008	222.04	
101-6020-452.27-02	09/14/2007	05-0102503-5	07/10-09/11	10-03-2007			02/2008	632.42	
101-5010-431.27-02	09/14/2007	05-0102729-6	07/10-09/11	10-03-2007			02/2008	635.08	
101-5010-431.27-02	09/17/2007	05-0106225-1	07/10-9/12	10-09-2007			02/2008	16.18	
101-5010-431.27-02	09/17/2007	05-0106249-1	07/10-09/12	10-09-2007			02/2008	18.75	
101-5010-431.27-02	09/17/2007	05-0106336-6	07/10-09/12	10-09-2007			02/2008	33.29	
101-5010-431.27-02	09/17/2007	05-0106337-4	07/10-09/12	10-09-2007			02/2008	18.75	
215-6026-452.27-02	09/13/2007	05-0402959-6	07/09-09/09	10-02-2007			02/2008	214.35	
09/21/2007	64813	CDW GOVERNMENT INC	725					802.38	
503-1923-419.28-09	08/27/2007	HP LJ 1022 19PPM 8.5X14		GNZ9409		080295	02/2008	13.93	
503-1923-419.50-04	08/27/2007	HP LJ 1022 19PPM 8.5X14		GNZ9409		080295	02/2008	186.55	
101-5020-432.30-22	08/29/2007	HP LJ 2605DTN 12/10PPM		GPQ2893		080305	02/2008	601.90	
09/21/2007	64814	CHULA VISTA ALARM & MONITORING	797					1,049.49	
504-1924-419.20-06	09/04/2007	DSC WIRELESS GLASS DETECT		5950		080358	03/2008	1,049.49	
09/21/2007	64815	CHULA VISTA ELECTRIC CO	1859					9,659.00	
503-1923-419.20-06	08/27/2007	WORK PROP.#3428 07/26		201365		080188	02/2008	9,659.00	
09/21/2007	64816	CLEAN HARBORS	913					935.00	
101-5040-434.21-04	08/30/2007	HHW EVEN PER CAR		CW0740947		080172	02/2008	935.00	
09/21/2007	64817	COUNTY RECORDER	1818					50.00	
101-0000-221.01-02	09/12/2007	NOTICE OF EXEMPTION FEE		09-12-2007			03/2008	50.00	
09/21/2007	64818	COUNTY RECORDER	1818					50.00	
101-0000-221.01-02	09/11/2007	NOTICE OF EXEMPTION FEE		1486			03/2008	50.00	
09/21/2007	64819	D. A. R. CONTRACTORS	1122					694.00	
101-3050-425.20-06	09/05/2007	SERVICES FOR AUGUST 2007		092059		080365	03/2008	347.00	
101-3050-425.20-06	08/05/2007	DISPOSAL FOR JULY 2007		082059		080365	02/2008	347.00	
09/21/2007	64820	DATA CAREERS PERSONNEL SERVICE	1839					450.00	
503-1923-419.21-01	09/10/2007	SANDOVAL, CHRIS 09/09/07		8746		080183	03/2008	450.00	
09/21/2007	64821	DATAQUICK	1134					106.91	
101-3070-427.21-04	09/04/2007	PERIOD 08/01-31/2007		B1-1083517		080246	03/2008	56.50	
101-3020-422.20-06	09/04/2007	PERIOD 08/01-31/07		B1-1083517		080246	03/2008	32.53	
101-5020-432.21-04	09/04/2007	PERIOD 08/01-31/07 P. W.		B1-1083517		080246	03/2008	17.88	
09/21/2007	64822	DEPARTMENT OF CORRECTIONS AND	169					8,641.19	
101-6020-452.21-04	09/07/2007	JULY 2007 AGRMT# RJD04019		2372		080386	03/2008	4,962.03	
101-6020-452.21-04	09/07/2007	AUGUST2007 AGRMT#RJD04019		2383		080386	03/2008	3,679.16	
09/21/2007	64823	DERMATOLOGY INSTITUTE	1727					330.00	
101-3030-423.21-04	09/11/2007	SKIN CANCER SCREENING FOR		50644/8989			03/2008	330.00	

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ACCOUNT #	TRN DATE								TRN AMOUNT
09/21/2007	64838	INTERSTATE BATTERY OF SAN DIEG	388						242.00
501-1921-419.28-16	08/27/2007	MTP-24 CORE DEP.		541015	080081	02/2008			76.53
101-6040-454.30-02	09/11/2007	DCM 35, CORE DEP.		541284	080081	03/2008			121.35
501-1921-419.28-16	09/11/2007	YB14-A-A2		541285	080081	03/2008			44.12
09/21/2007	64839	JEFF NEW	4						7,340.00
101-0000-221.01-05	09/20/2007	TEP 07-27 BOND REFUND		845		02/2008			7,340.00
09/21/2007	64840	JIM JANNEY	509						75.00
101-1010-411.28-04	09/12/2007	TAXI FARE AIRPORT-HOTEL		09-05-2007		03/2008			35.00
101-1010-411.28-04	09/08/2007	TAXI FARE HOTEL-AIRPORT		09-08-2007		03/2008			40.00
09/21/2007	64841	JOSEPH LANKFORD	2						120.00
101-0000-321.72-10	09/17/2007	REFUND DUPLICATE PAYMENT		220		01/2008			120.00
09/21/2007	64842	KEYSER MARSTON ASSOC INC	620						14,041.26
405-1260-413.20-06	09/10/2007	PERIOD 08/01-31/2007 IB		0016398	080306	03/2008			6,735.00
405-1260-413.20-06	09/11/2007	PERIOD 08/01-31/07		0016445	080320	03/2008			7,306.26
09/21/2007	64843	KIWANIS INTERNATIONAL	639						340.00
101-3020-422.28-12	06/01/2007	MEMBERSHIP DUES		108		01/2008			340.00
09/21/2007	64844	LORIE BRAGG	825						338.98
101-1010-411.28-04	09/07/2007	SWITCHED TO A DIFFERENT		09-07-2007		03/2008			338.98
09/21/2007	64845	LOUNSBERY FERGUSON ALTONA AND	1624						378.05
601-5060-436.20-06	08/09/2007	THROUGH 07/31/07		08-09-2007		02/2008			378.05
09/21/2007	64846	MARLOWE & COMPANY	893						3,350.00
408-1230-519.20-06	09/10/2007	SVCS & EXPENSES AUG. '07		07-229-09	080315	03/2008			3,350.00
09/21/2007	64847	MCDUGAL LOVE ECKIS &	962						8,227.00
101-1220-413.20-01	08/31/2007	08/31/07 MON. RETAINER		08-31-2007	080167	02/2008			8,227.00
09/21/2007	64848	MICHAL PIASECKI CONSULTING	1795						180.00
101-3020-422.20-06	09/01/2007	GIS REGIONAL SAFETY		20	080178	03/2008			180.00
09/21/2007	64849	MORELAND & ASSOCIATES INC	1086						7,492.50
101-1210-413.20-06	09/01/2007	SECOND HALF OF AUGUST		09-01-2007	080037	03/2008			7,492.50
09/21/2007	64850	NICHOLAS BEST	1876						147.00
101-1920-419.29-01	07/03/2007	PARAMEDIC LICENSE RENEWAL		20013	080368	01/2008			147.00
09/21/2007	64851	PARTNERSHIP WITH INDUSTRY	1302						1,110.03
101-6040-454.21-04	09/04/2007	PERIOD ENDING 08/31/07		SEB01149	080185	03/2008			1,110.03
09/21/2007	64852	PERVO PAINT CO.	8						833.39
101-5010-431.21-23	09/13/2007	WJOTE ,AX S[EC 5G		12793	080136	03/2008			833.39
09/21/2007	64853	POSTINI CORPORATION	1646						1,003.43
503-1923-419.20-06	09/05/2007	AUGUST/SEPTEMBER 2007		352169	080247	03/2008			294.00

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503-1923-419.28-13	09/05/2007	AUGUST/SEPTEMBER 2007			352169	080247	03/2008		415.43	
503-1923-419.20-06	07/05/2007	JULY 2007			333990	080247	01/2008		294.00	
09/21/2007	64854	PRO LINE PAINT COMPANY	52						51.78	
601-5060-436.30-02	09/11/2007	EPOXY POLYAM CLEAR			4402-6	080187	03/2008		51.78	
09/21/2007	64855	PRUDENTIAL OVERALL SUPPLY	72						481.42	
101-5020-432.25-03	08/29/2007	08-29-2007 UNIFORMS			7066583	080180	02/2008		150.59	
101-5020-432.25-03	09/05/2007	UNIFORMS WEEK 09/05/07			7099140	080180	03/2008		180.24	
101-5020-432.25-03	09/12/2007	UNIFORMS 09/12/2007			7131748	080180	03/2008		150.59	
09/21/2007	64856	RANCHO AUTO & TRUCK PARTS	1685						108.23	
501-1921-419.28-16	08/29/2007	WATER PUMP			D283912	080152	02/2008		75.65	
501-1921-419.28-16	09/05/2007	OIL FILTER			D284871	080152	03/2008		10.28	
501-1921-419.28-16	09/05/2007	TRANSMISSION OIL HOSE			D284930	080152	03/2008		22.30	
09/21/2007	64857	RESCUE ROOTER LLC	150						303.50	
601-5060-436.28-01	09/03/2007	TRY TO CLEAN CABLE MAIN			269974	080331	03/2008		303.50	
09/21/2007	64858	SAN DIEGO COUNTY SHERIFF	882						17,256.00	
101-3010-421.20-06	07/25/2007	SERVICES FOR JULY 2007			07-25-2007		01/2008		11,248.01	
101-3010-421.20-06	08/09/2007	SERVICES FOR JULY 2007			08-09-2007		02/2008		2,688.41	
101-3010-421.20-06	08/08/2007	SERVICES FOR JULY 2007			08-08-2007		02/2008		3,319.58	
09/21/2007	64859	SCOTT KNOX	1						75.00	
101-3030-423.25-03	09/11/2007	REIMBURSEMENT SUNGLASSES			000033		03/2008		75.00	
09/21/2007	64860	SKS INC.	412						9,229.95	
501-1921-419.28-15	09/05/2007	269 DIESEL & 1132 UNLEAD			1211619-IN	080151	03/2008		3,732.02	
501-1921-419.28-15	09/10/2007	1,200 GAL. UNLEADED			1211756-IN	080151	03/2008		3,316.51	
501-1921-419.28-15	09/13/2007	689 UNLEADED 105 DIESEL			1211904-IN	080151	03/2008		2,181.42	
09/21/2007	64861	SOUTH COAST PRINTING & SIGN	1704						1,050.02	
101-1920-419.21-04	09/14/2007	11X17 FULL COLOR POSTER			0246	080372	03/2008		1,050.02	
09/21/2007	64862	SOUTH WEST SIGNAL	488						150.00	
101-5010-431.21-04	08/31/2007	MAINTENANCE AUG. 2007			46858	080148	02/2008		150.00	
09/21/2007	64863	STANDARD ELECTRONICS	504						174.43	
101-1910-419.21-04	09/10/2007	LABOR ON 09/04/07:			9926	080144	03/2008		174.43	
09/21/2007	64864	STARK MFG. CO.	510						1,942.00	
408-1260-413.20-06	09/12/2007	FACADE IMPROVEMENT			69414	080218	03/2008		1,942.00	
09/21/2007	64865	SUNGARD HTE INC	1370						7,500.00	
503-1923-419.20-25	08/30/2007	MAINT. 10/01/07-9/30/08			875335	080363	02/2008		7,500.00	
09/21/2007	64866	WESTFLEX INDUSTRIAL	836						46.20	
601-5060-436.30-22	09/13/2007	ADJUSTABLE HYDRANT WRENCH			186511	080322	03/2008		46.20	
09/21/2007	64867	XEROX CORPORATION	861						1,205.87	
101-1920-419.20-17	09/02/2007	08/07/07-08/28/07 CITYHAL			027501792	080219	03/2008		713.81	

CHECK DATE	CHECK NUMBER	VENDOR NAME	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	CHECK AMOUNT
101-5020-432.25-01		AUGUST 2007 BASE CHARGE	09/01/2007		027381608	080222	03/2008	185.75	
101-1920-419.20-17		06/30-07/30/07 CITY HALL	09/06/2007		027536059	080371	03/2008	306.31	

DATE RANGE TOTAL * 319,658.73 *

Reported on 09-19-07 (52,418.18)

Council Agenda

267,240.55



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: OCTOBER 3, 2007
ORIGINATING DEPT.: PUBLIC WORKS *HoZ*
SUBJECT: 24-MONTH EXTENSION TO THE "STATE ROUTE 75
LANDSCAPE MAINTENANCE PROGRAM" AGREEMENT

BACKGROUND:

On October 20, 2004, City Council adopted resolution 2004-6054 awarding a contract to DG Landscaping for the "State Route 75 Landscape Maintenance Program." The landscape maintenance area is the S.R. 75 center medians from Georgia Street intersection west to the City limit line with the City of Coronado southern boundary. The contract amount was \$1,875.00 per month for three years – January 1, 2005 through December 31, 2007. The Agreement provided for the City to extend this agreement two (2) times up to twenty-four months in periods of at least 12 month each.

DISCUSSION:

Staff and DG Landscape have discussed the extension option and agree that an extension is of benefit to both parties.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

Annual cost of the contract extension is \$22,500. The cost for the S.R. 75 median maintenance program is within the Street Division Operation and Maintenance adopted 2-year budget. Thus, the funding for this maintenance work is currently funded for the next 18 months through June 30, 2009.

DEPARTMENT RECOMMENDATION:

- 1. Receive this report.
- 2. Approve a one time, 2-year extension to the Agreement with DG Landscape for the "State Route 75 Landscape Maintenance Program" at a cost of \$1,875.00 per month.
- 3. Adopt the attached resolution.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown, City Manager

Attachments: 1) Resolution 2007-6545

RESOLUTION NO. 2007-6545**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING A 24-MONTH EXTENSION TO THE "STATE ROUTE 75 LANDSCAPE MAINTENANCE PROGRAM" AGREEMENT**

The City Council of the City of Imperial Beach does hereby resolve as follows:

WHEREAS, on October 20, 2004, City Council adopted resolution 2004-6054 awarding a contract to DG Landscaping for the "State Route 75 Landscape Maintenance Program." ; and

WHEREAS, the landscape maintenance area is the S.R. 75 center medians from Georgia Street intersection west to the City limit line with the City of Coronado southern boundary; and

WHEREAS, the contract amount was \$1,875.00 per month for three years – January 1, 2005 through December 31, 2007; and

WHEREAS, the Agreement provided for the City to extend this agreement two (2) times up to twenty-four months in periods of at least 12 month each; and

WHEREAS, staff and DG Landscape have discussed the extension option and agree that an extension is of benefit to both parties; and

WHEREAS, annual cost of the contract extension is \$22,500; and

WHEREAS, the cost for the S.R. 75 median maintenance program is within the Street Division Operation and Maintenance adopted 2-year budget.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach as follows:

1. The above recitals are true and correct.
2. This legislative body approves a twenty-four month extension to the "State Route 75 Landscape Maintenance Program" agreement with DG Landscape at the rate of \$1,875.00 per month for the period January 1, 2008 through December 31, 2009.
3. The City Manager is authorized to execute a twenty-four month extension of the existing "State Route 75 Landscape Maintenance Program" agreement with DG Landscape for the period January 1, 2008 through December 31, 2009.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 3rd day of October 2007, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be an exact copy of Resolution No. 2007-6545 – A Resolution of the City Council of the City of Imperial Beach, California, Approving a 24-Month Extension to the “State Route 75 Landscape Maintenance Program” Agreement

CITY CLERK

DATE



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: OCTOBER 3, 2007

ORIGINATING DEPT.: PUBLIC WORKS *HAL*

SUBJECT: APPROVAL OF BDS ENGINEERING PROPOSAL FOR
ENGINEERING SUPPORT WORK – SOUTH SEACOAST DRIVE
OVERLAY -- CIP S08-101

BACKGROUND:

The adopted and approved Regional Transportation Improvement Program (RTIP) projects for FY 2006/07 and FY 2007/08 includes a project for "Street Maintenance & Improvements – Pavement Resurfacing and/or Rehabilitation - Minor Projects." Project description is "Various locations – minor repairs such as but not limited to street repairs, striping, and sign repairs. (IB08)." The funds allocated were \$161,000 for FY 2006/07 and \$181,000 for FY 2007/08. Total funds available for the two fiscal years funding is \$342,000.

One of the RTIP rules to qualify for "Minor Project" category is that the project cost cannot exceed \$300,000.

Since the adoption of the Five-Year Capital Improvement Program Budget Fiscal Year 2004/2005 through Fiscal Year 2008/2009 (5-year CIP), South Seacoast Drive road surface has deteriorated and is in need of repair as soon as possible. When the 5-year CIP was submitted and adopted South Seacoast Drive was not included as a specific project. The adopted 5-year CIP budget included Street Improvements RDA Phase 4 and Street Improvements RDA Phase 5 as unfunded projects for "... various locations as identified by Public Works." Since the adoption of the 5-year CIP, South Seacoast Drive road surface has deteriorated more rapidly than expected. It is recommended that South Seacoast Drive road surface repair not wait for the funding of Street Improvements RDA Phase 4 or Phase 5.

At the request of staff, BDS Engineering performed a preliminary overlay construction cost estimate. BDS Engineering estimated the South Seacoast Drive reconstruction/overlay project at \$184,000 plus engineering and administration.

On July 18, 2007, Council authorized the South Seacoast Overlay project CIP S08-101 with funding from RTIP.

DISCUSSION:

On September 12, 2007, BDS Engineering submitted a cost proposal for the engineering support work needed for construction of the South Seacoast Drive Overlay project in the amount of \$28,960. This work includes:

Preliminary design, preparation of contract documents, construction mark out, replace signage, striping parking stalls, reconstruct sewer manhole frames, replacement of 11 street light poles and construction inspection.

ENVIRONMENTAL DETERMINATION:

An environmental review was conducted on this project and it was determined that the project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15302(c): Replacement or Reconstruction of Existing Utility Systems and Facilities.

FISCAL IMPACT:

Total RTIP – Minor Projects Funds Available \$300,000

Note: Although RTIP – Minor Projects for the fiscal years total \$342,000, only \$300,000 may be spent on one project.

Expenditure of RTIP “Minor Projects” funds as follows:

Engineering, Administration and Inspection	\$ 28,960
Light Pole Replacement	\$ 33,000
Road Re-Construction	<u>\$184,000</u>
TOTAL ESTIMATED COST	\$245,960

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Adopt Resolution 2007-6546
3. Authorize the City Manager to prepare a purchase order for BDS Engineering for \$28,960.
4. Authorize BDS Engineering to prepare the construction documents for CIP S08-101.

CITY MANAGER’S RECOMMENDATION:

Approve Department recommendation.



 Gary Brown, City Manager

Attachments:

1. Resolution 2007-6546

RESOLUTION NO. 2007-6546

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING APPROVAL OF BDS ENGINEERING'S PROPOSAL FOR ENGINEERING SUPPORT WORK – SOUTH SEACOAST DRIVE OVERLAY -- CIP S08-101

The City Council of the City of Imperial Beach does hereby resolve as follows:

WHEREAS, on July 18, 2007, Council established a new capital improvement project "South Seacoast Drive Overlay" project CIP S08-101; and

WHEREAS, BDS Engineering submitted a proposal to the City to prepare the preliminary design, construction documents, construction mark out, replace signage, striping parking stalls, reconstruct sewer man holes frames, replacement on 11 light poles and construction inspection for the South Seacoast Drive Overlay project in the amount of \$28,960; and

WHEREAS, Civil engineering is needed to prepare the construction documents; and

WHEREAS, BDS Engineering is a Civil engineering firm, the City Engineer and familiar with the street conditions within the City of Imperial Beach.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach as follows:

1. The above recitals are true and correct.
2. This legislative body directs City Manager to prepare a purchase order in the amount of \$28,960 for BDS Engineering to perform engineering support for this project.
3. This legislative body authorizes BDS Engineering to provide the engineering support for this project.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 3rd day of October 2007, by the following roll call vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

James C. Janney

JAMES C. JANNEY, MAYOR

ATTEST:

 Jacqueline M. Hald
JACQUELINE M. HALD, CMC
CITY CLERK

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be an exact copy of Resolution No. 2007-6546 – A Resolution of the City Council of the City of Imperial Beach, California, Authorizing Approval of BDS Engineering’s Proposal for Engineering Support Work – South Seacoast Drive Overlay -- CIP S08-101

CITY CLERK

DATE



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL/REDEVELOPMENT AGENCY

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: OCTOBER 3, 2007

ORIGINATING DEPT.: PUBLIC WORKS *Had*

SUBJECT: AUTHORIZATION TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING FOR ENVIRONMENTAL INITIAL STUDY SERVICES FOR THE BUILDING EXPANSION REGARDING THE PUBLIC WORKS FACILITY MASTER PLAN (CIP F05-101)

BACKGROUND:

At the March 2, 2005, City Council/Redevelopment Agency meeting, City Council/Redevelopment Agency adopted Resolution No. 2005-6089 allocating \$41,080,700 to initiate city-wide physical improvements under a Five-Year Capital Improvement Program. Several projects within the Five-Year CIP addressed improvements to existing City facilities. In particular, one of the projects addressed was miscellaneous improvements to the Public Works Facility. The adopted Public Works Facility Project budget was \$676,000. Staff initiated a search for an experienced consultant with the qualifications to provide professional engineering services for the work of this Project.

On September 21, 2005, Council awarded a contract to Hirsch and Company, since renamed RBF Consulting, for \$85,035.

On August 1, 2006, an additional contract was awarded to RBF Consulting to furnish environmental services for the preparation of an Environmental Initial Study for the Public Works Facility improvement less the office building expansion. This contract was for \$9,860.00.

DISCUSSION:

It has been subsequently discovered that the office building expansion requires its own Environmental Initial Study. RFB Consulting has submitted a proposal to perform this service at a cost of \$14,085.00. This fee excludes:

1. Payment of Deposit for the Coastal Development Permit
2. Fee for the Notice of Exemption
3. Fees to the California Department of Fish and Game

ENVIRONMENTAL DETERMINATION:

The project has been determined by the City of Imperial Beach Municipal Code Section 19.87.040(B) to qualify for an environmental determination.

FISCAL IMPACT:

Project Construction	\$473,200
Project Delivery	<u>\$202,800</u>
Total Project Budget (RDA Tax Increment)	\$676,000

Project Delivery Breakdown

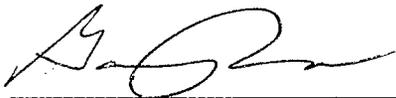
• Hirsch and Company (Project Design)	\$ 85,035
• RBF Consulting (P.W. Facility Environmental Initial Study)	\$ 9,860
• RBF Consulting (P.W. Building Environmental Initial Study)	\$ 14,085
• Misc. Services/Staff Labor/ Construction Inspection.	<u>\$ 93,820</u>
Total Project Delivery Cost	\$202,800

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Approve the attached resolution
3. Authorize the City Manager to enter into a professional services agreement with RBF Consulting for the preparation of an Environmental Initial Study for the Public Works building addition, Public Works Facility Master Plan CIP F05-101 at a cost of \$14,085.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Resolution R-07-132
2. RBF Consulting Proposal Revised August 28, 2007

RESOLUTION NO. R-07-132

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZATION TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING FOR ENVIRONMENTAL INITIAL STUDY SERVICES FOR THE BUILDING EXPANSION REGARDING THE PUBLIC WORKS FACILITY MASTER PLAN (F05-101)

The Redevelopment Agency of the City of Imperial Beach does hereby resolve as follows:

WHEREAS, at the March 2, 2005, City Council/Redevelopment Agency meeting, the City Council adopted Resolution No. 2005-6089 allocating \$41,080,700 to initiate City-wide physical improvements under a five-year Capital Improvement Program; and

WHEREAS, the Capital Improvement Program included a project for Public Works Facility Master Plan (CIP F05-101); and

WHEREAS, the Public Works building expansion project requires an Environmental Initial Study to apply for a Coastal Development Permit; and

WHEREAS, RFB Consulting has submitted a proposal to perform the Environmental Initial Study for \$14,085.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Imperial Beach as follows:

1. The above recitals are true and correct.
2. The City Manager is authorized to execute a professional services agreement with RBF Consulting for an Environmental Initial Study for the Public Works Yard Office Building Expansion.
3. The City Manager is authorized to approve a Purchase Order with RBF Consulting for the amount of \$14,085.

PASSED, APPROVED, AND ADOPTED by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 3rd day of October 2007, by the following roll call vote:

AYES: BOARDMEMBERS:
NOES: BOARDMEMBERS:
ABSENT: BOARDMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

I, Secretary of the RDA Board of the Imperial Beach Redevelopment Agency, do hereby certify the foregoing to be a true and exact copy of Resolution No. R-05-132 – A Resolution of the Redevelopment Agency of the City of Imperial Beach, California, Authorization to Sign a Professional Services Agreement with RBF Consulting For Environmental Initial Study Services for the Building Expansion Regarding the Public Works Facility Master Plan (F05-101)

CITY CLERK

DATE

ATTACHMENT 2

August 1, 2007
Revised August 16, 2007
Revised August 21, 2007
Revised August 28, 2007

Larry Martin
City of Imperial Beach
495 10th Street
Imperial Beach, California 91932

**Subject: City of Imperial Beach Public Works Building Addition-
Proposal For Environmental Services**

Dear Mr. Martin:

Your project can benefit from the RBF Consulting's team of professionals, composed of individuals with experience providing Environmental Services within the City of Imperial Beach. **We are aware of your desire to quickly and efficiently process a Coastal Development Permit through the City of Imperial Beach review process.**

RBF Consulting is excited and enthusiastic about the potential opportunity to work on your Public Works Yard Improvement project. **A proposal for the preparation of an Initial Study has been prepared for your evaluation.** Our proposed scope of work is based on the information you provided by you, our preliminary research, and RBF's experience with similar types of projects.

As we understand it, the proposed project would add approximately 750 square feet of building space to the existing Public Works Yard Building. The additional area will be built over an existing turf area located next to the building. Our preliminary research indicates that the project would qualify for a categorical exemption under CEQA, but per the City of Imperial Beach Municipal Code would require a Coastal Development Permit.

Our expertise, responsiveness, in-house resources, and multi-disciplinary capabilities enable RBF to provide high quality services and technically accurate work products that are responsive to the environmental and community issues of concern. We also have a well-established track record of completing complex projects on time and within budget.

RBF's qualified
Environmental Team
has the staff and
availability to begin
work on your project
immediately.

Our approach to this
project would be to
minimize the amount
of environmental
documentation
necessary.

We appreciate the opportunity to be of service and look forward to working with you on a successful project. We welcome the opportunity to discuss this proposal with you to address any specific requests you have. Please feel free to call me at (858) 614-5085 if you have any questions.

Sincerely,

/s/

Alex H. Jewell, AICP
Project Manager

Attachment

G:\Proposal\NB\B-PWYBuilding.doc

SCOPE OF SERVICES

TASK 1.0 PREPARATION OF INITIAL STUDY

SUBTASK 1.1 RESEARCH AND INVESTIGATION

RBF will obtain and review available data for the project, and the project area as provided by the client, as well as policy documentation from the City of Imperial Beach, state, and federal agencies, and other agencies which may be affected by the project. This effort would focus on obtaining information from the U.S. Fish and Wildlife Service, California Department of Fish and Game, and the Coastal Commission. This information, along with environmental data and information available from the City, will become part of the foundation of the CEQA Notice of Exemption (NOE) and the Coastal Development Permit (CDP) Application as deemed appropriate **\$950**

SUBTASK 1.2 MEETINGS AND CONSULTATION

Mr. Alex Jewell, AICP, will be responsible for management and supervision of the CDP as well as consultation with the City staff to incorporate City policies into the CDP Application. Mr. Jewell will undertake consultation and coordination of the project and review the CDP application and the NOE for compliance with CEQA requirements and guidelines and City CEQA procedures. As the Project Manager, Mr. Jewell will coordinate with City staff toward the timely completion of the CDP Application. This scope of work has assumed a total of 16 hours, billed on a time and materials basis for project coordination, meetings, and hearings. Additional time above that amount will be accommodated as an additional service and billed on a time and materials basis..... **\$2,160 (Budget T&M)**

SUBTASK 1.3 PREPARATION OF CDP APPLICATION

RBF staff will prepare a CDP Application based upon the City's CDP submittal requirements and checklist. This task includes the preparation of the application form, Completed Environmental Review Form, coordination of the public notice package and building plans. This task will take into incorporate findings from Subtask 1.1 Research and Investigation, and Subtask 1.2 Meetings and Consultations, which are to be completed as part of this scope of work..... **\$3,400**

SUBTASK 1.4 PUBLIC NOTICE PACKAGE

RBF staff will coordinate with a recognized land title company to prepare a Public Notice Package with the appropriate number of mailing labels to submit to the City for Distribution. This task includes the fee from the title company..... **\$400**

Subtask 1.5 Project Hearing Support

RBF staff will provide city staff with support for the hearings involved for the CDP. This task includes the following: Preparation of public notice for the hearing (3 hours), preparation of a staff report including conditions of approval (18 hours), preparation of a power point presentation (8 hours), attendance at hearings, assumes 1 rehearsal meeting with staff, 1 Design Review Board Meeting, and 1 City Council hearing (16 hours). This scope includes the preparation of a Notice of Final Action to be sent to the local Coastal Commission office. This scope of work assumes a total of 45 hours to be billed on a time and materials basis. Additional time above that amount will be accommodated as an additional service and billed on a time and materials basis..... **\$6,075**

Subtask 1.6 City of Imperial Beach Storm Water Management Plan (SWMP)

RBF Consulting will prepare a Storm Water Management Plan consistent with the City's requirements for a CDP application. RBF will coordinate with the City's Engineer responsible for reviewing the plans to determine the requirements for the (SWMP). Given the small amount of development associated with the project, the scope of work assumes that a minor SMWP will be required. Should a full SMWP be required, an additional scope of work will be required for approval by the City. **\$1,500**

SUBTASK 1.7 PREPARATION OF NOTICE OF EXEMPTION

RBF Consulting will complete a Notice of Exemption for the proposed project. RBF will use the standard form provided by the State Clearinghouse. RBF will submit the form to the County Clerk to meet the 30-day posting requirements. Please note this scope of work does not include the \$50 filing fee required by the County Clerks office. RBF will pay the \$50 fee and be reimbursed by the City **\$250**

Subtotal Environmental Services \$13,785

Reproduction Costs **\$300**

TOTAL COMPENSATION \$14,085

Additional Services

Services not specifically identified herein as services to be performed by RBF Consultants or its consultants are considered Additional Services for purposes of this agreement. Client may request that RBF perform services that are Additional Services, however, RBF is not obligated to perform such Additional Services unless an amendment to this Agreement has been fully executed setting forth the scope, schedule, and fee for such Additional Service.

In the event RBF performs Additional Services at the Client's request before receipt of such executed amendment, Client acknowledges its obligation to pay for such services at RBF Consulting's established rates, within 30 days of receipt of RBF's invoice.

Other Items for Future Budgeting

RBF Consulting has identified the following items, again, merely for purposes of anticipating the effort. We will provide budgets for fees for these items when the extent of the work is more clearly defined by the by the County's scoping process:

- Payment of Deposits to the City of Imperial Beach for Coastal Development Permit (\$2,000)
- Payment of Fee to County Clerk for the Deposit of Notice of Exemption (\$50)
- Payment of California Department of Fish and Game Fees (if necessary)
- Additional costs for reproduction

Assumptions and Exclusions

1. If required, additional environmental studies, unless otherwise noted, are not included in this proposal.

2. Client is responsible for payment of any government fees and deposits associated with processing of the Coastal Development Permit.
3. This fee proposal does not include costs associated with mitigation measures, if required, such as open space easements or landscaping/revegetation plans.
4. Client will provide to consultant project files in electronic format (e.g., architectural drawings, etc.), as applicable.
5. Assumes that a minor Stormwater Management Plan will be required.



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY R. BROWN, CITY MANAGER

MEETING DATE: OCTOBER 3, 2007

ORIGINATING DEPT.: TOM RITTER, ASSISTANT CITY MANAGER

SUBJECT: ADOPT ORDINANCE NO. 2007-1057 ADDING CHAPTER 13.10 OF THE IMPERIAL BEACH MUNICIPAL CODE, RELATED TO STATE AND CITY VIDEO FRANCHISES

BACKGROUND:

On September 29, 2006, Governor Schwarzenegger approved Assembly Bill No. 2987 ("AB 2987"), the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), effective January 1, 2007. AB 2987 provides for the issuance of a state franchise (in lieu of a local franchise) for video service (i.e. cable television) administered by the California Public Utilities Commission ("PUC"). On March 1, 2007, the PUC issued its Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act. Under DIVCA the City can preserve certain rights, franchise fees and other fees by adopting a local ordinance as proposed herewith.

DISCUSSION:

The purpose of DIVCA is to promote video service competition in California by establishing a "state-issued franchise authorization process that allows market participants to use their networks and systems to provide video, voice, and broadband services to all residents of the state." (Cal. Pub. Util. Code § 5810(a)(1)(C).) "Video service" is defined in Public Utilities Code section 5830(s) as video programming, cable, and open-video system services provided through facilities located at least in part in public rights-of-way without regard to delivery technology. It does not include video programming provided over the Internet. The Legislature stated that its intent is for a video service provider to pay as rent a franchise fee to "the local entity in whose jurisdiction service is being provided for the continued use of streets, public facilities, and other rights-of-way" to provide service. (Pub. Util. Code § 5810(b).) The Legislature further intends with DIVCA to maintain local entities' level of revenue from franchise fees. Additionally, the video service provider's obligations to comply with state or federal environmental protection laws are not eliminated or reduced, and the local entity shall serve as the lead agency for any environmental review under DIVCA.

The PUC is the sole franchising authority for a state franchise to provide video service under DIVCA. DIVCA requires any person or corporation, not already with an issued franchise, that seeks to provide video service in this state to file an application with the PUC for a state franchise. Failure of a video service provider to obtain a state or locally issued franchise is unlawful.

The PUC is tasked with notifying the City whether the video service provider's application is complete or not within thirty calendar days from submittal of the application. If the PUC fails to act within 44 calendar days from submittal of the application, the franchise is deemed issued. Issuance of the state franchise grants the video service provider, subject to the lawful operation by the applicant or its successor of the cable or video service, to service the area requested in the application, and use the public rights-of-way in exchange for the franchise fee. The video service provider may terminate the franchise within 90 days written notice to customers, the City, and the PUC. No less than ten days, or more than sixty days, before the video service provider begins to offer service it must notify the City that it will provide video service in its jurisdiction.

DIVCA allows a video service provider that currently holds a franchise from the City to seek a state franchise in the following circumstances:

- (1) The expiration, prior to any renewal or extension, of its local franchise.
- (2) A mutually agreed upon date set by both the City and the video service provider to terminate the franchise provided in writing by both parties to the PUC.
- (3) When a video service provider that holds a state franchise provides the notice required under DIVCA to the City that it intends to initiate providing video service in all or part of its jurisdiction, a video service provider operating under a franchise issued by the City may elect to obtain a state franchise to replace its locally issued franchise. The franchise issued by the City shall terminate and be replaced by a state franchise when the state franchising authority issues a state franchise for the video service provider that includes the entire service area served by the video service provider and the video service provider notifies the City that it will begin providing video service in its area under a state franchise.

Under the same circumstances as described in section (3) above, the City can require a local cable operator to obtain a state franchise and terminate its local franchise. This is particularly pertinent in Imperial Beach where the existing franchise does not include a 1% PEG fee. Thus it may be beneficial to the City to require Cox Communications to seek a state franchise under certain conditions.

A cable operator that opts for a state franchise under DIVCA is required to continue to serve all areas as required by its local franchise agreement, existing on January 1, 2007, until the local franchise agreement expires. The state-issued franchise is valid for ten years and renewable for an additional ten-year period.

The state franchise fee is payable as rent or toll for the use of the public right of way. The amount of the fee is five percent of gross revenues. The fee must be applied equally to all video service providers in the City. The City may use the state franchise fee for any lawful purpose (franchise fees are applied to the General Fund). The state franchise fee is due and payable quarterly and any late payment is subject to a late payment charge. The City may examine the business records of the franchise holder once a year to ensure compensation under DIVCA.

The City or another political subdivision of the state may not demand additional fees or charges based solely on a provider's status as a provider of video or cable service, or use a calculation method or definition of gross revenue other than that set forth in DIVCA. However, DIVCA does not limit a local entity's ability to impose utility user taxes and other generally applicable taxes, fees, and charges under state law, so long as applied in a nondiscriminatory and competitively neutral manner.

The holder of a state franchise is required to designate sufficient capacity on its network to provide the same number of public, educational, and governmental access (PEG) channels as provided by the incumbent cable provider (which is three in Imperial Beach – one governmental, one for schools, and one for public access) as of January 1, 2007. These PEG channels are for the exclusive noncommercial use of the City or its designee to provide public, educational and government channels. A fee of one percent of gross revenue may be imposed to support the PEG channels by ordinance (and is included in the proposed ordinance herewith).

The City must permit the holder of a state franchise to “install, construct, and maintain a network within public rights-of-way under the same time, place, and manner as the provisions governing telephone corporations under applicable state and federal law.” (Pub. Util. Code § 5885(a).) The City may not enforce any rule, regulation, or ordinance that “purports to allow the local entity to purchase or force the sale of a network.” (Pub. Util. Code § 5885(d).) Additionally, DIVCA does not change the permitting process or compliance with the California Environmental Quality Act (CEQA).

Within sixty days of submittal of a complete encroachment permit application, the City must approve or deny the application. The City must provide the applicant with a “detailed explanation of the reason” of a denial of an encroachment permit and establish an appeal process to the governing body of the local entity. (Pub. Util. Code § 5885(c).)

The holder of a state franchise must comply with specific customer service standards of the Cable Television and Video Provider Customer Service and Information Act, (California Government Code section 53054 et seq.), California Penal Code section 637.5, and the privacy standards in section 631 of the Federal Cable Act (47 U.S.C. section 551 et seq.). The City shall enforce a violation of this section of DIVCA within its jurisdiction and establish a schedule, by ordinance or resolution, of monetary penalties for such violations (see attached ordinance). The City shall submit one-half of the monetary penalty to the Digital Divide Account.

As summarized above, the City has several rights and responsibilities with respect to state video franchise holders and it is recommended that the City adopt the attached Ordinance. The attached Ordinance implements the City’s authority and responsibilities dictated by AB 2987. To date, the state has issued state video franchises to AT&T, Verizon (excludes Imperial Beach along with many other cities), and Cox Communications (does not include Imperial Beach as Cox’s “statewide franchise” was only issued for a limited area within the City of San Diego where Cox competes for customers with Time Warner Cable).

On September 19, 2007, the City Council of the City of Imperial Beach conducted the first reading of Ordinance No. 2007-1057.

ENVIRONMENTAL IMPACT

Not a project as defined by CEQA.

FISCAL IMPACT:

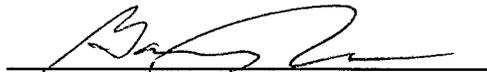
Franchise fees established by this Ordinance may generate additional revenue to the City if more residents or businesses owners purchase video services, however, it is more likely that franchise fees will remain constant or be slightly reduced due to increased competition in the video service business. However, PEG fees may increase due to this Ordinance as the City currently does not have a PEG fee in its existing Franchise and any new State Franchisee and possibly our existing Franchisee (under certain conditions) will be required to pay a 1% PEG fee.

DEPARTMENT RECOMMENDATION:

1. Receive report;
2. Mayor call for the reading of the title of Ordinance No. 2007-1057 – An Ordinance of the City Council of the City of Imperial Beach, California, adding Chapter 13.10 of the Imperial Beach Municipal Code, related to State and City video franchises;
3. City Clerk read the title of Ordinance No. 2007-1057; and
4. Motion to dispense second reading by title only and adopt Ordinance No. 2007-1057.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary R. Brown, City Manager

Attachments:

1. Ordinance No. 2007-1057

ORDINANCE NO. 2007-1057**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA ADDING CHAPTER 13.10 OF THE IMPERIAL BEACH MUNICIPAL CODE, RELATED TO STATE AND CITY VIDEO FRANCHISES**

WHEREAS, on September 29, 2006, the Governor approved Assembly Bill No. 2987 ("AB 2987"), the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), effective January 1, 2007; and

WHEREAS, AB 2987 provides for the issuance of a state franchise for video service administered by the California Public Utilities Commission; and

WHEREAS, the City will acquire certain rights and responsibilities with respect to state video franchise holders; and

WHEREAS, the City desires to implement the authority and responsibilities dictated by AB 2987.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH DOES ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 13.10 is added to the Imperial Beach Municipal Code to read:

Chapter 13.10. Video Franchise

13.10.010 Regulation of State Video Franchises and City Video Franchises

Under state law effective January 1, 2007, the California Public Utilities Commission ("PUC") has the authority to grant state video franchises. The City will acquire certain rights and responsibilities with respect to state video franchise holders. These include the receipt of a franchise fee and a fee for Public, Educational and Government ("PEG") purposes, both based on a percentage of the gross revenues of state franchise holders, as well as the establishment and enforcement of penalties for violations of customer service rules. The City will retain authority, without change, over all City video franchisees until such time as they no longer hold a valid City franchise, or are no longer operating under a current or expired City franchise. The City may continue to grant, modify, renew, extend or terminate City franchises for video service until January 1, 2008. After January 1, 2008, the City may not grant new franchises, but may modify, renew, extend or terminate existing City franchises. For purposes of this chapter, the terms "City video franchise" and "City video franchisee" shall have the same meaning as the terms "City cable franchise" and "City cable franchisee."

13.10.020 State Video Franchise and PEG Fees

(a) For any state video franchise holder operating within the boundaries of the City, there shall be a fee paid to the City equal to five percent (5%) of the gross revenue of that state video franchise holder.

(b) For any state video franchise holder operating within the boundaries of the City, there shall be an additional fee paid to the City equal to one percent (1%) of the gross revenue of that state video franchise holder, which fee shall be used by the City for PEG purposes consistent with state and federal law.

(c) Gross revenue, for the purposes of (a) and (b) above, shall have the definition set forth in California Public Utilities Code section 5860, as amended from time to time.

13.10.030 Audit Authority

Not more than once annually, the City Manager or his or her designee may examine and perform an audit of the business records of a holder of a state video franchise to ensure compliance with Section 13.10.020.

13.10.040 Customer Service Penalties

(a) The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

(b) The City Manager or his or her designee shall monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. The City Manager or his or her designee will provide the state video franchise holder written notice of any material breaches of applicable customer and service standards, and will allow the state video franchise holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by the City:

(1) For the first occurrence of a violation, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each occurrence of the violation.

(2) For a second occurrence of a violation of the same nature within 12 months, a fine of \$1,000.00 shall be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each occurrence of the violation.

(3) For a third or further occurrence of a violation of the same nature within 12 months, a fine of \$2,500.00 shall be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each occurrence of the violation.

(c) A state video franchise holder may appeal a penalty assessed by the City Manager or his or her designee to the City Council within 60 days of the initial assessment. After relevant speakers are heard, and any necessary staff reports are submitted, City Council will vote to uphold, modify, or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

13.10.050 City Response to State Video Franchise Applications

(a) Applicants for state video franchises within the boundaries of the City must concurrently provide complete copies to the City of any application or amendments to applications filed with the PUC. One complete copy must be provided to the City Clerk, and one complete copy to the City Manager.

(b) Within thirty days of receipt, the City Manager will provide any appropriate comments to the PUC regarding an application or an amendment to an application for a state video franchise.

13.10.060 Extension of Existing City Video Franchises

Any entity providing video service under an expired City video franchise on January 1, 2007, shall hereby have the terms of its City video franchise extended on the same terms and conditions until January 2, 2008. The extension of a City video franchise does not preclude the City from further modifications, renewals, extensions or termination of that City video franchise.

SECTION 2: The City Council of the City of Imperial Beach hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

SECTION 3: The City Clerk is directed to prepare and have published a summary of this ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Imperial Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California, on the 19th day of September 2007; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Imperial Beach, California, on the 3rd day of October 2007, by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

**JACQUELINE M. HALD, CMC
CITY CLERK**

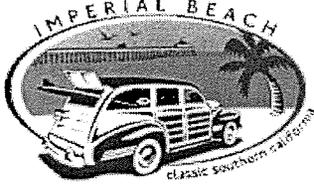
APPROVED AS TO FORM:

**JAMES P. LOUGH
CITY ATTORNEY**

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be an exact copy of Ordinance No. 2007-1057 – An Ordinance of the City Council of the City of Imperial Beach, California, ADDING CHAPTER 13.10 OF THE IMPERIAL BEACH MUNICIPAL CODE, RELATED TO STATE AND CITY VIDEO FRANCHISES.

CITY CLERK

DATE



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: OCTOBER 3, 2007

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT
GREG WADE, DIRECTOR
GERARD SELBY, REDEVELOPMENT COORDINATOR 

SUBJECT: PROJECT PROPOSALS FOR THE FISCAL YEAR 2008-2009
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
PROGRAM

BACKGROUND:

The Community Development Block Grant Program (“CDBG”) is a program funded through the Department of Housing and Urban Development Department (“HUD”). The County of San Diego’s Department of Housing and Community Development allocate the funds to participating cities based on a formula that considers factors such as population, income level, and overcrowded housing.

The Draft Fiscal Year (“FY”) 2008-09 Annual Funding Plan Strategy (“Strategy”) will be presented to the Board of Supervisors on September 18, 2007. The approval of the Strategy marks the start of the annual CDBG cycle that culminates in the funding of community development projects in FY 2008-2009. The final approval by the Board of Supervisors of the projects is expected to take place in May 2008. The HUD funding levels in FY 2008-09 are still uncertain; therefore the Strategy assumes the same level of funding as 2007-08. Adjustments will be made when HUD issues the entitlement figures.

The purpose of this meeting is to gather public comments and for City Council to provide direction to Staff’s on the selection of a project for the FY 2008-2009 CDBG program.

DISCUSSION

The proposed project has been identified as an activity that will benefit the community/families/individuals of Imperial Beach and is currently un-funded. The recommended project is:

1. The purchase of firefighting suits and protective gear that includes 12 sets of turn-out coat and pants, boots, helmet, gloves, goggles; lifesaving equipment, consisting of two (2) ECG Life-Pack 12 monitor; and fire station remodel that includes replacement of cabinets, flooring and lighting.

Staff has evaluated the benefits of a number of different projects. The purchase of fire-fighting suits and protective gear, two Life-pack 12 monitor, and fire station remodel to include cabinets, flooring and lighting will have the maximum impact on the quality of life for the Imperial Beach community. The fire station service area is the entire City Of Imperial Beach and therefore benefits the entire community. The purchase of firefighting suites and protective gear increases the safety of the firefighters making them less prone to injury, and will enable them to fight fires more productively. The ECG Life-Packs will replace existing equipment that is obsolete; and the remodel will improve working and living conditions of the fire fighters. Other projects considered do not have the same geographical or socio-economic impact on the community.

FISCAL IMPACT:

While the actual amount of CDBG will not be determined until the County receives all CDBG funding requests and receives HUD notification of available funds, the estimated FY 2008-09 CDBG allocation is \$142,000.00.

DEPARTMENT RECOMMENDATION:

1. Receive staff report and comments

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL/CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: OCTOBER 4, 2007

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR
GERARD SELBY, REDEVELOPMENT COORDINATOR *RS*

SUBJECT: REDEVELOPMENT AGENCY PROGRESS REPORT

BACKGROUND

On June 27, 2001 the City Council and Redevelopment Agency (the "Agency") adopted an amendment to the Redevelopment Plan for the Palm/Commercial Redevelopment Project. In 2003 a Tax Allocation Bond (the "Bond") was issued yielding approximately \$22 million. A series of Community Workshops were held to determine community priorities for the Bond proceeds. In summer of 2004, the Agency held a Focus Discussion based on the Community Workshops' results and established allocation priorities for the Bond proceeds. On March 2, 2005, the Agency approved the Five-Year Implementation Plan that included projects and programs to be undertaken by the Redevelopment Agency over the next five years.

DISCUSSION

The purpose of the Agency Progress Report is to provide the Chair and Members of the Agency an update on various Agency projects. Attachment 1 describes the current status of the various redevelopment projects. Attachment 2 describes the current status of the Façade Improvement Program.

REVENUE AND EXPENDITURES

Funding Sources (Current)	
Bond-Housing	\$4,260,300
Bond Non-Housing	\$16,085,500
Tax-Increment - Housing	\$3,082,192
Tax-Increment – Non-Housing	<u>\$12,330,112</u>
Subtotal	\$35,758,104
Expenditures (June 30, 2006) *	<u>(\$17,490,622)</u>
TOTAL	<u>\$18,267,482</u>

* Expenditures include Agency/City Administration, Affordable Housing Agreements, Capital Improvements, Bond Payments, Pass-Through Payments, and county fees.

DEPARTMENT RECOMMENDATION

- Staff recommends that the Redevelopment Agency review this report and give staff further direction as needed.

CITY MANAGER’S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

IMPERIAL BEACH
REDEVELOPMENT AGENCY
PROGRESS REPORT

PROJECT/PROGRAM	PROGRESS/STATUS
9 TH & Palm Redevelopment Project	<ul style="list-style-type: none"> ▪ Issued Request for Proposals/Qualifications ▪ Reviewed Two Proposals ▪ Continuing to work with developers and evaluate alternative development proposals
Plan Amendment	<ul style="list-style-type: none"> ▪ Issued Request for Proposals/Qualifications ▪ Entered into an agreement with Keyser Marston – LA Office ▪ Draft Report Due December 2007
Old Palm Streetscape Project	<ul style="list-style-type: none"> ▪ Construction Plans and Documents are 95% completed ▪ Completed Environmental documentation required by Caltrans ▪ Authorization to Proceed – December California Transportation Committee Meeting
C-2 and C-3 Commercial Master Plan	<ul style="list-style-type: none"> ▪ Issued Request for Qualifications for consultant services ▪ Selected Consultant and entered into an agreement with EDAW ▪ Interviewed Stakeholders ▪ 1st Public Workshop October
Façade Improvement Program	<ul style="list-style-type: none"> ▪ See Attachment 2
Palm Avenue SR 75 Master Plan	<ul style="list-style-type: none"> ▪ Issued Request for Qualifications for consultant services ▪ Selected Consultant and entered into an agreement with MIG ▪ Kick-off Meeting with Staff schedule for the week of October 8th.
Eco-tourism Study	<ul style="list-style-type: none"> ▪ Completed brochure and distributed to various entities ▪ Website is in development
Mundt Property	<ul style="list-style-type: none"> ▪ Developed pro-forma for Hotel Development ▪ Continue to discuss with owner the potential redevelopment of property w/Owner
Affordable Housing Development	<ul style="list-style-type: none"> ▪ Completed the rehabilitation of 15 low-income units ▪ Continue to solicit opportunities for Affordable Housing

IMPERIAL BEACH
FAÇADE IMPROVEMENT PROGRAM
PROGRESS REPORT

PROJECT	PROGRESS/STATUS
Cox Bait & Tackle	▪ Completed
Seacoast Shopkeepers	▪ Completed
MZM Seacoast Bistro	▪ Completed
YMCA Surf Camp	▪ Completed
TNT Surfboard	▪ Completed
Imperial Beach Pet Hospital	▪ Completed
One Source Realty	▪ Completed
Ye Older Plank Inn	▪ Completed
Marisa's Mexican Seafood	▪ Completed
Crystal Cove Cocktails	▪ Completed
Allstate Insurance Co.	▪ Completed
State Farm/Paper Shack	▪ Completed
Criss Cross Salon	▪ Completed
Palm Avenue Market/Suds	▪ Completed
Silver Strand Plaza	▪ Completed
Imperial Beach Professional Center	▪ Installation in progress
Mickie's Bar & Grill	▪ Soliciting new bids for painting, landscape, lighting, and signage
El Tapatio Catering	▪ Working on design
Cow-a-Bunga	▪ Working with Port for sliding window and door
Strip Mall (1051 13 th Street)	▪ Working with owner to finalize paint colors
Strip Mall (629-41 9 th Street)	▪ Working with Owner to develop scope of work
Specialty Design (236/238 Palm Avenue)	▪ Working with Owner to develop scope of work
Quonset Hut (1221-35 Palm Avenue)	▪ Working with Owner to develop scope of work
Imperial Beach Medical Center	▪ Pending
Bridge (150 Palm Avenue)	▪ Pending
Spot Less Laundry	▪ Pending
International Blends	▪ Applicant withdrew request
Bullpen Tavern	▪ Applicant withdrew request
Dr. Arnel Mariano	▪ Applicant withdrew request
Woodies Waterfront Patio	▪ Applicant withdrew request



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: OCTOBER 3, 2007

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR
GERARD E. SELBY, REDEVELOPMENT COORDINATOR

SUBJECT: AMENDMENT OF REHABILITATION LOAN AGREEMENT
WITH SOUTH BAY COMMUNITY SERVICES FOR
SUBSTANTIAL REHABILITATION OF 1360 HEMLOCK
AVENUE

A handwritten signature in black ink, appearing to be "G. Selby", is written over the name "GERARD E. SELBY" in the "ORIGINATING DEPT." section.

BACKGROUND:

On October 4, 2005, the City Council and Redevelopment Agency authorized the City Manager to enter into a Rehabilitation Loan Agreement with South Bay Community Services ("SBCS") for the substantial rehabilitation of a an 7-unit apartment building located at 1360 Hemlock Avenue. SBCS has completed the rehabilitation pursuant to the Agreement. The apartment building is owned and operated by South Bay Community Services and provides housing for very low-income families.

SBCS has submitted a request for an additional \$89,183 in funding to convert garages to a community room at 1360 Hemlock Street building. The community room will provide a common multi-purpose area for all the residents. The room will have a refrigerator and a microwave and will be equipped with computers.

The rehabilitation of 1360 Hemlock Avenue converted a blighted apartment building into affordable housing for families earning fifty percent or below the area median income for fifty-five years. The conversion of the garages will provide all of the residents with a place to pursue opportunities that will assist in economic and educational advancement. The amendment to the Agreement will provide the final touch to an extraordinary accomplishment.

DISCUSSION:

The key points of the Agreement will remain unchanged and include the following:

- The loan interest is 3% compounded annually.
- If the rental and occupancy conditions are met, no payments are required.
- The loan amount and accrued interest would be forgiven at the end of the 55-year term if the covenants and conditions were met over the term of the loan.

- If the property is sold or transferred, the loan balance and all accrued interest are due and payable upon transfer or sale unless loan restrictions are kept in place and the transfer is approved by the Redevelopment Agency.
- An Agreement Affecting Real Property and Deed Restrictions will be recorded on each title with the note. Covenants would run for 55 years.
- The rents shall be indexed to the Area Median Income (AMI) and shall be affordable to families earning less than 50% of AMI and further will comply with all program regulations contained in the Regulatory Agreements dated June 30, 1995 (1360 Hemlock Avenue) by and between the County of San Diego and South Bay Community Services, Inc.
- The City of Imperial Beach and the County of San Diego will monitor annually rents and tenant incomes.

The amended loan amount for 1360 Hemlock is as follows:

1360 Hemlock

Original Agreement (November 2005)	\$540,425
Paid to Date	<u>\$540,425</u>
Amendment	\$89,183
Amount Available Subsequent to the Amendment	<u>\$89,183</u>

It is anticipated that construction will commence in October 2007 with an estimated construction schedule of three (3) months.

ENVIRONMENTAL IMPACT:

Not a project as defined by CEQA.

FISCAL IMPACT:

There is approximately \$6.3 million of bond and tax increment in the Redevelopment Agency budget for Affordable Housing.

DEPARTMENT RECOMMENDATION:

Staff recommends that the Redevelopment Agency adopt Resolution No. R-07-131 and authorize the Executive Director to amend the Rehabilitation Loan Agreement with South Bay Community Services for the rehabilitation of 1360 Hemlock Avenue.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

A handwritten signature in black ink, appearing to be 'G. Brown', written over a horizontal line.

Gary Brown, Executive Director

Attachments:

1. Resolution – R-07-131
2. Rehab Loan Agreement – 1360 Hemlock Avenue
3. Deed of Trust & Promissory Note – 1360 Hemlock Avenue

RESOLUTION NO. R-07-131

**A RESOLUTION OF THE REDEVELOPMENT AGENCY
OF THE CITY OF IMPERIAL BEACH, CALIFORNIA,
APPROVING AN AMENDMENT TO AN AGREEMENT
WITH SOUTH BAY COMMUNITY SERVICES FOR
REHABILITATION WORK LOCATED AT 1360
HEMLOCK AVENUE**

The Redevelopment Agency of the City of Imperial Beach (“Agency”) does hereby resolve as follows:

WHEREAS, the Agency is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area [the “Project”]; and

WHEREAS, in order to carry out and implement the Redevelopment Plan, the Agency proposes to amend an agreement with South Bay Community Services (“SBCS”) for Rehabilitation Work (1360 Hemlock Avenue, Imperial Beach); and

WHEREAS, the Corporation previously entered into an Agreement [“the Agreement”] with South Bay Community Services (“SBCS”) for Rehabilitation Work (1360 Hemlock Avenue, Imperial Beach); and

WHEREAS, the Agency wishes to amend the said Agreement with SBCS by adding \$89,183 to the original Agreement, the additional funds will be used to convert garages to a community room; and

NOW, THEREFORE, BE IT RESOLVED, by the Agency, that the Executive Director of the Agency, or designee, is authorized and empowered to execute, for and on behalf of the Agency, an Amendment to the Agreement with SBCS for Rehabilitation Work in an amount not to exceed EIGHTY-NINE THOUSAND ONE HUNDRED EIGHTY-THREE DOLLARS (\$89,183); thereby increasing the compensation of the original Agreement to a total amount not to exceed SIX HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED AND EIGHT DOLLARS (\$629,608).

NOW, THEREFORE, BE IT RESOLVED, by the Agency as follows:

That the City Manager or designee, is authorized and empowered to execute, for and on behalf of the Agency, an amendment to an agreement with South Bay Community Services (“SBCS”) for Rehabilitation Work (1360 Hemlock Avenue, Imperial Beach); under the terms and conditions set forth in the amended Agreement;

BE IT FURTHER RESOLVED BY the Agency, as follows:

That the amount of the agreement shall not exceed **SIX HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED AND EIGHT DOLLARS (\$629,608.)**

PASSED, APPROVED, AND ADOPTED by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 19th of September, 2007, by the following roll call vote:

**AYES: BOARDMEMBERS:
NOES: BOARDMEMBERS:
ABSENT: BOARDMEMBERS:**

**JIM C. JANNEY
CHAIRPERSON**

ATTEST:

**JACQUELINE M. HALD, CMC
SECRETARY**

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and exact copy of Resolution No. R- 07-131 – to approve an Amendment to an Agreement with South Bay Community Services for Rehabilitation Work (1360 Hemlock Avenue, Imperial Beach).

CITY CLERK

DATE

**AMENDMENT TO AGREEMENT BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH AND
SOUTH BAY COMMUNITY SERVICES FOR REHABILITATION WORK
(1360 Hemlock Avenue, Imperial Beach, CA 91932)**

THIS AMENDMENT TO AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2007 (the "Effective Date"), for purposes of reference only, and effective as of the date last executed between the parties, by and between the Redevelopment Agency of the City of Imperial Beach (the "Agency") and South Bay Community Services, a non-profit organization ("SBCS") is made with reference to the following facts:

RECITALS:

WHEREAS, the Agency desires to amend the Agreement between the AGENCY and SBCS; and

WHEREAS, SBCS desires to convert garages to a community room; and

WHEREAS, the funding of this rehabilitation Development will be done through the Agency's housing set-aside funds; and

WHEREAS, the Agency desires to amend the Agency Loan by increasing the amount by Eighty-Nine Thousand One Hundred Eighty-Three Dollars (\$89,183); thereby increasing the Agency Loan to a total amount not to exceed Six Hundred Twenty-Nine Thousand Six Hundred and Eight Dollars (\$629,608); and

NOW, THEREFORE, in consideration of the mutual obligations of the parties as herein expressed, the parties hereto agree as follows:

1. Definitions. Is hereby amended to include the following: The following capitalized terms have the meanings set forth in this Section wherever used in this Agreement, unless otherwise provided:

c. "Amended Approved Development Budget" shall mean the development budget, as approved by the Agency, and attached hereto and incorporated into, herein as Exhibit A, but which may be amended with the approval of the Agency as set forth in this Agreement.

j. "Loan" shall mean the Agency loan to Borrower in the amended principal amount of Six Hundred Twenty-Nine Thousand Six Hundred and Eight Dollars (\$629,608).

r. "Community Room" means the conversion and rehabilitation of two garages on the Property.

3. Loan. The Agency shall loan to SBCS the Loan in the principal amount of Six Hundred Twenty-Nine Thousand Six Hundred and Eight Dollars (\$629,608) for the purposes set forth in Section 5 of this Agreement. The obligation to repay the Loan shall

be evidenced by the Note in the form provided by the Agency.

5. Use of Loan Funds.

i. SBCS shall use Six Hundred Twenty-Nine Thousand Six Hundred and Eight Dollars (\$629,608) of the Loan funds to the total rehabilitation cost, consistent with the approved amended development budget.

11. Scope of Work. SBCS shall perform those duties described in the Amended Scope of Work in Exhibit D, attached hereto and incorporated herein.

IN WITNESS WHEREOF, Redevelopment Agency of the City of Imperial Beach, County of San Diego, and South Bay Community Services have executed this Agreement this _____ day of _____ 2007.

REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH

Gary Brown
Executive Director

APPROVED AS TO FORM

James P. Lough
City Attorney

ATTEST

Jacque Hald
City Clerk

South Bay Community Services

Kathryn Lembo, Director

EXHIBIT A
 AMENDED DEVELOPMENT BUDGET
 1360 HEMLOCK STREET

<u>Item</u>	<u>Description</u>	<u>Optional</u>	<u>Cost</u>
1.	General Conditions		\$56,127
2.	Demolition Exterior		\$6,000
3.	Demolition Interior		\$4,000
2.	Concrete Flatwork		\$8,410
3.	Masonry Seat Walls		\$24,210
4.	Masonry Trash Enclosure		\$14,286
5.	Parking Lot		\$1,800
6.	Concrete Columns		\$7,400
7.	Mailboxes		\$1,500
8.	Wood Trellises		\$5,000
9.	Wood Siding		\$7,200
10.	Wood Chips		\$760
11.	Front Porch		\$9,717
12.	Awnings		\$2,500
13.	Stairway Entry	\$6,000	\$0
14.	Remove Garage Doors		\$6,000
15.	Landscaping		\$15,200
16.	Fencing		\$8,000
17.	Entry Gate		\$0
18.	Exterior Lighting		\$3,435
19.	Windows		\$17,626
20.	Exterior Paint		\$9,319
21.	Security Doors	\$4,000	\$0
22.	Pest Control		\$1,200
23.	Roofing		\$16,000
24.	Finish Carpentry		\$4,000
25.	Cabinetry		\$27,708
26.	Countertops		\$3,871
26.	Exterior Doors and Hardware		\$4,000
27.	Interior Painting		\$7,360
28.	Flooring		\$20,000
29.	Refinish Bathtubs and Showers		\$0
30.	Medicine Cabinets		\$800
31.	Bathroom Accessories		\$800
32.	Re-pipe Water Lines		\$53,100
33.	Garbage Disposal		\$1,571
34.	Toilets		\$0
35.	Kitchen Sink		\$5,719
36.	Kitchen Faucet		\$1,907
37.	Bath Sink		\$1,625
38.	Bath Faucet		\$2,675
39.	Tub and Shower Controls		\$0
40.	Mirrors		\$700

EXHIBIT A
 AMENDED DEVELOPMENT BUDGET
 1360 HEMLOCK STREET

<u>Item</u>	<u>Description</u>	<u>Optional</u>	<u>Cost</u>
41.	Shower Enclosures		\$0
42.	Drain Lines		\$600
43.	Appliances		\$0
44.	Electrical		\$1,435
45.	Lighting		\$1,400
46.	Heating		\$800
47.	Smoke Detectors		\$735
48.	Laundry Room		\$950
49.	Asbestos Abatement		\$0
50.	Gutters and Downspouts		\$977
51.	Concrete Curb, Gutter, Sidewalks and Aprons (Includes ADA requirements)		\$6,123
52.	Permits		\$2,308
	Subtotal	\$10,000	\$376,854
	Liability Insurance		\$12,243
	Contractor's Fee (15%)		\$56,528
	Performance Bond		\$0
	Subtotal	\$10,000	\$445,625

EXHIBIT A
 AMENDED DEVELOPMENT BUDGET
 1360 HEMLOCK STREET

<u>Item</u>	<u>Description</u>	<u>Optional</u>	<u>Cost</u>
	GARAGE CONVERSION		
	Architectural Services		\$10,000
	Project Management		\$7,000
	Demolition		\$2,500
	ADA Access ramp		\$1,200
	Concrete		\$1,125
	Framing		\$1,885
	Electrical/Computer Wiring		\$3,931
	HVAC		\$2,100
	Plumbing		\$9,700
	Insulation		\$975
	Drywall		\$3,225
	Doors and Hardware		\$975
	Finish Carpentry		\$1,130
	Flooring		\$2,300
	Painting		\$2,700
	Appliances		\$800
	Cabinets		\$4,700
	Countertops		\$1,200
	Vertical Blinds		\$550
	Mirrors		\$350
	Furnishings		\$4,500
	Permits		\$3,500
	Subtotal		\$66,346
	Contigency		\$5,000
	Overhead		\$10,702
	Fee		\$7,135
	TOTAL		<u>\$89,183</u>

Exhibit D
Amended
Scope of Work
1360 Hemlock

SBCS shall provide the following:

<u>Item</u>	<u>Description</u>
1.	General Conditions - Supervision, Project Management, Toilets, Construction Fencing, Trailer/Lockup, Debris Hauling, telephone, Truck, fuel, laborers, Temp Power, Misc. Expenses
2.	Demolition Exterior
3.	Demolition Interior
2.	Concrete Flatwork - General Conditions – Supervision, Project Management, Toilets, Construction Fencing, Trailer/Lockup, Debris Hauling, telephone, Truck, fuel, laborers, Temp Power, Misc. Expenses
3.	Masonry Seat Walls - All walls to be 16" wide and 24" finish grade. Block is to be a mix of two standard colors (no grey) Walls to have a paver cap on top.
4.	Masonry Trash Enclosure - Build new masonry trash enclosure per plans. Block to be 8x8x16 with the same color mix as seat walls. Enclosure to include metal gates and a 2x6 pressure treated bumper on the inside of the enclosure. Remove existing enclosure.
5.	Parking Lot – Demolish and remove concrete for new lawn area. Pour new concrete at old trash enclosure area. Install new wheel stops and striping. Pour a new 6" high curb between the lawn and parking lot.
6.	Concrete Columns – Install four 16' diameter concrete columns with a smooth finish.
7.	Mailboxes - Install new pedestal mounted mailbox per plans. Mailbox to have eight mailboxes and an outgoing mail compartment. Included are locks and keys.
8.	Wood Trellises - Build wood trellises per the plans. Include all hardware and necessary backing.
9.	Wood Siding - Install "hardiplank" siding per plan. Nailing per manufacturers recommendations. All siding to be primed and painted.
10.	Wood Chips - Provide ADA approved wood chips in play area.
11.	Front Porch – Framing to be: 4"x6" ledger at building with (metal cap and drip pan), 6"x8" beam on top of concrete columns, 4"x4" rafters 24" o.c. corrugated metal roofing panels.
12.	Awnings – Provide wooden awnings.
13.	Stairway Entry – Remove the stucco area above the stairway entry, Include all necessary stucco repairs.
14.	Remove Garage Doors – Remove garage doors. Install new windows and doors. Windows to match new replacement windows.
15.	Landscaping - Install new landscape and irrigation per plans. Relocate existing trees per plans. Included is a new irrigation timer.
16.	Fencing – Replace the wood fence on the west and east side of the property with 6' cedar fence boards and redwood posts and rails.
17.	Entry Gate – Install new wrought iron entry gate with automatic opener. Provide underground electric power to the gate opener.
18.	Exterior Lighting - Install three low-pressure sodium box style lights on the exterior of the building. Any exterior wiring to be in metal conduit run up tight to the rafters painted to

<u>Item</u>	<u>Description</u>
	match the exterior paint.
19.	Windows - Install new dual glazed white vinyl replacement windows and sliding glass doors for every existing opening on all buildings. Windows to be "Milgard". All codes regarding egress and tempered glass to be met. Windows to include screens, locking mechanisms, and all required hardware. Caulk all joints. Window to window, window to drywall, window to stucco/siding. Repair any damage cause by window installations, bathroom windows to have opaque glass. Remove and dispose of old windows.
20.	Exterior Paint - Prepare and paint all exterior surfaces. All areas to be painted must include one coat of primer and one finish coat of paint. All painting colors to be approved by the owner. Owner will use a maximum of three colors.
21.	Security Doors - Install new metal security screen doors. Owner to approve one of the typical "Home Depot" designs.
22.	Pest Control - Spray for all common house pests.
23.	Roofing - Install new roofing system for flat roof. Remove existing gravel roof down to sheathing. Provide a square footage price to R&R Sheathing. Apply one layer of rosin slip-sheet nailed in place. Apply one layer of #28 lb. Base sheet, mechanically fastened using simplex nails. Install 26 gauge galvanized metal gravel stops, all laps to be set in roof cement. Prime all metal surfaces coming in contact with new roof system with asphalt primer. Install new galvanized vent pipe flashings, seal and paint. Apply three (3) layers of #11lb Fiberglass ply laminated with 25-30 lbs of hot asphalt per square feet. Flood coast final ply with 50-60lbs. of hot asphalt per square feet, and embed 350-400 lbs of gravel per square feet. Install new fiber cant strips at all horizontal to vertical surface intersections. Install new 2' x 8" x3" coping cap metal to tops of parapet walls.
24.	Finish Carpentry - Replace all damaged interior doors, hardware, molding, shelf & pole, and wardrobe doors. Interior doors to be hollow core, paint grade, slab doors. Replace doorjamb and casing only if needed. Door hardware to be "Kwikset" or equal. Gold color with lever handles. Molding and shelving to be MDF. Wardrobe doors to be vinyl with white trim and must include tope and bottom tracks. Remove and dispose of old materials. All nails to be countersunk and filled.
25.	Cabinetry - Remove and replace all upper and lower kitchen and bathroom cabinets. Cabinets to be pre-finished stain grade veneer (no picture or film veneers). Cabinets to have melamine interiors. Hinges to be brass. Cabinets to include toe-kicks and cutting boards. All Cabinets handles to be wire pulls. Owner must approve shop drawings for cabinets. Base shoe to be included at all cabinets. Remove and dispose of old cabinets.
26.	Countertops - Install new countertops in the kitchens and baths. "Laminate" or equal.
26.	Exterior Doors and Hardware - Install new entry door. Install new 13/4" solid core paint grade entry door.
27.	Interior Painting - Prep and paint all previously painted interior surfaces, including painting of ceilings, semi-gloss on all walls and ceilings, high-gloss on all doors and trim, caulk all areas in order to provide a clean finish product, and owner will approve color prior to start of painting.
28.	Flooring - Install new VCT in all bathrooms and kitchens. Install new carpet in all living rooms and bedrooms.
29.	Refinish Bathtubs and Showers - Install a polyurethane coating on all bath and showers (5 year warranty)
30.	Medicine Cabinets - Replace all medicine cabinets
31.	Bathroom Accessories - Install new Toilet paper holder and towel bar.

<u>Item</u>	<u>Description</u>
32.	Re-pipe Water Lines
33.	Garbage Disposal - Replace garbage disposals. Install ½ H.P. Badger garbage disposals.
34.	Toilets - Remove existing and install new white 1.6- gallon low flow toilet.
35.	Kitchen Sink - Install new kitchen sink, including sink to be dual basin stainless steel, new p-trap, and dispose of excising sink.
36.	Kitchen Faucet - Install new single lever, "Moen" brand or equal kitchen faucet, including all new angle stops and supply lines. Dispose of existing.
37.	Bath Sink - Install new bathroom white porcelain over steel, "American Standard" or equal, including new p-trap. Dispose of existing sink.
38.	Bath Faucet - Install new single lever "Moen" brand or equal bath faucet, including all new angle stops and supply lines. Dispose of existing.
39.	Tub and Shower Controls - Install new "Moen" or equal tub, shower valve and control, new tub spout, and new single handle shower control. Dispose of existing.
40.	Mirrors - Install new mirrors in all bathrooms.
41.	Shower Enclosures - Replace shower enclosures in all units.
42.	Drain Lines - Jet out all accessible sewer lines.
43.	Appliances - Install new 15cu.ft. energy star rated refrigerators, an electronic ignition ranges, and range hoods in all units.
44.	Electrical - Install Ground Fault Interrupted outlets in all kitchens and baths. Replace and damaged switches and outlets.
45.	Lighting - Replace any damaged or missing light fixtures.
46.	Heating - Provide service to all gas heaters.
47.	Smoke Detectors - Install smoke detectors in all bedrooms and hallways.
48.	Laundry Room - Install new VCT flooring and paint entire room.
49.	Asbestos Abatement
50.	Gutters and Downspouts
51.	Concrete Curb, Gutter, Sidewalks and Aprons (Includes ADA requirements) Remove and replace the main entry on Hemlock Street.
52.	Permits
53.	Convert garages into community room

NOTICE: THIS NOTE MAY REQUIRE PAYMENT OF PRINCIPAL AND INTEREST UPON THE SALE OR TRANSFER OF THE PROPERTY OR UPON A PREPAYMENT.

**AMENDED
PROMISSORY NOTE SECURED BY DEED OF TRUST
(CONTAINS A REPAYMENT CLAUSE)**

**1360 Hemlock Avenue
Imperial Beach, CA 91932**

1. **Trustor's Promise to Pay.** For value received, and made this _____, the undersigned, **South Bay Community Services**, a non-profit organization ("Trustor"), promises to pay to the Redevelopment Agency of the City of Imperial Beach ("Beneficiary"), or order, the sum of Six Hundred Twenty-Nine Thousand Six Hundred Eight Dollars (\$629,608), with interest accruing thereon as hereinafter provided, and payable as set forth below. It is understood that the Beneficiary may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder". All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Rehabilitation Loan Agreement.
2. **Interest.** The outstanding principal balance of this Note shall bear simple interest at the rate of three percent (3%) per annum from the date of disbursement until paid; provided, however, if a Default occurs, interest on the principal balance shall begin to accrue, as of the date of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.
3. **Payments and Term.** The term of this Note (the "Term") shall commence with the date of this Note and shall expire on the date, which is fifty-five (55) years after the date of this Note. This Note shall be due and payable as set forth in Rehabilitation Loan Agreement.
4. **Transfer.** A transfer constitutes sold, or otherwise conveyed, by operation of law or otherwise. No delay or omission on the part of the Beneficiary shall operate as a waiver of such right of repayment or of any other right of this Note. The principal amount of this Note, together with interest (if any) accruing thereon from the date hereof as set forth in Section 2, shall be due and payable on or before the date provided by the Beneficiary in the Notice of Acceleration, which shall not be less than thirty (30) days, if all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed, or transferred (or if a beneficial interest in Trustor is sold, rented, refinanced, conveyed, or transferred and Trustor is not a natural person)(herein called "Transfer") without the prior written consent of the Beneficiary. The Beneficiary shall not exercise this right of acceleration if prohibited by federal law as of the date of the Deed of Trust or if the Beneficiary has executed a separate written waiver of this option. The following shall not constitute a Transfer:
 - (a) A transfer of the Property by a Trustor to an inter vivos trust in which the Trustor is the sole beneficiary.

- (b) A transfer by means of encumbering the Property with a lien, which is a junior lien to the lien securing the loan to Trustor, evidenced by the Deed of Trust.
- (c) The Property is transferred or sold to a Qualifying Household, with the express written consent of the Beneficiary, subject to the conditions in the Regulatory Agreement between Trustor and Beneficiary.
- (d) Renting a portion of the residence to another provided owner continues to occupy property as the Primary Residence.

5. **Prepayment.** Trustor has the right to prepay, at any time, all or any part of the principal amount without incurring any penalty, apart from any interest that may be due under default provisions above. In the event that Trustor chooses to prepay the Note, Trustor must notify Note Holder in writing. If the property is **not** for sale, in escrow, transferred to a party other than the Trustor listed in this Note, or rented at the time of such notification, no interest will be due: only the full amount of the principal will be due to the Beneficiary. If the property **is** for sale, in escrow, transferred to a party other than the Trustor listed in this Note, or rented at the time of notification, the Note will be part of the escrow and/or appropriate interest will be incurred as an obligation by Trustor as listed in paragraph 2 above.

All payments made under this Note shall be paid in lawful money of the United States to the Redevelopment Agency of the City of Imperial Beach, at 825 Imperial Beach Blvd., Imperial Beach, CA 91932.

6. **Default Under Deed of Trust.** Notwithstanding any other provisions of the Note, if default occurs in any of the covenants or agreements contained in the Deed of Trust securing this Note, this Note shall immediately become due and payable in full at the option of the Beneficiary. In the event the Beneficiary exercises such option, the amounts due and payable shall be the principal balance remaining on the Note and other amounts owing, together with accrued but unpaid interest as described above.
7. **Attorneys' Fees.** If suit is brought by either party to this agreement to enforce any of its terms, the party deemed the prevailing party, as defined in the Code of Civil Procedure section 1032, shall be entitled to recover from the opposing party all costs and expenses, including attorneys' fees, incurred by the prevailing party in exercising any of its rights or remedies hereunder or enforcing any of the terms conditions, or provisions hereof.
8. **Time.** Time is of the essence herein.
9. **Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention and signed by an authorized representative of the Beneficiary and Trustor.
10. **Severability.** If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity and binding effect of the remainder of this Note upon the parties.
11. **Trustor's Waivers.** Trustor waives any rights to require the Beneficiary to perform certain acts. Those acts are:
- (a) To demand payment of amounts due (known as "presentment");
 - (b) To give notice that amounts due have not been paid (known as "notice of dishonor");
 - (c) To obtain an official certification of non-payment (known as a "protest").

12. Giving of Notices. Any notice that must be given to Trustor under this Note will be given by delivering it or by mailing it first class mail or by certified mail, return receipt requested, addressed to Trustor at the property address set forth above. A notice that must be given to the Beneficiary under this Note will be given by mailing it certified mail, return receipt requested, to the Beneficiary at the address stated in Section 5, above. Any party may change its address by a notice given to the other party in the manner set forth in this Section.

13. Joint and Several Responsibility. If more than one person executes this Note, each is fully and personally obligated to pay the full amount owed and to keep all promises in this Note.

Trustor understands that agreement to the provisions of this Note is voluntary. The Trustor has read and understands the foregoing and agrees that upon any transfer of the Property, as listed in paragraphs 2, 4, and 6 of this Note, the outstanding obligation shall be due and payable.

This Note is governed and construed in accordance with the laws of the State of California and executed at El Cajon, California, and the date set forth below.

NOTICE TO TRUSTOR

Do not sign this Note if it contains blank spaces.
All spaces should be completed before you sign.

SOUTH BAY COMMUNITY SERVICES

Date

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

WHEN RECORDED PLEASE MAIL TO:
City of Imperial Beach
Redevelopment Agency
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

(SPACE ABOVE FOR RECORDER'S USE ONLY)

APN: 633-221-06

Loan Number: RDA - 002

**AMENDED
DEED OF TRUST & ASSIGNMENT OF RENTS**
(This is a Second Deed of Trust)

THIS AMENDED DEED OF TRUST is made this _____, 2007, by **South Bay Community Services, a non-profit organization**, (herein called "Trustor"), and the **City of Imperial Beach** (herein called "Trustee"), for the benefit of the **Redevelopment Agency of the City of Imperial Beach**, (herein called "Beneficiary") whose address is 825 Imperial Beach Blvd., Imperial Beach, CA 91932.

TRUSTOR, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of San Diego, State of California:

SEE EXHIBIT "A" ATTACHED HERETO FOR LEGAL DESCRIPTION.

which has the address **1360 Hemlock Avenue, Imperial Beach, CA 91932** (herein "Property");

TOGETHER with all the improvement now and hereafter erected on the above property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to the Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property";

TO SECURE to the Beneficiary the repayment of the indebtedness evidenced by Beneficiary's Promissory Note dated _____, 2006, and riders, extensions and renewals thereof (herein "Note"), in the principal sum of SIX HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED AND EIGHT DOLLARS (\$629,608), with interest thereon, fully deferred with the total indebtedness, if not sooner paid due and payable upon sale or change in title of the property, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust and any riders hereto; the performance of the covenants and agreements of Trustor herein contained; the performance of the covenants and agreements of Trustor contained in that certain Regulatory Agreement dated the _____, 2007, by and between Beneficiary and Trustor.

Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Trustor is unencumbered except for encumbrances of record. Trustor covenants that Trustor warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS

Trustor and Beneficiary covenant and agree as follows:

1. Payment of Principal and Interest. Trustor shall promptly pay when due the principal and interest indebtedness evidenced by the Note.

2. Funds for Taxes and Insurance. To protect the security of the Deed of Trust, Trustor agrees to pay, at least ten (10) days before delinquency, all taxes and assessments affecting said property; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; and all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his/her reasonable fees.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Beneficiary under the Note shall be applied by Beneficiary first in payment of amounts to Beneficiary by Trustor, then to interest payable on the Note, and then to the principal of the Note.

4. Prior Mortgages and Deeds of Trust; Charges, Liens. Trustor shall perform all of Trustor's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over the lien of this Deed of Trust, including Trustor's covenants to make payments when due. Trustor shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

5. Hazard Insurance. Trustor shall keep the improvement(s) now existing or hereinafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as the Beneficiary may require and in such amounts and for such periods as the Beneficiary may require.

The insurance carrier providing the insurance shall be chosen by Trustor subject to approval by the Beneficiary; provided, that such approval will not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to the Beneficiary and shall include a standard mortgage clause in favor of and in a form acceptable to the Beneficiary. The Beneficiary has the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, Trustor shall give prompt notice to the insurance carrier and the Beneficiary. The Beneficiary may make proof of loss if not made promptly by Trustor.

If Property is abandoned by Trustor, or if Trustor fails to respond to the Beneficiary within thirty (30) days from the date notice is mailed by the Beneficiary to Trustor that the insurance carrier offers to settle a claim for insurance benefits, the Beneficiary is authorized to collect and apply

the insurance proceeds at the Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

6. Preservation and Maintenance of Property, Condominium, Cooperatives, Planned Unit Developments, Planned Residential Developments. Trustor will keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium, a planned unit development or a planned residential development, Trustor shall perform all of Trustor's obligations under the declaration of covenants, conditions and restrictions, creating or governing the condominium, planned unit development or planned residential development, the by-laws and regulations of the condominium, planned unit development or planned residential development, and constituent documents.

7. Protection of the Beneficiary Security. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects the Beneficiary's interest in the Property, then the Beneficiary, at the Beneficiary's option, upon notice to Trustor, may make such appearance, disburse such sums including reasonable attorneys' fees, and take such action as is necessary to protect the Beneficiary's interest. If the Beneficiary's required mortgage insurance is a condition of making the loan secured by the Deed of Trust, Trustor shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with the Trustor's and the Beneficiary's written agreement or applicable law.

Any amounts disbursed by the Beneficiary pursuant to this paragraph, with interest thereon, at the Note rate, will become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and the Beneficiary agree to other terms of payment, such amounts will be payable upon notice from the Beneficiary to Trustor requesting payment thereof. Nothing contained in this paragraph will require the Beneficiary to incur any expense or take any action hereunder.

8. Inspection. The Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that the Beneficiary will give the Trustor written notice prior to any such inspection specifying reasonable cause therefore related to the Beneficiary's interest in the Property.

9. Condemnation. The proceeds of any award of claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the Beneficiary subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

10. Trustor Not Released; Forbearance by the Beneficiary Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by the Beneficiary to Trustor or to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor and Trustor's successors in interest. The Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor and Trustor's successors in interest. Any forbearance by the Beneficiary in exercising any right or remedy hereunder, of otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound, Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the Beneficiary and Trustor, subject to the provisions of Paragraph 16 hereof. All covenants and agreements of Trustor shall be joint and several.

12. Notice. Except for any notice required under applicable law to be given in another manner, if at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be given by delivering it or by mailing such notice by certified mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

Redevelopment Agency of the City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attention: Executive Director

and (2) if intended for Trustor shall be addressed to:

South Bay Community Services
1124 Bay Boulevard, Suite D
Chula Vista, CA 91911
Attention: Executive Director

Any Notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or the Beneficiary when given in the manner designated herein.

13. Governing Laws, Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end, the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Trustor's Copy. Trustor shall be furnished a conformed copy of the Note and this Deed of Trust at the time of execution or after recordation thereof.

15. Agreements. Trustor shall fulfill all of Trustor's other loan agreement(s), which Trustor enters into with the Beneficiary.

16. Rehabilitation Loan Agreement. Trustor shall fulfill all of Trustor's obligations under any home rehabilitation, improvement, repair, or other loan agreement that Trustor enters into with the Beneficiary. The Beneficiary, at the Beneficiary's option, may require Trustor to execute and deliver to the Beneficiary, in a form acceptable to the Beneficiary, an assignment of any rights, claims or defenses which Trustor may have against parties who supply labor, materials or services in connection with improvements to the Property.

17. Transfer or Sale of the Property or a Beneficial Interest in Trustor. If all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed or transferred (or if a beneficial interest in Trustor is sold, rented, refinanced, conveyed or transferred and Trustor is not a natural person) without the Beneficiary's prior written consent, the Beneficiary may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Beneficiary if exercise is prohibited by federal laws as of

the date of this Deed of Trust. A transfer constitutes sold, or otherwise conveyed, by operation of law or otherwise. No delay or omission on the part of the Beneficiary shall operate as a waiver of such right of repayment or of any other right of this Note. The principal amount of this Note, together with interest (if any) accruing thereon from the date hereof as set forth in Paragraph 2, shall be due and payable on or before the date provided by the Beneficiary in the Notice of Acceleration, which shall not be less than thirty (30) days, if all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed or transferred (or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person)(herein called "Transfer") without the prior written consent of the Beneficiary. The Beneficiary shall not exercise this right of acceleration if prohibited by federal law as of the date of the Deed of Trust or if the Beneficiary has executed a separate written waiver of this option. The following shall not constitute a Transfer:

- (a) A transfer of the Property by a Trustor to an inter vivos trust in which the Trustor is the sole beneficiary.
- (b) A transfer by means of encumbering the Property with a lien, which is a junior lien to the lien securing the loan to Trustor, evidenced by the Deed of Trust.
- (c) The Property is transferred or sold to a Qualifying Household, with the express written consent of the Beneficiary, subject to the conditions in the Regulatory Agreement between Trustor and Beneficiary.
- (d) Renting a portion of the residence to another provided owner continues to occupy property as the Primary Residence.

NON-UNIFORM COVENANTS

Trustor and Beneficiary further covenant and agree as follows:

18. Acceleration, Remedies. Upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, and those contained in Paragraph 17 hereof, the Beneficiary, prior to acceleration, shall give Notice to Trustor as provided in Paragraph 12 hereof specifying:

- (a) the breach;
- (b) the action required to cure such breach;
- (c) a date, not less than 10 days from the date the Notice is mailed to Trustor, by which such breach must be cured; and
- (d) that failure to cure such breach on or before the date specified in the Notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property.

The notice shall further inform Trustor of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and sale. If the breach is not cured on or before the date specified in the Notice, the Beneficiary, at the Beneficiary's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. The Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing these remedies, including, but not limited to, reasonable attorney's fees.

If the Beneficiary invokes the power of sale, the Beneficiary shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of the Beneficiary's election to cause the Property to be sold and shall cause such notice to be recorded in each county in

which the Property or some part thereof is located. The Beneficiary or Trustee shall mail copies of such notice in the manner prescribed by applicable law. The Trustee shall give public notice of sale to the persons and in the manner prescribed by law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of any previously scheduled sale. Any person, including the Beneficiary or the Beneficiary's designee, may purchase the Property at such sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be conclusive proof of the truthfulness thereof. Trustee shall apply the proceeds of the sale in the following order:

- (a) to all reasonable costs and expenses of the sale, including but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence;
- (b) to all sums secured by this Deed of Trust with accrued interest; and,
- (c) the excess, if any, to the person or persons legally entitled thereto.

19. Trustor's Right to Reinstate. Notwithstanding the Beneficiary's acceleration of the sums secured by this Deed of Trust due to Trustor's breach, Trustor shall have the right to have any proceedings begun by the Beneficiary to enforce this Deed of Trust discontinued at any time prior to five (5) days before the sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if:

- (a) Trustor pays the Beneficiary all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred;
- (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in the Deed of Trust;
- (c) Trustor pays all reasonable expenses incurred by the Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing the Beneficiary's and Trustee's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorneys' fees; and
- (d) Trustor takes such action as the Beneficiary may reasonably require to assure that the lien of this Deed of Trust, the Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired.

Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Rents; Appointment of Receiver; the Beneficiary in Possession. As additional security, Trustor hereby assigns to the Beneficiary the rents of the Property, provided that Trustor shall, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, have the right to collect and retain such rents as they become due and payable.

Upon any such default, the Beneficiary, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the Beneficiary or the receiver shall be applied first to payment of the cost of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receivers bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. The Beneficiary and the receiver shall be liable to account only for those rents actually received. The entering upon and taking possession of said property and the collection of such rents and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

21. Reconveyance. Upon payment of all sums secured by this Deed of Trust, the Beneficiary shall request Trustee to reconvey the Property and will surrender this Deed of Trust and all Notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

22. Substitute Trustee. The Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by the Beneficiary and recorded in the office of the Recorder of the county where the Property is located. The instrument shall contain the name of the original Beneficiary, Trustee and Trustor, the book and page where this Deed is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

23. Request for Notices. Trustor requests that copies of the notice of sale be sent to Trustor's address.

24. Fee for Requested Statements. The Beneficiary may charge a fee not to exceed Sixty Dollars (\$60.00) for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

25. Warranties of Trustor. Trustor warrants to Beneficiary that

- (a) Trustor is and the owner of record and occupies the property whose legal description is attached in Exhibit "A".
- (b) That Trustor's services shall be provided specifically to persons of low-income households earning fifty percent (50%) or below the area median income for fifty-five (55) years during the term of this Deed of Trust.

26. Subordination. The Beneficiary and Trustor acknowledge and agree that this Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Trust Deed and to all advances heretofore made or which may hereafter be made pursuant to the First Trust Deed including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Trust Deed, curing defaults by the Trustor under the First Trust Deed or for any other purpose expressly permitted by the First Trust Deed, and (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property. The terms and provisions of the First Trust Deed are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Trust Deed, any provisions herein or any provision in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting the Trustor's ability to sell the Property shall have no further force or effect on subsequent

owners or purchasers of the Property. Any person, including his/her successors or assigns (other than the Trustor or a related entity of the Trustor), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Trust Deed shall receive title to the Property free and clear from such restrictions.

Further, if the Primary Lender acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Deed of Trust shall automatically terminate upon the Primary Lender's acquisition of title, provided that (i) the Beneficiary has been given written notice of a default under the First Trust Deed, and (ii) the Beneficiary shall not have cured the default under the First Trust Deed, or diligently pursued curing the default as determined by the Primary Lender, within the sixty (60) day period provided in such notice sent to the Beneficiary.

27. Funds for Taxes and Insurance. The Beneficiary will waive collection of impounds for taxes and assessments (including condominium, planned unit development and planned residential development assessments, if any). Trustor will make all payments for impounds to First Trust Deed holder.

N WITNESS HEREOF, The Trustee and the Trustor have executed this Agreement as of the date first hereinafter set forth.

CITY OF IMPERIAL BEACH, a municipal corporation OWNER: SBCS

Gary Brown, Executive Director

Kathryn Lembo, Executive Director

ACKNOWLEDGMENT:

State of California, County of San Diego

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGE OR DEED OF TRUST**

Trustor and the Beneficiary request the holder of any mortgage, Deed of Trust or other encumbrance with a lien which has priority over this Deed of Trust to give Notice to Beneficiary, at Beneficiary address set forth on page one of this Deed of Trust, of any default under the superior encumbrances and of any sale or other foreclosure action.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____ as Instrument No. _____ records of San Diego County, (or filed for record with recorder's serial number _____, San Diego County, California.

IN WITNESS WHEREOF, TRUSTOR HAS EXECUTED THIS DEED OF TRUST.

Date: _____

**South Bay Community Services,
a non-profit organization**

ACKNOWLEDGMENT:

State of California, County of San Diego

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT "A"

**Legal Description of the Property
(to be attached prior to recordation)**

The land referred to herein is situated in the State of California, County of San Diego, and is described as follows:

The Easterly 57.00 feet of Lot 9, Block 3 of SEA BREEZE GARDENS UNIT NO. 2, in the City of Imperial Beach, County of San Diego, State of California, according to Map thereof No. 2117 filed in the Office of the County Recorder of San Diego County, July 2, 1928.



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: OCTOBER 3, 2007
ORIGINATING DEPT.: CITY MANAGER
SUBJECT: DRAFT DEVELOPMENT AGREEMENT FOR SEACOAST INN

BACKGROUND:

Pacifica and City staffs have been drafting a Development Agreement (DA) to delineate the obligations and rights of the City and the Developer related to the development of a new, 78 room (suites) Seacoast Inn. The DA will eliminate or reduce uncertainty in planning for orderly development of the project, assure installation of necessary improvements, provide public services, ensure effective utilization of resources, and otherwise achieve the purposes set forth in the state's Development Agreement Statute.

DISCUSSION:

The attached draft is presented for Council review and comment. There will be a public hearing on the DA on November 21 when Council considers it and other Seacoast Inn related documents such as the Specific Plan and EIR.

Some of the key provisions are:

Rights and Obligations of Developer:

The Developer will:

1. Comply with the Specific Plan
2. Dedicate to the City 35' of Ocean Lane for public beach access
3. Construct public improvements to Seacoast Drive, Dunes Park and other requirements specified by the City Engineer and approved by the City Council.
4. Dedicate to the City necessary right-of-way for improvements to Date Avenue. (This language is not in the draft, but will be added.)
5. Eliminate existing encroachments into public rights-of-way on the north and south property lines.
6. Build access to Date Avenue and Dunes Park from the hotel.
7. Construct new shoreline protection at locations approved by the City Engineer.

8. Build and operate a new 78 room hotel with ancillary uses such as a full service fine dining restaurant, conference center, and centralized room reservation system.
9. Incorporate "green building" development concepts into the project.
10. Coordinate advertising with the City's Ecotourism Program.
11. Advertising for room rentals will be done only through a centralized reservation system.
12. (The 40 foot height limitation is in the Specific Plan.)
13. Pay a fee for mitigating environmental impacts, if necessary.
14. Pay a fee equal to the Transient Occupancy Tax that would have been collected if construction had not disrupted operations.

There are a number of conditions required to be in the Covenants, Conditions and Restrictions (CC&R's) designed to ensure that the project will remain and be operated as a hotel including:

1. There will be an on-site hotel operator to manage reservations for all rooms through a centralized reservation system.
2. The restaurant and conference center will be available to the general public, not just hotel guests.
3. Room and maid service will be provided.
4. Investor owners can use a room for no more than 90 days per year and no more than 25 consecutive days preceded by 50 days of not using a room.
5. Transient Occupancy Tax is to be paid on all occupied rooms, whether occupied by an owner investor or non-investor.
6. No portion of the project can be converted to time-share, full-time occupancy, condominium, apartment, or any other type of project that differs from the 78 guest rooms.
7. Covenants, Conditions and Restrictions cannot be changed without Coastal Commission approval. (In the event that the Coastal Commission does not require this condition, we'll probably state the CC&R's can't be changed without City Council approval. Council might prefer this option now.)
8. The hotel operator will market and advertise all the rooms to the general public.
9. Owner investors cannot discourage rentals or create disincentives for renting.

The City will:

1. Diligently proceed to complete all steps necessary to implement the DA.
2. Hold necessary public hearings.
3. Process and approve all Ministerial Approvals like building permits necessary to complete the project. (City staff will recommend that Date Avenue improvements be added to the CIP, but this is not part of the Development Agreement.)

The Development Agreement also states:

1. Conditions for the Developer to assign his rights

2. Amendments to the DA can be made by mutual consent
3. Requirements for annual reviews of the DA
4. Default conditions and default remedies

The DA Procedures, Exhibit B, provides for annual reviews of the agreement findings, and possible actions such as modifications or terminations based upon findings.

In summary, the DA, its Exhibits, and other documents such as the Specific Plan, are designed to ensure that the project will be of high quality and meet certain key goals:

1. Build a high quality hotel with fine dining and conference facilities.
2. Increase beach area and access.
3. The project will be used as a hotel and not be converted to other uses.
4. Generate additional financial resources for the City.
5. Create a hotel consistent with ecotourism and green building standards.
6. The hotel will meet all requirements necessary to build to the 40 foot height limit.

Council can be proud of the project when it is completed.

ENVIRONMENTAL DETERMINATION:

Staff is currently reviewing the Development Agreement.

FISCAL IMPACT:

The project when completed is likely to generate \$400,000 to \$500,000 more than is generated currently at the project site.

DEPARTMENT RECOMMENDATION:

City Council review and comment upon the Draft Development Agreement.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Seacoast Inn Development Agreement

**RECORDING REQUESTED BY
CITY OF IMPERIAL BEACH**

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383 - Benefits City)

AND WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF IMPERIAL BEACH
825 IMPERIAL BEACH BOULEVARD
IMPERIAL BEACH, CALIFORNIA 91932

SPACE ABOVE THIS LINE FOR RECORDERS USE

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF IMPERIAL BEACH AND
PACIFICA HOST, INC.
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE SEACOAST INN DEVELOPMENT PROJECT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2007 (the "Effective Date"), by and between Imperial Coast Limited Partnership (owner) , a California limited partnership General Partner is Pacifica Hospitality Group, Inc., a Nevada corporation ("Developer"), and the CITY OF IMPERIAL BEACH, a municipal corporation, ("City"), pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of the State of California.

Deleted: IMPERIAL BEACH LP, Incorporated, a California corporation

RECITALS:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 *et seq.* of the California Government Code (the "Development Agreement Statute").

B. The Development Agreement Statute authorizes the City to enter into a property development agreement with any person having a legal or equitable interest in real property for the development of such real property in order to establish certain development rights in the real property.

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C. This Agreement is voluntarily entered into in consideration of the benefits to and the rights and obligations of the parties on the basis of the facts cited herein, understanding and intentions of the parties and in reliance upon the various representations and warranties contained herein.

D. Developer is a corporation organized under the laws of the State of California and is in good standing thereunder.

E. Developer owns in fee that certain parcel of land (the "Project Site") as more specifically described in Exhibit "A", attached hereto.

F. Developer intends to develop the Project Site as a seventy-eight (78) Guest Suite, Beach Resort Hotel is to be developed on an existing 1.39-acre site.

G. The Project Site is located in the City and consists of a total of approximately 1.39 acres of land.

H. The Project Site is located at 800 Seacoast Inn Owners' Association Drive, Imperial Beach, California (APN No. 625-262-01-00).

I. The General Plan designates the area in which the Subject Property is located as Seacoast Commercial (C-2). The Specific Plan provides for the Subject Property to be developed for hotel and ancillary uses under the guidelines established in the applicable Specific Plan, adopted concurrently with this Agreement and attached hereto as Exhibit "D".

J. Developer seeks to comply with conditions of approval and develop the Subject Property in accordance with the anticipated land use policies and regulations set forth in the City's General Plan and with the terms and conditions of this Agreement.

K. Developer shall not receive any density increases for the Project, and the City has approved this Project in a manner consistent with existing rules and regulations governing maximum density and hotel unit totals established by the Specific Plan for the Project for the term of this Agreement, thus ensuring that appropriate facilities and services are planned and implemented.

L. Pursuant to California Government Section 65865 of the Development Agreement Statute, a City may establish procedures and requirements for the consideration of development agreements. The City, under Imperial Beach Municipal Code Chapter 19.89 ("Development Agreement Ordinance") has adopted such procedures and requirements and the parties hereto desire to enter into such a development agreement pursuant thereto. The Development Agreement Procedures applicable to this Agreement are attached hereto as Exhibit "B".

M. The Application for this Agreement was considered by the City at duly

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noticed public hearings in accordance with the Development Agreement Statute and the Development Agreement Enacting Ordinance.

N. For the reasons recited herein, the City has determined that the Project is a development for which this Agreement is appropriate under the Development Agreement Statute and City Enacting Ordinance (IBMC Chapter 19.89).

O. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project Site, assure progressive installation of necessary improvements, provide public services appropriate to each stage of development of the Project Site, ensure attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens, and otherwise achieve the purposes for which the Development Agreement Statute was enacted.

P. In exchange for the benefits to the City, contained herein, the City has taken or will take all reasonable actions required so that Developer may begin and consummate development of the Project, including the approval, adoption or issuance of necessary development permits, and the future ministerial approval of building plans and ministerial issuance of final maps, appropriate building permits, lot line adjustments, and other necessary or desired approvals and entitlements which are consistent with the development requirements of the Project (collectively, the "Ministerial Approvals").

Q. In exchange for the benefits to City, Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, including the Seacoast Specific Plan (Exhibit "D"), subject to the terms and conditions contained in this Agreement and to secure the benefits afforded Developer by Government Code Section 65865.3.

R. It is the intent of the parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with CEQA, the Development Agreement Statute, the Development Agreement Ordinance and conditions of the various Development Permits required for this Project.

S. The terms of this Agreement support the vital and best interests of the City by insuring the development of the Project, which will provide additional sales tax and transient occupancy tax revenue for the City.

T. The City has an expressed interest in ensuring the provisions of regional and community level infrastructure, and in pursuing the use of development agreements as a method whereby a level of assurance can be achieved concerning the service demands within the Seacoast Commercial Zone and surrounding areas impacted by the Development so that long-range plans for needed infrastructure can be developed and implemented.

U. This Agreement is made and entered into in consideration of the mutual covenants and in reliance upon the various representations and warranties contained

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herein. The parties acknowledge that, in reliance on the agreements, representations and warranties contained herein, Developer will take certain actions, including making substantial investments and expenditures of monies, relative to the Project Site and the development thereof.

V. City and Developer desire to enter into a binding agreement for purposes of (i) identifying the terms, conditions, and regulations for the construction of the Project, certain components of which constitute a Planned Development (as defined in Civil Code Section 1351(k)); (ii) setting forth a payment schedule for the Developer's payment to the City of certain amounts designed to compensate the City in the event that certain components of the Project fail to generate specified levels of transient occupancy tax or "TOT") during the construction phase of the Project; (iii) setting forth a payment schedule for the Developer's payment to the City of TOT and payments made in lieu of TOT that the City would receive based on expected hotel occupancy as defined hereunder; (iv) payments made to mitigate impacts of the Project on the community (v) setting forth the extent to which Developer may construct, develop, use and operate the Project and (vi) setting forth Developer and City obligations.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

AGREEMENT:

SECTION 1. GENERAL ACKNOWLEDGMENTS.

The parties acknowledge that: (a) the City, which has an adopted General Plan, has entered into this Agreement pursuant to the Development Agreement Legislation and its police power in order to address public health and safety and general welfare concerns including those relating to the amount, density, intensity and timing of development within the Subject Property and the need for public facilities and infrastructure in connection with the Subject Property and other property in the area; (b) there is a certain authority under the police power to address public health and safety concerns that cannot be legally relinquished or restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder, provided that to the extent possible it shall be construed as to provide Developer with the assurances intended by this Agreement; and (c) nothing herein shall be construed to limit or restrict the exercise by the City of its power of eminent domain.

SECTION 2. GENERAL PROVISIONS.

2.01 Property Description. The legal description of the Subject Property is specifically set forth on Exhibit "A" attached hereto and made a part hereof.

2.02 Location of Subject Property. The Subject Property is located in the

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City and consists of a total of approximately 1.39 acres.

2.03 Effective Date. This Agreement has been entered into by the parties as of the date and year first above-written, and shall be effective as of such date (“Effective Date”); provided, however, that if a referendum election is duly and lawfully held on the Enacting Ordinance and said Ordinance is disapproved, this Agreement shall be null and void as of the date of the final declaration by the City Council of the disapproval by the referendum election of the Enacting Ordinance.

2.04 Term. The term of this Agreement shall commence upon the Effective Date and shall extend thirty-five (35) years thereafter, unless said term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties. The City and Developer agree that the term of this Agreement is necessary in order to permit the orderly and planned development of the Project.

2.05 Expiration of Term. Following the expiration of said term, this Agreement shall be deemed terminated and has no further force and effect without the need of further documentation from the parties hereto.

2.06 Time is of the essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

2.07 Enforceability of Agreement. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any of the “Existing Rules” (defined in Section 4.04 infra) which changes, alters or amends the Existing Rules applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code Sections 65866 and 65867.5. This Agreement shall not prevent City from denying or conditionally approving any subsequent development project application by a third party not a successor-in-interest hereto on the basis of such existing or new rules, regulations and policies.

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2.08 Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

2.09 Singular and Plural; Gender. As used herein, and except where the context requires otherwise, the singular of any word includes the plural and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa.

2.10 Covenants Run With The Land. All of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon the parties and their

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respective heirs, successors, and assigns, and all other persons or entities acquiring all or any portion of the Subject Property, or any interest therein, whether by operation of law or in any manner whatsoever, and the rights thereof shall inure to the benefit of such parties and their respective heirs, successors and assigns.

2.11 Enforcement of Covenants. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California.

2.12 Constructive Notice. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Subject Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Subject Property.

SECTION 3. DEFINITIONS.

Reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

3.01 Approvals. Any and all permits or approvals of any kind or character required under the terms of this Agreement to develop the Subject Property in the manner as described herein.

3.02 Building Ordinances. Those building standards, of general application and not imposed solely with respect to the Subject Property, in effect from time to time that govern building and construction standards, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, underground parking, sign, and fire codes.

3.03 CEQA. CEQA means the California Environmental Quality Act, California Public Resources Code section 21000, et seq., and the State CEQA Guidelines, (California Code of Regulations, title 14, section 15000, et seq.), as each is amended from time to time.

3.04 City. City of Imperial Beach, County of San Diego, State of California.

3.05 Development. The subdivision or improvement of the Subject Property for purposes of constructing the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction and installation of infrastructure and public facilities related to the Project whether located within or outside the Subject Property; the construction of structures and building; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion

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thereof. As part of the development review process, the structures to be constructed at the Subject Property shall be measured to determine height by using the average grade of the parcel as set out in the Specific Plan applicable to the Subject Property. The measurement method established in IBMC Section 19.04.400 shall not be applicable to the Subject Property.

3.06 Development Agreement Legislation. Sections 65864 through 65869.5 of the California Government Code, as it exists on the Effective Date.

3.07 Development Approval(s). Site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Development including, but not limited to: subdivision approvals (including tentative maps, vesting tentative maps, final maps, parcel maps and map waivers), development permits, conditional use permits, specific plans, coastal permits, variances, grading permits, building permits and occupancy permits.

3.08 Development Fees. All City adopted fees and monetary exactions that are designed to pay for new or expanded public facilities needed to serve, or to mitigate the adverse effects of a given development project and that are imposed by the City as a condition of approval of discretionary or ministerial permits for, or in connection with the implementation of, that development project. The term "Development Fees" does not include processing fees and charges as described in this Agreement. The term "Development Fees" also does not include requirements that development be served by a public utility even if that public utility imposes a capital improvement fee or similar charge as a condition of providing service. All development fees shall be deposited in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, and shall be spent solely for the purpose for which the fee was collected, pursuant to California Government Code Section 66006.

3.09 Director. The "Director is the Director of the Community Development Department of the City of Imperial Beach.

3.10 Enacting Ordinance. The "Enacting Ordinance" is Ordinance No. 2007-___ enacted by the City Council on December 5, 2007, approving this Agreement. The Enacting Ordinance is adopted pursuant to Imperial Beach Municipal Code ("IBMC") Chapter 19.89, governing Development Agreement procedures. The Development Agreement procedures in effect on the date of approval shall apply to the implementation of this Agreement. Chapter 19.89 is attached hereto and incorporated herein by reference as Exhibit "B".

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3.11 Exactions Intended to Mitigate Project Specific Impacts. To the extent any exactions are authorized for this Project and in addition to the Development Fees set out above in Section 3.08, all project-specific exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-site or off-site improvements, construction requirements for public improvements, facilities, or services

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imposed in connection with the development of or construction on the Subject Property, whether such requirements constitute subdivision improvements, mitigation measures in connection with environmental review of any project, or impositions made under any applicable ordinance or in order to make a project approval consistent with the anticipated land use policies of the City's General Plan, including the Certified Local Coastal Plan.

3.12 Existing Land Use Ordinances and Plans. The Land Use Ordinances in effect as of the Effective Date of this Agreement are attached hereto and incorporated herein by reference as Exhibit "C"

3.13. General Plan. The City of Imperial Beach General Plan as duly adopted by the City Council. The General Plan also includes the certified Local Coastal Plan as approved by the City Council.

3.14 Land Use Ordinances. The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the development of the Subject Property, including but not limited to, the permitted uses of land, the density and intensity of use of land, exactions, and the timing of development, all as applicable to the development of the Subject Property. Specifically, but without limiting the generality of the foregoing, Land Use Ordinances shall include the City's General Plan, the Local Coastal Plan, the Development Plan, the City's Zoning Code, the applicable Specific Plan and the City's Subdivision Code. The term Land Use Ordinances does not include Regulations relating to the following: the conduct of business, professions and occupations generally; taxes and assessments; the control and abatement of nuisances; Owners' Association Covenants, Conditions and Restrictions and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property; and any exercise of the power of eminent domain.

3.15 Persons. As used herein, any reference to or use of the word "person" shall mean, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

3.16 Project. The hotel/convention center commercial development and associated amenities, and on-site and off-site improvements, contemplated by or embodied within the Specific Plan to be constructed on the Subject Property, as the same may hereafter be further refined, enhanced or modified pursuant to the provisions of this Agreement, as shown in the Specific Plan which is attached hereto as Exhibit "D".

3.17 Regulations. Constitutions, statutes, City ordinances, and codes, City resolutions and official policies of the City that are applicable to the Project shall constitute the Regulations applicable to the Project.

3.18 Subject Property. That real property described in Exhibit "A" attached hereto and made a part hereof.

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3.19 **Certain Other Terms.** Certain other terms shall have the meanings set forth for such terms in this Agreement.

SECTION 4. GENERAL DEVELOPMENT OF THE PROPERTY.

4.01 **Project.** The Project is defined and described in the Specific Plan which specifies all of the following aspects of the Project: (i) proposed uses of the Subject Property, (ii) height and size of buildings to be constructed on the Subject Property, (iii) density and intensity of use of the property, and (iv) requirements for reservation or dedication of portions of the Subject Property for public purposes. The Specific Plan is attached hereto and incorporated herein as Exhibit "D".

4.02 **General Development.** Any Development of the Project on the Project Site shall be conducted in accordance with the terms and conditions of this Agreement.

4.03 **Future Approvals.** The City hereby agrees that land uses set forth in the New Development Permits are approved or will be approved pursuant to the terms of this Agreement, provided that Developer satisfactorily complies with all preliminary procedures, actions, payments and criteria applicable as of the effective date of this Agreement and generally required of developers by the City for processing applications for developments at such time. City agrees to grant and implement the necessary land use, zoning, site plan or subdivision approvals and to grant other approvals and permits, including the Ministerial Approvals, that will accomplish or facilitate development of the Project Site for the uses and to the density or intensity of development described and shown in the New Development Permits and/or this Agreement pursuant to those rules, regulation policies and conditions in force on the effective date of this Agreement.

4.04 **Applicable Rules, Regulations and Official Policies.** Except as otherwise provided in this Agreement, the rules, regulations, official policies, and conditions of approval governing the permitted uses of the Project Site, the density or intensity of use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site shall be those in force on the Effective Date ("Existing Rules"). The City shall have the right to impose reasonable conditions in connection with such subsequent discretionary permit actions which are not deemed Ministerial Approvals, but such conditions and actions shall not prevent development of the Project as contemplated by this Agreement and the Development Permits, or place burdensome or restrictive measures on Developer in connection with the development of the Project.

4.05 **Amendment to Applicable Ordinances.** In the event the City Zoning Code is amended by the City in a manner, which provides more favorable site development standards than those in effect as of the Effective Date, Developer shall have the right to notify City in writing of its desire to be subject to the new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council or by action of a City official whom the City Council may designate, such new standards

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shall become applicable to the Subject property. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall have no further application to the Subject Property, but Developer may notify City and City may agree by resolution to apply such amended new standards to the Property.

4.06 Application of New Rules, Regulations and Policies. This Agreement shall not prevent City in subsequent actions applicable to the Subject Property from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Subject Property and set forth herein; nor shall this Agreement prevent City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

4.07 Approval of Subsequent Tentative and Final Maps. Although the Existing Land Use Ordinances and Plans shall determine the standards for granting or withholding approval of Tentative, Vesting Tentative and Final Tract Maps, the procedures for processing approval of all such Maps shall be governed by such ordinances and regulations as may then be applicable.

4.08 Changes in State and Federal Rules and Regulations. Nothing in this Agreement shall preclude the application to the development of the Subject Property of changes in the City's laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code Section 65869.5.

4.09 Processing Fees. This Agreement shall not be construed to limit the authority of the City to charge processing fees for land use approvals, building permits or other similar permits or entitlements which are in force and effect on a City-wide basis at the time application is made for such permits or entitlements.

SECTION 5. PERIODIC REVIEW.

5.01 Annual Review. City shall conduct a review of this Agreement in the manner set forth in Section 5 (Periodic Review). City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least once every 12-month period from the Effective Date of this Agreement.

5.02 Procedure. Such annual review shall be conducted in accordance with the City's duly adopted Development Agreement Procedures, found in Imperial Beach Municipal Code Chapter 19.89 (Development Agreement Procedures), as amended.

5.03 Notice. City shall notify Developer in writing of the date of review at least thirty (30) days prior thereto.

5.04 Good-faith Compliance. During each annual review, Developer is

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required to demonstrate good faith compliance with the terms of this Agreement.

5.05 Production of Documents and Other Evidence. Developer agrees to furnish such reasonable evidence and adequate documentation of good faith compliance as the City, in the exercise of its reasonable discretion, may require.

5.06 Cost of Annual Review. The actual costs incurred by City in connection with the annual review shall be borne by Developer.

SECTION 6. RIGHTS AND OBLIGATIONS OF DEVELOPER.

6.01 Contributions. In consideration of City entering into this Agreement, Developer has agreed to comply with the applicable provisions of the Specific Plan, which is found in the attached Exhibit "D", developing the Project and to perform certain obligations and provide certain contributions set forth therein, which City acknowledges will have an overall benefit to the public and surrounding area, including but not limited to those benefits set out under this Section 6 (Rights and Obligations of Developer).

6.02 Certain Conditions of Development and Off-site Improvements: The following conditions shall apply:

- a) Developer shall convey and dedicate approximately thirty-five (35) feet of Ocean Lane (Boulevard) for public beach access and use subject to all approvals being granted by the City and/or Coastal Commission.
- b) Developer shall construct required public improvements to Seacoast Drive, Dunes Park and other requirements as specified by the City Engineer and approved by the City Council.

Public Improvements:

- c) Developer shall provide and construct required public right-of-way improvements, including recessed stairways and/or access ways to Date Avenue and to Dunes Park as designed and shown in Exhibit "E" (Site Plan) to allow for improved public access to beach. These improvements have been designed for eventual construction linking the existing street end and the public park to a rededicated public beach area fronting the hotel.
- d) Developer shall be required to construct new shoreline protection devices at locations approved by the City Engineer and City Council.
- e) Developer shall eliminate any existing encroachments into public rights-of-way on the north and south property lines. Developer shall also be required to design and construct or replace public improvements along Dunes Park and Seacoast Drive as required by the City Engineer and the City Council.
- f) Any such required improvements required of the Developer shall be based on

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pro-rata or "fair share" cost basis for said public improvements designed and constructed in conjunction with the Developer for any required public improvements that would provide benefit beyond the boundaries of the project. Said public improvements may include, but not be limited to water and sewer systems, streets, sidewalks, bicycle facilities, mass transit facilities, public landscaping, crosswalks, drainage system facilities, public signage and other similar public facilities.

Hotel Facilities:

- g) Developer shall provide an expanded visitor serving facility with a minimum of 78 guest rooms, and ancillary uses, such as a full service fine dining restaurant, conference center open to the public and hotel guests, and centralized room reservation system. Said facilities shall be accessible to the public from the primary hotel access from Seacoast Drive, the beach area and Date Avenue.
- h) Developer shall operate hotel as a full-service visitor serving facility, which is inclusive of but not limited to: maid service, room service, year-round centralized reservation system for all guests and investor-owners, conference facilities, restaurant and ancillary services. Investor-owner room stays shall be governed by terms and conditions as specified hereto in Exhibit "G", Schedule of Performance.
- i) Hotel design and construction shall incorporate "green building" development concepts, inclusive of but not limited to: bio-filtration of storm water runoff areas, energy conservation measures, rooftop design treatments or landscaping to minimize or eliminate heating and cooling losses and use of solar panels as may be required by the City of Imperial Beach and State law.
- j) The Developer shall require the Covenants, Conditions and Restrictions of the Seacoast Inn Owner's Association include restrictions on the advertisement of units to only be allowed as part of a centralized room reservation system.
- k) The Developer shall make reasonable efforts to coordinate advertising of the Hotel in a manner consistent with the City's established Eco-tourism Program.

Compensation:

- l) As specified hereunder in Section 10.02 (One -Time Mitigation Fees), Developer shall pay those Mitigation Fees authorized as environmental mitigation measures in the Certified Environmental Impact Report approved for this Project, necessary to defray the cost of municipal services.

6.03 Nexus/Reasonable Relationship Challenges. After reviewing the Certified Environmental Impact Report and accompanying approvals, the Developer consents to, and waives any rights it may have now or in the future to challenge the

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legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Regulations or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

6.04 Cooperation By Developer. Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore.

6.05 Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Subject Property as may be required for the development of, or provision of services to, the Project. The City will use reasonable efforts to assist the Developer in securing necessary permits and entitlements from other public entities with jurisdiction over this Project.

6.06 Reimbursement for City's Efforts on Behalf of Developer. To the extent that City, on behalf of Developer, attempts to enter into binding agreements with other entities (*i.e.* San Diego Unified Port District) in order to assure the availability of certain permits and approvals or services necessary for development of the Project as described in this Agreement, Developer shall reimburse City for all costs and expenses incurred in connection with seeking and entering into any such agreement. Any fees, assessments or other amounts payable by City pursuant to any such agreement described herein shall be borne by Developer except where Developer has notified City in writing, prior to City entering into such agreement, that it does not desire for City to execute such agreement. City shall use its best efforts to notify Developer fifteen days prior to entry of an agreement or expending funds on behalf of the Developer under this Section.

6.07 Right to Develop. Subject to the terms, conditions, and covenants of the Agreement, Developer's right to develop the Project in accordance with the Development Plan (and subject to the Conditions of Approval which, among other Conditions of Approval associated with future approvals and permits issued by the City, includes but is not limited to the Schedule of Performance set forth in Exhibit "G" attached hereto) shall be deemed vested upon approval of the Development Plan, which vesting shall expire upon the earliest of the following occurrences: (a) termination of this Agreement; (b) an uncured default by Developer of this Agreement; (c) the issuance of a certificate of occupancy for the Project; or (d) the date set forth herein in which the Developer was required to have completed the development of all improvements for the Project. Except for the expiration set forth in clause (a) of the preceding sentence, the expiration of the vesting right set forth in the preceding sentence shall not terminate the obligations of Developer under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Project shall remain

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subject to:

(a) all ordinances, regulations, rules, laws, plans, policies, and guidelines of the City and its City Council and all other City boards, commissions, and committees existing on the Effective Date of this Agreement (i.e. the Existing Rules, Section ~~4.04~~ supra);

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(b) all amendments or modifications to Existing Rules after the Effective Date of this Agreement and all ordinances, regulations, rules, laws, plans, policies, and guidelines of the City and its City Council and all other City commissions, and committees enacted or adopted after the Effective Date of this Agreement (collectively "New Laws"), except such New Laws which would materially impair Developer's ability to develop the Project in accordance with the Development Plan unless such New Laws are adopted by the City on a City-wide basis and applied to the Site in a non-discriminatory manner, such New Laws are required by a non-City entity to be adopted by or applied by the City (or if optional the failure to adopt or apply such non-City law or regulation would cause City to sustain a loss of funds or loss of access to funding or other resources), or are New Laws the City reserves the right to apply under this Agreement, including but not limited to Sections (Applicable Codes) and (Other Fees and Charges);

(c) all subsequent development approvals and the conditions of approval associated therewith, including but not limited to Site Development Permits, Project Tract Maps and building permits;

(d) the payment of all fees or exactions in the categories and in the amounts as required at the time such fees are due and payable which may be at the time of issuance of the building permits, or other wise as specified by applicable law, as existing at the time such fees are due and payable; and

(e) the reservation or dedication of land for public purposes or payment of fees in lieu thereof as required at the time such reservations or dedications or payments in lieu are required under applicable law to be made or paid.

6.08 Additional Applicable Codes and Regulations. Notwithstanding any other provision of this Agreement, City also reserves the right to apply the following to the development of the Project:

(a) Building, electrical, mechanical, fire and similar building codes based upon uniform codes adopted in, or incorporated by reference into the Imperial Beach Municipal Code, as existing on the Effective Date of this Agreement or as may be enacted or amended thereafter, applied on a City-wide basis.

(b) In the event of fire or other casualty requiring partial or total reconstruction of any building, nothing herein shall prevent the City from applying to such reconstruction the requirements of the City's building codes in a manner consistent

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with Imperial Beach Municipal Code Section 19.76.050, to the extent applicable to all development projects in the City.

(c) This Agreement shall apply those fees in effect at the time of approval of this Agreement to the Project. No new fees or increased fees adopted after the approval of this Agreement shall be applicable to the Project unless required to be imposed by State or Federal law.

6.09 Recordation of Covenants, Conditions and Restrictions and Establishing the Seacoast Inn Owners' Association.

Prior to, and as a condition of, the City's issuance of any building permits for the Seacoast Inn Development, the Developer shall submit to the City, obtain approval thereof, and record, covenants, conditions and restrictions against the Seacoast Inn Owners' Association Development Parcel which, in addition to the obligations set forth in the Conditions of Approval, shall (i) establish an association of Owners (the "Seacoast Inn Owners' Association"); (ii) provide for the Seacoast Inn Owners' Association's payment of fees described in Sections 10.03 (PAYMENT OF TOT); (iii) provide for the rental of each of the units in the Project on behalf of Seacoast Inn Owners' Association members, through a national reservation system; and (iv) that the Covenants, Conditions and Restrictions contain a prohibition against the conversion of any owner-investor guest rooms into residences allowing residential occupancy on the Subject Property. The Covenants, Conditions and Restrictions ("CC&Rs") shall include the following requirements:

1. Property owners and hotel operators will guarantee that Seacoast Inn Owners' Association remains in usage and operations as a commercial hotel.
2. The Pacifica Host Hotels and the Seacoast Inn Owners' Association will utilize a centralized reservation system under the operation of a unified hotel operator. Pacifica Host Hotels, the hotel operation division of Developer and their successors in interest will operate this system. City will have the reasonable right to approve any new operator of the centralized reservation system to be assured that the hotel will remain in operation as a commercial hotel.
3. The project's proposed restaurant and conference center will be available for use to the general public, as well as to hotel guests, subject to the Hotels' schedule of charges that are in effect at the time of usage.
4. The Seacoast Inn Owners' Association will provide for room and maid service to all guest rooms.
5. All investor-owned guest rooms shall be fee ownership.
6. Investor-owner reservations for room stays shall be restricted to a maximum of no more than ninety days during any calendar year with a maximum of no more than 25 consecutive days per stay during an immediate preceding fifty day time period.
7. The maximum number of investor-owner occupied rooms shall be restricted to no more than twenty percent (20 %) of the total number of hotel guest rooms during the peak or high season months (June 15-September 15). This provision is

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subject to modification if Developer or controlled entities provide supportive data to support a higher percentage of owner usage, or another formula basis.

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8. Developer, controlled entries or condominium owners shall be required to pay to the City an offset fee that is equal to 100% of the amount of Transit Occupancy Taxes (TOT), which is ordinarily collected when guest room(s) is non-investor owner occupied. When Owner-occupied, the Owner shall pay the applicable TOT either directly or through the Owner's Association. This fee shall be paid to the City at the same time as TOT is normally paid.

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9. During construction, Developer, controlled entities or beneficiaries of interest shall be required to pay to the City an offset fee that is the equivalent of the lost TOT revenue that would have been paid to the City during construction. This offset amount shall be based on the average TOT paid for the quarter (*i.e.* January – March) of the previous year for each day throughout the period of construction until a Certificate of Occupancy is issued.

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10. During construction, Developer will provide a copy of the Investor-owner development prospectus to the City of Imperial Beach prior to commencement of sales program.

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The project will develop covenants, codes and restrictions, subject to approval by the City of Imperial Beach and the Department of Real Estate that will be recorded against all individual properties. CC&Rs will be developed and recorded that requires the hotel operation, including its physical components, to only be owned or sold to a viable hotel operator. CC&Rs will be recorded against every unit that requires every hotel room to be included in the hotel rental room pool. Any Hotel Operating Agreement entered into by the Developer or the Seacoast Inn Owners' Association shall include all of the conditions listed in this section. Further, the City of Imperial Beach shall be a third party beneficiary to the CC&Rs and shall have the right to enforce the provisions of the CC&Rs referenced herein.

SECTION 7. OBLIGATIONS OF CITY.

In consideration of Developer entering into this Agreement, City has agreed to the following with respect to the development of the Project Site:

7.01 Processing. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by Developer of the Project Site in accordance with the Specific Plan, Coastal Development Permit, Site Plan Review and Design Review Permits, including, but not limited to, the following:

- (a) the holding of all required public hearings; and
- (b) the processing and approval of all Ministerial Approvals and related

Deleted: 6.10 **Agreement not to Protest Formation of a Business Improvement District for Public Safety Purposes.** The Developer shall agree not to protest the formation of a Business Improvement District, or similar assessing entity, formed to provide special public safety services to the Project and surrounding business locations on a non-discriminatory basis. This requirement shall remain in place for a period of ten years from the date of the execution of this Agreement and shall be made a condition of the CC&Rs applicable to the Subject Property.

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matters as necessary for the completion of the development of the Project. In this regard, Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder as required by the Existing Rules and shall cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore as required by the Existing Rules.

7.02 Standard of Review. The rules, regulations and policies that apply to any Ministerial Approvals that must be secured prior to the construction of any portion of the Project shall be the Existing Rules. The City shall approve any Ministerial Approval, including without limitation a building permit, within a reasonable period of time after application is made therefore.

7.03 Contract Services. If requested by Developer, at Developer's expense, City shall obtain outside contractual services as necessary to ensure prompt processing of all development approvals.

SECTION 8. AMENDMENTS.

8.01 Amendment by Mutual Consent. This Agreement may be amended from time to time by mutual consent of the original parties or their successors in interest, with City's costs payable by amendment applicants, in accordance with the provisions of Government Code Section 65867 and 65868 and provided that: (i) any amendment to this Agreement which does not relate to the term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developer or any conditions or covenants relating to the use of the Subject Property, shall not require notice or public hearing before the parties may execute an amendment hereto; and (ii) any other amendment of this Agreement shall follow the City's adopted procedures and requirements for the consideration of development agreements.

8.02 Amendment Exemptions. Any amendment of the City's land use regulations that, pursuant to this Agreement, is applicable to the property, including, but not limited to, an amendment to the General Plan and zoning ordinances, shall not require an amendment to this Agreement. Instead, any such amendment shall be deemed to be incorporated into this Agreement at the time that such amendment is approved.

8.03 Amendment of Development Permits. Upon the written request of Developer, the Development Permits described in 7.01, above, may from time to time be amended or modified in the manner set forth in this Agreement and applicable State and City laws.

SECTION 9. TRANSFERS AND ASSIGNMENTS.

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9.01 City's Intent. Developer has demonstrated, and the City finds that Developer possesses, the experience, reputation and financial resources to develop and maintain the Subject Property in the manner contemplated by this Agreement. It is because of such qualifications, which assure the development of the Subject Property to a high quality standard contemplated by the General Plan that the City is entering into this Agreement. Accordingly, restrictions on the right of Developer to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's anticipated General Plan and this Agreement.

9.02 Developer's Right to Assign or Transfer. Developer may assign or transfer any of its rights or interests under this Agreement subject to consent of City, which shall not be unreasonably withheld, delayed or conditioned except as specifically described in this Section 9.

9.03 Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation. Developer agrees that the restriction on its right to transfer any of its rights or interests under this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement since the restriction reserves for the City the power to prevent the transfer of any of the rights and obligations hereunder to an unreliable party.

9.04 Restriction on Assignment Shall Not Prevent Developer From Conveying the Subject Property. The parties agree that the restriction on assignment without consent is limited solely to those certain vested rights created under this Agreement and such restriction shall not affect Developer's right to convey the Subject Property itself.

9.05 Request Procedure. City shall administer the provisions of this Section through its Director of Community Development. Developer shall notify the Director and the City Manager in writing of its request for City's consent to an assignment or transfer under this Section, together with a statement that if the Director does not notify Developer within forty-five (45) days of receipt of the request, the request will be deemed approved.

9.06 45 Day Period. If, within such 45-day period the Director does not so notify Developer, the request for consent shall automatically be deemed approved and no further action by Developer or the City shall be necessary. If, within such 45-day period, the Director notifies Developer that the request will be considered and acted upon by City, Developer shall furnish such additional information as the Director may reasonably request at the time of such notice, and City shall proceed to consider and act upon the Developer's request for City's consent to the proposed assignment or transfer. Failure by the City to act within thirty (30) days of giving such notice or of receiving the additional requested information shall automatically be deemed an approval of the request.

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9.07 City Council Approval. In the event the Director determines that the assignment or transfer should be acted upon by the City Council, and the Director so notifies Developer within fifteen (15) days of giving the notice or receiving the information described herein, the matter shall be referred to the City Council. The City Council shall have forty-five (45) days from the date of such notice to approve or deny the requested transfer or assignment. Failure of City to act within the forty-five (45) day period shall automatically be deemed an approval of the request.

9.08 Assignment. The management control and responsibility of Developer and the expertise, competence, and financial strength of Developer are integral components of the consideration for City entering into this Agreement. In order to preserve such consideration for City and for City to receive full value, the parties hereto agree that the occurrence of any of the following events constitute, for purposes of this provision, an assignment:

a) A change in the composition of ownership interests in and control of Developer, the result of which diminishes Developer's ownership interest to less than twenty percent (20%).

b) A change in the composition of ownership interests in and control of the Subject Property such that Developer's equity in the Subject Property is reduced to less than fifty-one percent (51%), excluding individual investor interest transfers.

9.09 Minor Assignments. The following transfers shall be considered minor assignments, which shall not be subject to Section 9.08, above: (i) **The Developer needs to list specific examples of when transfers will require Council approval**.

9.10 Notice of Proposed Assignment. Developer must provide City with adequate evidence that the proposed assignee, buyer or transferee is qualified using the standards and conditions described in this Section, and ability to comply with these standards and conditions will be the test of reasonableness.

9.11 Conditions and Standards. The conditions and standards referred to above are as follows:

(a) Such assignee or transferee possesses the experience, reputation and financial resources to cause the Subject Property to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement;

(b) Such assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement;

(c) Such assignment or transfer will not impair the ability of City to achieve the objectives of its general Plan and this Agreement;

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(d) Good cause exists for Developer to make such assignment or transfer. For purposes of this subsection, good cause shall include but is not limited to such causes as business reorganizations, financing arrangements for the development of the Subject Property, and exigent circumstances creating the need to generate capital to offset material business losses.

9.12 Financing Exemption. Mortgages, deeds of trust, sales and lease-backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Subject Property are permitted without the consent of the City, provided the City receives prior notice of such financing (including the name and address of the lender and the person or entities acquiring any such secured interest) and Developer retains the legal and equitable interest in the Subject Property and remains fully responsible hereunder. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development. Nothing herein shall allow Developer to convey interests in the property that will allow separate residential usage of the individual units. **Is this OK for your Financing?**

9.13 Notice of Assignment. Upon receiving approval of an assignment, Developer shall provide City with written notice of such assignment and as part of such notice the assignee must execute and deliver to City an assumption agreement in which the name and address of the assignee is set forth and the assignee expressly and unconditionally assumes the obligations of all the provisions set forth in the Agreement.

9.14 Unapproved Assignments. If City reasonably makes the determination not to consent to the assignment or transfer of the rights and privileges contained in this Agreement, and Developer conveys the Subject Property to a third party, in whole or in part, Developer shall remain liable and responsible for all of the duties and obligations of this Agreement.

9.15 Notice of Sale of Subject Property. Developer shall give written notice to the city, within ten (10) days after close of escrow, of any sale or transfer of any portion of the Subject Property required herein, specifying the name or names of the purchaser, the purchaser's mailing address, the amount and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given.

SECTION 10. PAYMENTS TO CITY BY DEVELOPER.

10.01 General. During the term of this Agreement, Developer or the Seacoast Inn Owners' Association shall make the payment to City described in this Section 10. The payments under this Section 10 are not the exclusive development impact fees for the Project and nothing in this Section 10 shall be constructed as a limitation on the right of the city to impose, levy, or assess the Site other development fees as permitted by applicable law.

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10.02 Developer's Payments of One-Time Mitigation Fees. Developer shall pay to the City the sum of _____ Dollars (\$_____.00) for the cost of environmental impacts and other infrastructure impacts, of the Project on the community including, but not limited to, those shown in the certified Environmental Impact Report approved by the City Council concurrently with this Agreement, as referenced in Exhibit "F" (Conditions of Approval) and Section 6.02(k), above. The developer and the Seacoast Inn Owners' Association shall be jointly and severally liable for the forgoing payment. Can't be filled in until environmental review identifies the impacts requiring mitigation.

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10.03 Payment of Transient Occupancy Tax. In addition to the other payments required to be paid pursuant to this Section 10, the Seacoast Inn Owners' Association shall be required to be pay to the City the Transient Occupancy Tax for the occupation of all units that are occupied, regardless of the occupant during the term of this Agreement. Thereafter, TOT shall be paid in the manner provided by law.

10.04 Other Fees and Charges: Assessment Appeals. Except for Development Impact Fees and Exactions set forth in Section 6, above, nothing set forth in this Agreement is intended or shall be construed to limit or restrict the City's authority to impose its existing, or any new or increased fees, charges, levies, or assessments for the development of the Site, or to impose or increase, subject to the required procedure, any taxes applicable to the Site including but not limited to transient occupancy taxes, provided nothing set forth herein, subject to the next sentence, is intended or shall be construed to limit or restrict whatever right Developer might otherwise have to challenge any fee, charge, levy, assessment, or tax imposed. Developer shall timely pay all applicable fees, charges, levies, assessments, and special and general taxes validly imposed in accordance with the Constitution and the laws of the State of California.

Deleted: Developer agrees that it shall not take any action, including any assessment appeal, to decrease the assessed value of any of the site or any portion thereof below the final assessed value at the time the development of the Site or separate parcel thereof is completed.

Section 11. DELAYS IN PERFORMANCE.

11.01 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Developer and City shall be excused for performance of their obligations hereunder during any period of delay caused by acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder.

11.02 Third Party Actions. Any court action or proceeding brought by any third party to challenge this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether of not Developer is a party to or real party in interest in such action

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or proceeding, shall constitute a Permitted Delay under this Section.

11.03 Notice of Permitted Delays. If written notice of such delay is given to either party within (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

SECTION 12. DEFAULT.

12.01 Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of the Section regarding Permitted Delays, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

12.02 Notice of Default. Any Notice of Default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

12.03 Cure Period. During the time periods herein specified for cure of an Event of Default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any building permit with respect to the Project.

12.04 General Default Remedies. After notice and expiration of the 30-day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement pursuant to Government Code Section 65868 or seek mandamus, specific performance, injunctive or declaratory relief.

12.05 Remedies Cumulative. Any rights or remedies available to non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non-defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.

12.06 Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any

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covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

12.07 No Damages Relief Against City. The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that in no event shall Developer be entitled to recover damages against City for breach of this Agreement.

12.08 Developer Default. No building permit shall be issued or building permit application accepted for any structure on the Subject Property after Developer is determined by City, to be in default of the terms and conditions of this Agreement, and until such default thereafter is cured by the Developer or is waived by City.

12.09 Waiver. All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.

12.10 Scope of Waiver. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.

12.11 Attorneys' Fees. Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in any such suit or proceedings shall be entitled to a reasonable award of attorneys' fees and costs in addition to any other award made in such suit or proceeding. Reasonable attorneys' fees of either party shall be based on comparable fees for private attorneys practicing in San Diego County.

12.12 Venue. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of San Diego or where appropriate, in the United States District Court, Southern District of California, San Diego, California.

SECTION 13. TERMINATION.

13.01 Effect of Termination. Upon termination of this Agreement, the rights, duties and obligations of the parties hereunder shall, subject to the following provisions, cease as of the date of such termination.

13.02 Termination by City. If City terminates this Agreement because of Developer's default, then City shall retain any and all benefits, including money or land received by City hereunder.

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SECTION 14. RELATIONSHIP OF PARTIES.

14.01 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project Site is a separately undertaken private development.

14.02 Independent Contractors. The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.

14.03 No Joint Venture or Partnership. City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

14.04 No Third Party Beneficiaries. The only parties to this Agreement are Developer and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

14.05 Ambiguities or Uncertainties. The parties hereto have mutually negotiated the terms and conditions of this Development Agreement and this has resulted in a product of the joint drafting efforts of both parties. Neither party is solely or independently responsible for the preparation or form of this agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.

SECTION 15. APPLICABLE LAW.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

SECTION 16. SUPERSEDURE OF SUBSEQUENT LAWS OR JUDICIAL ACTION.

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law or decision issued by a court of competent jurisdiction, enacted or made after the effective date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement other than all new laws enacted by the City.

SECTION 17. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

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In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement or the Potential Subsequent Development Approvals, should any be obtained, the parties hereby agree to cooperate in defending said action or proceeding.

SECTION 18. HOLD HARMLESS AGREEMENT.

Developer hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from, any and all claims, costs and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer's or Developer's contractors', subcontractors', agents or employees' operations under this Agreement, whether such negligent operations be by Developer or by any of Developer's contractors, subcontractors, agents or employees. City shall retain the right to select the attorney of its choice to defend any action requiring a defense under this section.

SECTION 19. INDEMNIFICATION.

Developer shall defend, indemnify and hold harmless City and its agents, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), which any or all of them may suffer, incur, be responsible for or pay out as a result of or in connection with any challenge to the legality, validity or adequacy of any of the following: (i) this Agreement; (ii) the environmental impact report prepared in connection with the adoption of the Project; and (iii) the proceedings undertaken in connection with the adoption or approval of any of the above. City shall retain the right to select the attorney of its choice to defend any action requiring a defense under this section.

SECTION 20. NOTICES.

Any notice or communication required hereunder between City or Developer shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

To City:

Community Development Director
City of Imperial Beach

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825 Imperial Beach Boulevard
Imperial Beach, California 91932

To Developer:

Developer **Need this filled in.**

SECTION 21. EXHIBITS.

21.01 Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation.

<u>Exhibit Designation</u>	<u>Description</u>
<u>Exhibit A</u>	<u>Property Description of the Subject Property</u>
<u>Exhibit B</u>	<u>Development Agreement Procedures Ordinance</u>
<u>Exhibit C</u>	<u>Existing Land Use Ordinances</u>
<u>Exhibit D</u>	<u>Seacoast Inn Specific Plan</u>
<u>Exhibit E</u>	<u>Site Plan</u>
<u>Exhibit F</u>	<u>Conditions of Approval</u>
<u>Exhibit G</u>	<u>Schedule of Performance</u>

21.02 Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement.

SECTION 22. SEVERABILITY.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

SECTION 23. RECORDATION.

In order to comply with Section 65868.5 of the Development Agreement Statute and Section of the City Enacting Ordinance, the parties do hereby direct the City Manager to cause a copy of this Agreement to be recorded with the County Recorder of the County, within ten (10) days after passage by the City of the ordinance approving this Agreement.

SECTION 24. ENTIRE AGREEMENT.

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This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement and the Exhibits hereto, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto.

SECTION 25. COUNTERPARTS.

This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

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Executed at Imperial Beach, California on _____

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the dates written above.

City of Imperial Beach

*[Developer] *see notes below*

By: Jim Janney, Mayor

By: [Name of Officer, Title]

APPROVED AS TO CONTENT:

City of Imperial Beach

By: _____
[Name of Officer, Title]

By:

APPROVED AS TO FORM:

City of Imperial Beach

By: _____
James P. Lough,
City Attorney

ATTEST:

By: _____
Jacque Hald, City Clerk

*Notes: If the Developer is a Corporation, then this document must be executed by the Corporation's Chief Executive Officer, President or Vice-President, on the one hand, and the Corporations' Chief Financial Officer, Treasurer, Assistant Treasurer or Secretary on the other hand. Developer's signature must be notarized.

|

EXHIBIT "A"
PROPERTY DESCRIPTION

DRAFT

EXHIBIT "B"

CHAPTER 19.89
DEVELOPMENT AGREEMENT PROCEDURES
IN EFFECT ON ,2007

[Title 19 ZONING](#)

[Chapter 19.89. DEVELOPMENT AGREEMENT PROCEDURES](#)

19.89.010. Applications.

- A. Authority for Adoption. These regulations are adopted under the authority of Government Code Sections 65864 through 65869.5.
- B. Forms and Information.
 - 1. The Community Development Director shall prescribe the form for each application, notice and document provided for or required under these regulations for the preparation and implementation of development agreements.
 - 2. The Community Development Director may require an applicant to submit such information and supporting data, as the Community Development Director considers necessary to process the application.
- C. Fees. The City Council shall by separate resolution fix the schedule of fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations.
- D. Qualification as an Applicant. Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property, which is the subject of the development agreement. Applicant includes authorized agent. The Community Development Director shall require an applicant to submit proof of his interest in the real property and of the authority of the agent to act for the applicant. Before processing the application, the Community Development Director shall obtain the opinion of the City Attorney as to the sufficiency of the applicant's interest in the real property to enter into the agreement.
- E. Proposed Form of Agreement. Each application shall be accompanied by the form of development agreement approved by the City. This requirement may be met by designating the City's standard form of development agreement and including specific proposals for changes in or additions to the language of the standard form.

- F. Review of Application. The Community Development Director shall endorse on the application the date it is received. He shall review the application and may reject it if it is incomplete or inaccurate for processing. If he finds that the application is complete, he shall accept it for filing. The director shall review the application and determine the additional requirements necessary to complete the agreement. After receiving the required information, he shall prepare a staff report and recommendation and shall state whether or not the agreement proposed or in an amended form would be consistent with the general plan and any applicable specific plan. (Ord. 2004-1018 § 1 (part), 2004)

19.89.020. Notices and hearing.

- A. Duty to Give Notice. The Community Development Director shall give notice of intention to consider adoption of development agreement and of any other public hearing required by law or these rules.
- B. Requirements for Form and Time of Notice of Intention to Consider Adoption of Development Agreement.
1. Form of Notice. The form of the notice of intention to consider adoption of development agreement shall contain:
 - a. A time and place of the hearing;
 - b. A general explanation of the matter to be considered, including a general description of the area affected; and
 - c. Other information required by specific provisions of these regulations or which the planning director considers necessary or desirable.
 2. Time and Manner of Notice. The time and manner of giving notice is by:
 - a. Publication or Posting. Publication at least once in a newspaper of general circulation, published and circulated in the City of Imperial Beach, or if there is none, posting in at least three public places in the City of Imperial Beach.
 - b. Mailing. Mailing of the notice to all persons shown on the last equalized assessment roll as owing real property within five hundred feet of the property, which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than one thousand, the Community Development Director may, as an alternative, provide notice in the manner set forth in Section 65091 as amended of the Government Code.
 3. Additional Notice. The City Council may direct that notice of the public hearing to be held before it shall be given in a manner that exceeds the notice requirements prescribed by State law.
 4. Declaration of Existing Law. The notice requirements referred to in subsections (B)(2)(a) through (b) of this section are declaratory of existing law. (Government Code Section 65867 as amended and as incorporated by reference). If State law prescribes a different notice requirement, notice shall be given in that manner.

- C. Failure to Receive Notice. Lack of receipt by any person entitled to notice required by law or these regulations do not affect the authority of the City to enter into a development agreement.
- D. Rules Governing Conduct of Hearing. The public hearing shall be conducted as nearly as may be in accordance with the procedural standards adopted under Government Code Section 65804 for the conduct of zoning hearings and applicable local procedural rules established by the City Council. Each person interested in the matter shall be given an opportunity to be heard. The applicant has the burden of proof at the public hearing on the proposed development agreement.
- E. Irregularity in Proceedings. No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission (“error”) as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever, unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial and that by reason of the error, the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is no presumption that error is prejudicial or that injury was done if error was shown. (Ord. 2004-1018 § 1 (part), 2004)

19.89.030. Standards of review, findings and decision.

- A. Determination by the City Council. After the hearing by the City Council, the City Council shall make its decision to approve or deny the proposed development agreement. The approval shall include the City Council’s determination whether or not the development agreement proposed:
 - 1. Is consistent with the objectives, policies, general land uses and programs specified in the general plan, the local coastal plan and any applicable specific plan;
 - 2. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
 - 3. Is in conformity with public convenience, general welfare and good land use practice;
 - 4. Will not be detrimental to the health, safety and general welfare; and
 - 5. Will not adversely affect the orderly development of the property or the preservation of property values.
- B. Approval of the Development Agreement. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance.

After the ordinance approving the development agreement takes effect, the City Council may enter into the agreement. (Ord. 2004-1018 § 1 (part), 2004)

19.89.040. Amendment and cancellation of agreement by mutual consent.

- A. Initiation of Amendment or Cancellation. For an existing development agreement, either party may propose an amendment to or cancellation in whole or in part.
- B. Procedure. The procedure and notice requirements for proposing an adoption of an amendment to or cancellation in whole or in part of the development agreement is the same as the procedure for entering into the agreement in the first instance. (Ord. 2004-1018 § 1 (part), 2004)

19.89.050. Recordation of development agreement, amendment or cancellation.

- A. Within ten days after the City enters into the development agreement, the City Clerk shall have the agreement recorded with the County Recorder.
- B. If the parties to the agreement or their successors in interest amend or cancel the agreement as provided in Government Code Section 65868, or if the City terminates or modifies the agreement as provided in Government Code Section 65865.1 for failure of the applicant to comply with good faith with the terms or conditions of the agreement, the City Clerk shall have notice of such action recorded with the County Recorder. (Ord. 2004-1018 § 1 (part), 2004)

19.89.060. Periodic review.

- A. Time for and Initiation of Review. The City shall review the development agreement every twelve months from the date the agreement is entered into. The time for review may be modified either by agreement between the parties or by initiation in one or more of the following ways:
 - 1. Recommendation of the Community Development Department;
 - 2. Affirmative vote of at least three members of the City Council;
- B. Notice of Periodic Review. The Community Development Director shall initiate the review proceeding by giving notice to the property owner that the City intends to undertake a periodic review of the development agreement. He or she shall give the notice as provided in Government Code Section 65091(a)(1) and (2).
- C. Hearing. The City Council shall conduct a hearing at which the property owner must demonstrate good faith compliance with the terms of the agreement. The burden of proof on this issue is upon the property owner.
- D. Findings Upon Hearing. The City Council shall determine, upon the basis of substantial evidence, whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the agreement.
- E. Procedure Upon Findings. If the City Council finds and determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that

period is concluded, and a notice of that determination shall be published and mailed as provided in subsection B of this section. If the City Council finds and determines on the basis of substantial evidence that the owner has not complied with the terms and conditions of the agreement, the City Council may set the matter for modification or termination of the agreement under the procedures set forth in Section 19.89.070 of this chapter. (Ord. 2004-1018 § 1 (part), 2004)

19.89.070. Modification or termination.

- A. Proceedings Upon Modification or Termination. If, upon a finding, under Section 19.89.060(E) of this chapter, the City determines to proceed with modification or termination of the agreement, the City shall give notice as provided in Section 19.89.060(B) of this chapter to the property owner of its intention so to do. The notice shall contain:
 - 1. The time and place of the hearing, which shall be conducted by the City Council;
 - 2. A statement as to whether or not the City proposes to terminate or to modify the development agreement; and
 - 3. Other information that the City considers necessary to inform the property owner of the nature of the proceeding.
- B. Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard. At the hearing, the City Council shall make a determination as to whether the development agreement should be terminated or modified. If, as a result of the hearing, the City Council finds and determines that the applicant or successor in interest has not complied in good faith with the terms and conditions of the agreement, the City may terminate or modify the agreement. The City Council may also modify or suspend the provisions of the development agreement if the City Council finds and determines implementation of the agreement poses a health or safety risk to the community. The City Council may refer the matter back to the Community Development Department for further review or for report and recommendation. The City Council may impose those conditions to the action it takes as it considers necessary to protect the interests of the City and/or the surrounding community. The decision of the City Council is final. (Ord. 2004-1018 § 1 (part), 2004)

19.89.080. Issuance of building permit.

- A. A building permit may not be issued for any project approved pursuant to the development agreement process, if at the time for issuance the development agreement has been terminated.
- B. If at the time a building permit is requested for any project approved pursuant to the development agreement process there is a hearing pending to determine the existence of default by the property owner or any obligor under the terms of the development agreement, then in such case no building permit may be issued without written approval of the City Manager. (Ord. 2004-1018 § 1 (part), 2004)

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EXHIBIT "C"

EXISTING LAND USE ORDINANCES AND PLANS

EXHIBIT "D"

Project Description

Seacoast Inn Development Plan

Project Overview:

The proposed seventy-eight (78) Guest Suite, Beach Resort Hotel will be developed on a 1.39-acre site, which presently consists of an existing thirty-eight (38)-rooms hotel property located at 800 Seacoast Drive in the City of Imperial Beach. This hotel is proposed to be contained with two (2) main guest room four (4)-story buildings that are configured into a star-shaped pattern, approximately southwest to northeast and southeast to northwest, across the central portion of the property. The hotel project is proposing a "Grand Entryway" for the Seacoast Drive frontage with a full-service public restaurant on the westerly views from a dining deck and the main dining room.

A City public park, Dunes Park, is located immediately to the north of the proposed hotel site. Date Avenue is located immediately to the south of the site. The proposed hotel also includes a full-service public restaurant with patio dining, a hotel guest swimming pool area, conference facilities/meeting rooms, and 114 parking spaces as an underground level.

The existing hotel facility consists of 38-guest rooms contained in three (3) contiguous two-story buildings surrounding an inner courtyard swimming pool. The existing facility contains a lobby, a breakfast area, offices on the first floor. A penthouse apartment is contained on the third (3) floor on the north end of the building and occupies approximately one-half of the floor area on this floor level. This existing hotel facility will be razed to accommodate the proposed hotel; provide new and additional parking spaces, resolve existing building setback issues; and comply with the City's Specific Plan Ordinance and Local Coastal Plan requirements for project development. The existing seawall will also be razed and relocated landward thirty-five (35) feet, which will comply with requirements of governing agencies responsible for the Coastal zone.

The proposed project includes an architectural design influence that evokes a "Tropical Art Deco" theme as influenced by the elements, tones and colors associated with the Pacific Basin region. This theme will also incorporate the use of a "Grand Entryway" with a cascading or waterfall feature, a porte-cochere driveway for guest drop-off and pick-up and the Lobby/Public areas of the hotel. The exterior of each guest room is highlighted with cantilevered canopies and balconies.

Building Design Treatments/Configuration

The star-shaped building configuration and the above described architectural design theme will allow the limited property dimensions to accommodate all guest and public facilities planned for the site. Among the building design elements to be used, the project proposes the use of decorative wrought iron or an equivalent material for railing details and lighted torches for corner posts of all terraces. Proposed building wall treatments will include the use of articulated, recessed, curved or carved elements/accents, including full height and sculptured relief's placed

at strategic locations throughout the hotel. These treatments are intended to carry out the design theme for the building exteriors and interiors to soften structural monotony and to provide visual/design theme effects that are consistent and pleasing to visitors/guests.

The buildings have been massed to best utilize the views of the beach and ocean areas as well as work within the confines of the property dimensions. The overall building footprint is a star-shaped configuration that maximizes guest room views of the beach area and maximizes the views from public areas of the hotel. Additionally, the swimming pool location provides guest facilities, while creating maximum public views from Dunes Park. All buildings shall be a maximum height of forty (40)-feet as required by City Ordinance for the Seacoast Commercial area. Elevator towers, building parapets and mechanical equipment rooms on the building roof will exceed the forty (40)-feet height limitation, but will not exceed a height of forty-three (43)-feet. These described facilities are allowed by City Ordinance.

The maximum height of the proposed hotel will not exceed four stories or 40 feet, per City of Imperial Beach Specific Plan Ordinance. The project also includes the construction of a new shoreline protection device to be located thirty-five (35)-feet east (landward) of an existing seawall as a part of the proposed hotel. The proposed hotel also will be constructed at this landward location and provide for improved public access to the beach area. The proposed project will also include specific public improvements, such as but not limited to: street end improvements at the western terminus of Date Avenue and public access improvements to Dunes Park.

Ground Floor Area Configuration

The proposed full-service restaurant area will contain approximately 9,590 square feet for the main dining room, a bar and lounge area and kitchen facilities. The proposed conference/meeting rooms area and main lobby area will be approximately 5,760 square feet in area and an outside landscaped terrace area. The ground floor level will also contain six (6) guest rooms on the northerly side of this level. This level also has a dining deck that will be available to the public as well as guests. The swimming pool, with its sun deck are located on the northerly side of the property and will have a guest only deck area with controlled, secure access.

The planned "Grand Entryway" for the main hotel entrance from Seacoast Drive is located on this level and will include a porte-cochere drive, a water feature and a cascading waterfall feature incorporated into the porte-cochere structure over the driveway.

The main lobby will contain the reception desk, office area and Bell Captain area. Inside the main lobby will also contain a water feature leading to the lobby lounge area that overlooks the Pacific Ocean and pool area. Special textured walkways and deck paving materials will be used for the entryway and for the public and private deck areas.

Second Floor Level Configuration

The second floor configuration will contain approximately twenty-four (24) guest rooms with approximately 650 square feet of area per guest room including kitchen facilities.

Third Floor Level Configuration

The third floor configuration will contain approximately twenty-four (24) guest rooms with approximately 650 square feet of area per guest room including kitchen facilities.

Fourth Floor Level Configuration

The fourth floor configuration will contain approximately twenty-four (24) guest rooms with approximately 650 square feet of area per guest room including kitchen facilities.

Landscape Treatments

Extensive landscape treatments are proposed throughout the interior and exterior areas of the proposed hotel. Special landscape treatments are planned for the Seacoast building frontages that incorporate the use of mature box specimen-sized trees, flowers, flowering bushes and ground cover plant materials. The planned landscape/plant materials will be consistent with the architectural design theme described herein. The exterior landscape treatments will extend along the building exteriors on the north and south sides of the proposed project. Potted plants and landscape boxes will be used for other public areas including the lobby lounge, the main lobby area, the restaurant and conference facilities.

Underground Parking

The proposed project will provide 114 off-street parking spaces in a below grade parking facility, which will also house equipment rooms for the planned elevators, maintenance/repair facilities, laundry and other similar storage, approximately 2,800 square feet of floor area. This below grade parking area will be approximately ten (10) feet below the ground level of the hotel building. Water pumping facilities will also be required to be located in this area.

Hotel/Owner Investor Restrictions

All guestrooms in the proposed hotel will be bound by a single set of Conditions, Covenants and Restrictions (“CC&Rs”) as well as conditions of approval from the City and the Commission to ensure that guestrooms will function as traditional guestrooms under hotel management. The restrictions will be recorded on every deed for every guestroom and cannot be altered or removed without approval from the City and Commission. With these controls there should be no difference between the operation of the redeveloped condotel and the existing traditional hotel. The developer proposes to adopt the following restrictions:

1. The project shall have an on-site hotel operator to manage reservations of all guestrooms. Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room, and its availability shall not be conditioned on a renter's willingness to rent any additional unit.

2. The hotel operator shall market and advertise all 78 condo hotel to the general public. Unit owners may also market and advertise their units but all reservations shall be made by and through the hotel operator.

3. Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.

4. All individually owned hotel units shall be rented at the same or comparable rate to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.

5. The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.

6. Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for no more than 90 days per calendar year with a maximum of 25 days use during any immediately preceding 50-day time period.

7. The use period limitations identified in paragraph 6 above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.

8. No portion of the project may be converted to time-share, full-time occupancy condominium, apartment, or any other type of project that differs from the 78 guestrooms.

CC&R's

1. The CC&R's will include all of the restrictions lists above, they will not be changed without approval by the Coastal Commission, and they will be recorded against all individual property titles.

Condition Compliance and Enforcement

1. The applicant or any successor-in-interest as hotel owner-operator shall maintain the legal ability to ensure compliance with the terms and conditions of the permit at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to this permit comply with the terms and conditions of this permit. Each owner of an individual condominium unit is jointly and severally liable with the hotel owner-operator for violations of the terms and conditions herein.

2. All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&R's and similar documents, shall notify potential buyers of the following:
- A. The owners of individual hotel units are jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of herein; and
 - B. The occupancy and use of the units is restricted pursuant to conditions 1, 3, and 4.
3. The applicant and any successor-in-interest as hotel owner-operator, and each future unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy is limited to 90 days per calendar year with a maximum of 25 days use during any immediately preceding 50-day time period, that the unit must be available for rental by the hotel operator when not occupied by the owner, and that there are further restrictions on use and occupancy as described herein.
4. The applicant and all successors-in-interest as hotel owner-operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The records shall be sufficient to demonstrate compliance with the restrictions set forth in conditions 1, 3, and 4. The hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the Executive Director of the California Coastal Commission (CCC) upon request and to the auditor required below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the CCC Executive Director of commencement of hotel operations.
5. On the first anniversary of the opening of hotel operations, and exactly every year thereafter, the hotel owner-operator shall retain an independent auditing company to perform an audit to evaluate compliance with Special Conditions 1, 3, and 4. The audit shall evaluate compliance by the hotel owner, operator and owners of individual hotel units during the prior one-year period. The hotel owner-operator shall obtain the CCC Executive Director's written approval of the independent auditor before the auditor is retained. Such approval shall be sought at least 3 months before the deadline for retaining an auditor (the first anniversary of hotel operations). The hotel owner-operator shall require the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the CCC Executive Director within 6 months after the conclusion of each one-year period of hotel operations. After five years, the one-year audit period may be extended to two years upon written approval of the CCC Executive Director. The CCC Executive Director may grant such approval if each of the previous audits revealed compliance with the conditions.
6. Hotel operations management shall submit a quarterly report to the City documenting that the project is in conformance with the City's TOT requirements.
7. If the hotel owner and hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally liable for violations of the

terms and conditions of this permit.

8. PRIOR TO OCCUPANCY OF THE APPROVED UNITS, the applicant shall submit for review and written approval of the CCC Executive Director, a plan specifying how the applicant will implement the requirements herein. The plan must include, at a minimum, the sale contract, grant deed, CC&Rs and the rental program agreement entered into between individual unit owners and the hotel owner-operator that will be used to satisfy the conditions. The plan must demonstrate that the applicant has established mechanisms that provide the applicant or any successor-in-interest as hotel owner-operator adequate legal authority to implement the requirements of this condition. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions of this permit including deeds and CC&R's shall be reported to the CCC Executive Director. No change to any documents noted above pertaining to compliance with and enforcement of the terms and conditions of this permit including deeds and CC&R's shall occur without a CCC-approved amendment to the permit unless the CCC Executive Director determines that no such amendment is required.

Room Management and Rental When Hotel Operator is Not Owner's Rental Agent

1. The operator of the hotel shall manage the condominiums as part of the hotel inventory, which management will include the booking of reservations through the rental agent, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing the units for use by guests/owners. In addition, if the hotel operator is not the owner's rental agent, or if the owner is acting without a rental agent, then the operator shall have the right, working through the owner or its designated rental agent, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use. In all circumstances, the operator shall have full access to the condominiums' reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder. The keys shall be electronic and created upon each new occupancy to control the use of the condominium units.

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EXHIBIT "E"

SITE PLAN

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EXHIBIT "F"
CONDITIONS OF APPROVAL

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EXHIBIT "G"
SCHEDULE OF PERFORMANCE

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