



Special Meeting A G E N D A



IMPERIAL BEACH CITY COUNCIL REDEVELOPMENT AGENCY HOUSING AUTHORITY PLANNING COMMISSION PUBLIC FINANCING AUTHORITY

THURSDAY, JANUARY 26, 2012

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

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

THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY, HOUSING AUTHORITY, 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.

CLOSED SESSION CALL TO ORDER

ROLL CALL BY CITY CLERK

CLOSED SESSION

- 1. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to Govt. Code §54956.9(b)(3)(A) (3 cases)
- 2. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**
Initiation of litigation pursuant to Govt. Code §54956.9(c) (3 cases)
- 3. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**
Initiation of litigation pursuant to Government Code Section §54956.9(b)(3)(E) (1 case)

RECONVENE AND ANNOUNCE ACTION (IF APPROPRIATE)

SPECIAL MEETING CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

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.

Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Housing Authority/Public Financing Authority regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

REPORTS

1. **CITY RESOLUTION NO. 2012-7150 REQUIRED BY AB 936 REGARDING FORGIVENESS OF LOANS, ADVANCES OR INDEBTEDNESS OF THE REDEVELOPMENT AGENCY. (0640-05)**

City Manager's Recommendation: That the City Council adopt resolution.

2. **AGENCY RESOLUTION NO. R-12-270 REQUIRED BY AB 936 REGARDING FORGIVENESS OF LOANS, ADVANCES OR INDEBTEDNESS OF THE CITY OR OTHER PUBLIC BODY. (0640-05)**

City Manager's Recommendation: That the Redevelopment Agency adopt resolution.

3. **ADOPTION OF RESOLUTION NO. R-12-271 OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING ITS ENFORCEABLE OBLIGATION PAYMENT SCHEDULE (EOPS); ADOPTION OF RESOLUTION NO. R-12-272 OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING ITS PRELIMINARY DRAFT INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE (IROPS). (0640-05)**

City Manager's Recommendation: That the Redevelopment Agency adopt resolutions.

4. **ADOPTION OF RESOLUTION NO. 2012-7145 AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH THE AIRPORT AUTHORITY FOR PROPERTY LOCATED AT THE NORTHERN TERMINUS OF 13TH STREET (APN 616-021-10) AND ADOPTION OF RESOLUTION NO. 2012-7140 AUTHORIZING THE CITY MANAGER TO ENTER INTO AN OWNER PARTICIPATION AGREEMENT WITH BIKEWAY VILLAGE LLC FOR THE ACQUISITION OF PROPERTY BELONGING TO THE AIRPORT AUTHORITY AND FOR THE DEVELOPMENT OF THE BIKEWAY VILLAGE PROJECT LOCATED AT 535 FLORENCE STREET AND 536 13TH STREET (APN 626-192-03 AND 04) FOR THE DEVELOPMENT OF THE BIKEWAY VILLAGE PROJECT. (0680-10 & 0680-20)**

City Manager's Recommendation: That the City Council adopt resolutions.

5. **ADOPTION OF RESOLUTION NO. HA-12-09 APPROVING GUIDELINES FOR THE CLEAN AND GREEN PROGRAM AND AUTHORIZATION FOR THE EXECUTIVE DIRECTOR TO ENTER INTO GRANT AGREEMENTS CONSISTENT WITH THE GUIDELINES. (0412-95 & 0640-95)**

City Manager's Recommendation: That the Housing Authority adopt resolution.

ADJOURNMENT

/s/
Jacqueline M. Hald, MMC
City Clerk



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: JANUARY 26, 2012

ORIGINATING DEPT.: MIKE MCGRANE, FINANCE DIRECTOR

SUBJECT: CITY RESOLUTION NO. 2012-7150 REQUIRED BY AB 936 REGARDING FORGIVENESS OF LOANS, ADVANCES OR INDEBTEDNESS OF THE REDEVELOPMENT AGENCY

BACKGROUND:

The Redevelopment Agency of the City of Imperial Beach (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000 et seq., hereinafter the "CCRL") and is responsible for the administration of redevelopment activities within the City of Imperial Beach ("City").

On September 6, 2011, the Governor signed AB 936, which added Article 4.4 (commencing with Section 33354.7) to the CCRL, which became effective on January 1, 2012. AB 936 requires an agency or public body to:

- i) Adopt a resolution stating its intention to forgive the repayment of a loan, advance or indebtedness owed by a public body to the agency or an agency to the public body prior to repayment forgiveness; and
- ii) Before February 1, 2012, adopt a resolution declaring whether it has forgiven the repayment of a loan, advance or indebtedness owed by a public body or an agency to the public body during the period of time of January 1, 2010 through December 31, 2011.

AB 936 requires that no less than ten (10) days after the adoption of the resolution, the agency or public body shall transmit a copy of the resolution to the legislative body and the California State Controller.

DISCUSSION:

The attached resolution is for the purpose of the City complying with Item (ii) above. Staff has confirmed that during the period of time from January 1, 2010, through December 31, 2011, the City has not forgiven, wholly or partially, repayment of any loans, advances or other indebtedness owed to it by the Agency, nor has the Agency forgiven, wholly or partially, any loans, advances or other indebtedness owed to it by the City. Staff has prepared the attached resolution, as required by AB 936, to declare that no such forgiveness has occurred.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

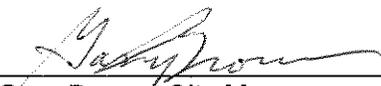
None.

DEPARTMENT RECOMMENDATION:

That the City Council adopt Resolution No. 2012-7150 making a declaration pursuant to AB 936 regarding matters of forgiveness of loans, advances, or other indebtedness of the Agency.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Resolution No. 2012-7150

RESOLUTION NO. 2012-7150

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, MAKING A DECLARATION PURSUANT TO AB 936 REGARDING MATTERS OF FORGIVENESS OF LOANS, ADVANCES, OR OTHER INDEBTEDNESS OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH

WHEREAS, the Community Redevelopment Agency of the City of Imperial Beach (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000 et seq., hereinafter the "CCRL") and is responsible for the administration of redevelopment activities within the City of Calexico (the "City"); **and**

WHEREAS, on September 6, 2011, the Governor signed AB 936, which added Article 4.4 (commencing with Section 33354.7) to the CCRL, which became effective January 1, 2012; **and**

WHEREAS, AB 936 requires an agency or public body to adopt a resolution before February 1, 2012, declaring whether it has forgiven the repayment of a loan, advance or other indebtedness owed by a public body or an agency to the public body during the period of time of January 1, 2010 through December 31, 2011; **and**

WHEREAS, AB 936 requires that no less than ten (10) days after the adoption of the resolution, the agency or public body shall transmit a copy of the resolution to the legislative body and the State Controller; **and**

WHEREAS, the City has not wholly or partially forgiven the repayment of any loans, advances or indebtedness owed to the City by the Agency during the period of time of January 1, 2010 through December 31, 2011; **and**

WHEREAS, the sole purpose of this Resolution is to comply with AB 936 by making a declaration with respect to matters of forgiveness of loans, advances, or other indebtedness of the Agency; **and**

WHEREAS, all the prerequisites with respect to the approval of this Resolution have been met.

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

1. The foregoing recitals are true and correct and are a substantive part of this Resolution.
2. The City has not wholly or partially forgiven the repayment of any loans, advances or indebtedness owed to the City by the Agency during the period of time of January 1, 2010 through December 31, 2011.
3. The City Clerk is hereby authorized and directed to file a certified copy of this Resolution with the California State Controller within ten (10) days of the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 26th day of January 2012, by the following vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC
CITY CLERK



**STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY**

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY
FROM: GARY BROWN, EXECUTIVE DIRECTOR
MEETING DATE: JANUARY 26, 2012
ORIGINATING DEPT.: MIKE MCGRANE, FINANCE DIRECTOR
**SUBJECT: AGENCY RESOLUTION NO. R-12-270 REQUIRED BY AB 936
REGARDING FORGIVENESS OF LOANS, ADVANCES OR
INDEBTEDNESS OF THE CITY OR OTHER PUBLIC BODY**

BACKGROUND:

The Redevelopment Agency of the City of Imperial Beach (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000 et seq., hereinafter the "CCRL") and is responsible for the administration of redevelopment activities within the City of Imperial Beach ("City").

On September 6, 2011, the Governor signed AB 936, which added Article 4.4 (commencing with Section 33354.7) to the CCRL, which became effective on January 1, 2012. AB 936 requires an agency or public body to:

- i) Adopt a resolution stating its intention to forgive the repayment of a loan, advance or indebtedness owed by a public body to the agency or an agency to the public body prior to repayment forgiveness; and
- ii) Before February 1, 2012, adopt a resolution declaring whether it has forgiven the repayment of a loan, advance or indebtedness owed by a public body or an agency to the public body during the period of time of January 1, 2010 through December 31, 2011.

AB 936 requires that no less than ten (10) days after the adoption of the resolution, the agency or public body shall transmit a copy of the resolution to the legislative body and the California State Controller.

DISCUSSION:

The attached resolution is for the purpose of the Agency's compliance with Item (ii) above. Staff has confirmed that during the period of time from January 1, 2010, through December 31, 2011, the Agency has not forgiven, wholly or partially, repayment of any loans, advances or other indebtedness owed to it by the City or other public body, nor has the City forgiven, wholly or partially, any loans, advances or other indebtedness owed to it by the Agency. Staff has prepared the attached resolution, as required by AB 936, to declare that no such forgiveness has occurred.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

None.

DEPARTMENT RECOMMENDATION:

Staff recommends that the Redevelopment Agency adopt Resolution No. R-12-270, making a declaration pursuant to AB 936 regarding matters of forgiveness of loans, advances, or other indebtedness of the City or other public body.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, Executive Director

Attachments:

1. Resolution No. R-12-270

RESOLUTION NO. R-12-270

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, MAKING A DECLARATION PURSUANT TO AB 936 REGARDING MATTERS OF FORGIVENESS OF LOANS, ADVANCES, OR OTHER INDEBTEDNESS OF THE CITY OF IMPERIAL BEACH OR OTHER PUBLIC BODY

WHEREAS, the Community Redevelopment Agency of the City of Imperial Beach (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Heath and Safety Code § 33000 et seq., hereinafter the "CCRL") and is responsible for the administration of redevelopment activities within the City of Calexico (the "City"); and

WHEREAS, on September 6, 2011, the Governor signed AB 936, which added Article 4.4 (commencing with Section 33354.7) to the CCRL, which became effective January 1, 2012; and

WHEREAS, AB 936 requires an agency or public body to adopt a resolution before February 1, 2012, declaring whether it has forgiven the repayment of a loan, advance or other indebtedness owed by a public body to the agency during the period of time of January 1, 2010 through December 31, 2011; and

WHEREAS, AB 936 requires that no less than ten (10) days after the adoption of the resolution, the agency or public body shall transmit a copy of the resolution to the legislative body and the State Controller; and

WHEREAS, the Agency has not wholly or partially forgiven the repayment of any loans, advances or indebtedness owed to the Agency by the City or other public body during the period of time of January 1, 2010 through December 31, 2011; and

WHEREAS, the sole purpose of this Resolution is to comply with AB 936 by making a declaration with respect to matters of forgiveness of loans, advances, or other indebtedness of the City; and

WHEREAS, all the prerequisites with respect to the approval of this Resolution have been met.

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

1. The foregoing recitals are true and correct and are a substantive part of this Resolution.
2. The Agency has not wholly or partially forgiven the repayment of any loans, advances of indebtedness owed to the Agency by the City or other public body during the period of time of January 1, 2010 through December 31, 2011.
3. The Agency Secretary is hereby authorized and directed to file a certified copy of this Resolution with the California State Controller within ten (10) days of the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 26th day of January 2012, by the following vote:

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

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY



**STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY**

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: January 26, 2012

ORIGINATING DEPT.: Mike McGrane, Finance Director

SUBJECT: Adoption of Resolution No. R-12-271 of the Redevelopment Agency of the City of Imperial Beach, California, amending its Enforceable Obligation Payment Schedule (EOPS); Adoption of Resolution No. R-12-272 of the Redevelopment Agency of the City of Imperial Beach, California, amending its preliminary draft Initial Recognized Obligation Payment Schedule (IROPS)

BACKGROUND:

On December 29, 2011, the California Supreme Court issued its decision in *California Redevelopment Association, et al. v. Matosantos, et al.* (Case No. S194861), which is the litigation that challenged Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"). The Court largely upheld as constitutional AB 26, which provides for the "wind-down" and subsequent dissolution of redevelopment agencies, and invalidated in its entirety as unconstitutional AB 27, which provided for an alternative "voluntary" redevelopment program. The Court held that AB 26 may be severed from AB 27 and enforced independently. In summary, as a result of the decision, all redevelopment agencies will be dissolved as of February 1, 2012¹. In addition, the Supreme Court generally revised the effective dates and deadlines for performance of obligations in AB 26 (the dissolution provisions) arising before May 1, 2012 to take effect four months later.

As a result of the Supreme Court's decision and lacking a legislative remedy, the successor agencies created by AB 26 as of February 1, 2012, will be tasked with winding down the affairs of what would then be their former redevelopment agencies. In Imperial Beach's case, the City Council will serve as the Successor Agency to the former Redevelopment Agency of the City of Imperial Beach. Pursuant to Health and Safety Code Section 34169(a), until successor agencies are authorized, redevelopment agencies must continue to make all scheduled payments for enforceable obligations as defined in Health and Safety Code Section 34167(a). Pursuant to Health and Safety Code Section 34167(h), redevelopment agencies shall not make a payment unless it is listed in an adopted Enforceable Obligation Payment Schedule ("EOPS"), other than payments required to meet obligations with respect to bonded indebtedness.

¹ Legislation has been authored (SB 659), but not yet considered by the State Legislature, that proposes an extension to this deadline until April 15, 2012, as well as other deadlines promulgated under AB 26, including some dates already modified by the Supreme Court.

Consistent with the provisions of AB 26 and as required by Health and Safety Code Section 34169(g)(1), on August 24, 2011, the Agency adopted its original EOPS. The purpose of the amended EOPS before the Board tonight is to amend the original EOPS that was previously adopted by the Agency. Further, the purpose of the amendment to the EOPS before the Board tonight is to: i) clarify several previously listed payment obligations related to existing indebtedness; ii) include payment obligations that were inadvertently overlooked; iii) add several payment obligations, including statutory obligations, related to the Successor Agency and the Oversight Board; and iv) adjust the payment period to the second half of FY 2011-12 in accordance with the Supreme Court's reformation and extension of certain deadlines for performance of obligations in AB 26.

Consistent with the provisions of AB 26 and as required by Health and Safety Code Section 34169(h), on September 28, 2011, the Agency adopted its preliminary draft Initial Recognized Obligation Payment Schedule ("IROPS"), which was based on the original EOPS. Pursuant to Section 34169(h), the Agency is required to prepare the IROPS and provide the IROPS to the Successor Agency once it is established. AB 26 contemplates that the Successor Agency will utilize the IROPS as the basis on which the Successor Agency will prepare the formal ROPS on or before March 1, 2012 pursuant to Health and Safety Code Section 34177(l)(2). AB 26 intends that the IROPS (and thereafter the formal ROPS) is the designated reporting mechanism for disclosing the Agency's bi-annual payment obligations by amount and source. Although the IROPS is based on the EOPS (which comprehensively discloses the entirety of the Agency's payment obligations), its purpose is to disclose the Agency's payment obligations in six (6) month increments. Ultimately and subsequent to the audit of the formal ROPS as specified in AB 26, the County's Auditor-Controller will be responsible for ensuring that the Successor Agency receives revenues sufficient to meet the requirements of the formal ROPS during each bi-annual period. In consideration that the Agency will have amended its EOPS as proposed, it is appropriate to also amend its IROPS at this time in order to be consistent with the amendment to the EOPS. Further, by amending the EOPS and the IROPS, the EOPS and IROPS will be more complete and will simplify the Successor Agency's duties when it is required to re-adopt the EOPS and adopt the formal ROPS pursuant to Health and Safety Code Sections 34177(a)(1) and 34177(l)(2), respectively. In this regard, subsequent to the dissolution of the Agency and pursuant to AB 26, the City, as the Agency's Successor Agency, will consider re-adoption of the Agency's EOPS as the "Successor Agency's EOPS" (with any appropriate modifications), and the Successor Agency will pay enforceable obligations pursuant to the EOPS until such time as the formal ROPS is adopted by the Successor Agency and becomes operative under AB 26.

ENVIRONMENTAL DETERMINATION:

Pursuant to Title 15 of the California Code of Regulations, Section 15378(b)(4), this item is not subject to the California Environmental Quality Act ("CEQA") review because the recommended approvals are not considered a project, and are governmental funding mechanisms and fiscal activities that do not involve any commitment to any specific project which may result in a potentially significant environmental impact.

FISCAL IMPACT:

Adoption of the attached Resolutions alone will not cause a fiscal impact. Amendment of the EOPS will authorize the Agency to pay its enforceable obligations after December 31, 2011 and prior to dissolution of the Agency. Amendment of the preliminary draft IROPS is in compliance with the provisions of AB 26.

DEPARTMENT RECOMMENDATION:

Staff recommends the Redevelopment Agency:

1. Adopt Resolution No. R-12-271 amending the EOPS; and
2. Adopt Resolution No. R-12-272 amending the preliminary draft IROPS.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, Executive Director

Attachments:

1. Resolution No. R-12-271.
2. Resolution No. R-12-272.

RESOLUTION NO. R-12-271

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH AMENDING ITS PREVIOUSLY ADOPTED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE AND APPROVING CERTAIN RELATED ACTIONS

WHEREAS, the Redevelopment Agency of the City of Imperial Beach (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Imperial Beach (the "City"); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, AB 1X 26 and AB 1X 27 were signed by the Governor of California on June 29, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with § 34161) ("Part 1.8") and Part 1.85 (commencing with § 34170) ("Part 1.85") to Division 24 of the California Health and Safety Code; and

WHEREAS, the California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California (*California Redevelopment Association, et al. v. Matosantos, et al.* (Case No. S194861)) alleging that AB 1X 26 and AB 1X 27 were unconstitutional; and

WHEREAS, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding as constitutional AB 1X 26, invalidating as unconstitutional AB 1X 27, and holding that AB 1X 26 may be severed from AB 1X 27 and enforced independently; and

WHEREAS, the Supreme Court generally reformed and revised the effective dates and deadlines for performance of obligations under Health and Safety Code Part 1.85 arising before May 1, 2012 to take effect four months later while leaving the effective dates or deadlines for performance of obligations under Health and Safety Code Part 1.8 unchanged; and

WHEREAS, as a result of the Supreme Court's decision, on February 1, 2012, all California redevelopment agencies are dissolved and successor agencies are designated as successor agencies to the former redevelopment agencies; and

WHEREAS, pursuant to Health and Safety Code section 34169(a), until successor agencies are authorized, redevelopment agencies must continue to make all scheduled payments for enforceable obligations as defined in Health and Safety Code section 34167(a); and

WHEREAS, pursuant to Health and Safety Code section 34167(h), redevelopment agencies shall not make a payment unless it is listed in an adopted enforceable obligation payment schedule, other than payments required to meet obligations with respect to bonded indebtedness; and

WHEREAS, on August 24, 2011, the Agency adopted Resolution No. R-11-266 approving an original Enforceable Obligation Payment Schedule, pursuant to Health and Safety Code section 34169(g)(1); and

WHEREAS, prior to dissolution, the Agency may amend its EOPS from time to time at any public meeting of the Agency and any such further amendments shall be posted to the City Internet Web site; and

WHEREAS, the Agency's proposed amended and amendment to the EOPS, which are consistent with the requirements of Health and Safety Code section 34169, are attached to this Resolution as Exhibit "A"; and

WHEREAS, this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines; and

WHEREAS, this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

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

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The adoption of this Resolution is not intended to and shall not constitute a waiver by the Agency of any rights the Agency may have to challenge the effectiveness and/or legality of all or any portion of AB 1X 26 through administrative or judicial proceedings.
- Section 3.** The Agency's Amended EOPS, which is attached hereto as Exhibit "A" is approved and adopted.
- Section 4.** The Executive Director, or designee, is hereby authorized and directed to: i) post the amended EOPS and the amendment to the EOPS on the City's website; ii) notify the County Auditor-Controller, the State Controller and the State Department of Finance concerning this amending Resolution, in accordance with the applicable provisions of the Health and Safety Code; and iii) take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution, to implement the EOPS on behalf of the Agency, including making such payments.
- Section 5.** The Agency determines that this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.
- Section 6.** This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 26th day of January 2012, by the following vote:

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

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY

EXHIBIT "A"

**REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH
AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE
AMENDED JANUARY 26, 2012**

(See attached)

Project Area(s) _____

AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34167 and 34169

	Project Name / Debt Obligation	Payee	Description	Payments by month												Total
				July	August	September	October	November	December	January	February	March	April	May	June	
Debt Obligations																
1	2003 Tax Allocation Bonds Series	Wells Fargo Bank	Bond Debt Service	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 1,553,208
2	2010 Tax Allocation Bonds Series	Wells Fargo Bank	Bond Debt Service	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$1,051,908
3	City Loan 1995	City of Imperial Beach	Loan to finance start up costs	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$448,572
4																\$0
5																\$0
6																\$0
7																\$0
8																\$0
9																\$0
10																\$0
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12																\$0
13																\$0
14																\$0
15																\$0
16																\$0
17																\$0
18																\$0
19																\$0
20																\$0
Totals - Debt Obligations - This Page				\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$3,053,688
Totals - Housing Program Related - Page 2				\$140,773	\$129,594	\$62,770	\$170,732	\$59,012	\$306,729	\$1,091,087	\$140,000	\$120,000	\$120,000	\$120,000	\$3,033,362	\$5,494,059
Totals - RDA Operating - Page 3				\$55,965	\$116,629	\$231,364	\$77,390	\$79,110	\$235,654	\$585,777	\$96,667	\$98,692	\$96,667	\$96,667	\$103,914	\$1,874,496
Totals - RDA Projects - Page 4				\$538,289	\$66,005	\$107,260	\$32,896	\$128,084	\$168,799	\$5,667,142	\$1,448,072	\$1,084,607	\$1,482,765	\$1,054,681	\$1,195,682	\$12,974,282
Totals - Pass Through Obligations- Page 5				\$0	\$0	\$2,047,351	\$0	\$0	\$0	\$0	\$0	\$576,814	\$0	\$0	\$0	\$2,624,165
Total Enforceable Obligations				\$989,501	\$566,702	\$2,703,219	\$535,492	\$520,680	\$965,656	\$7,598,480	\$1,939,213	\$2,134,587	\$1,953,906	\$1,525,822	\$4,587,432	\$26,020,690

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior the the Governor's signature of ABx1 26 on June 28, 2011.

Project Area(s)

AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34167 and 34169

Project Name / Debt Obl	Payee	Description	Payments by month												Total	
			Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun		
Housing Programs																
1	Housing Management	See Attached	Mgt costs for Low/Mod Housing Program	\$ 4,928	\$ 12,574	\$ 26,005	\$ 10,710	\$ 9,478	\$ 25,681	\$ 24,544	\$ -	\$ -	\$ -	\$ -	\$ -	\$113,920
2	Housing Agreement	Imperial Beach	Support costs								\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$75,000
3	Hemlock Monitoring	Housing Authority/City Finance	South Bay Comm. Svcs Loan												\$ 2,611	\$2,611
4	Calla Monitoring	Housing Authority/City Finance	South Bay Comm. Svcs Loan												\$ 2,611	\$2,611
5	Beachwind Monitoring	Housing Authority/City Finance	Beachwood Loan												\$ 2,611	\$2,611
6	Housing Reporting	Housing Authority/City Finance	RDA Statutory Compliance												\$ 6,765	\$6,765
7	Clean & Green Monitorin	Housing Authority	10 yr Contract Compliance												\$ 193	\$193
8	Deficit Housing Oblig.	Housing Authority	RDA Statutory Compliance												\$ 5,000	\$5,000
9	Age Proportionality	Housing Authority	RDA Statutory Compliance												\$ 5,000	\$5,000
10	American Legion	Kane Ballmer	Low/Mod Housing Project	\$ -	\$ 3,621	\$ 1,329	\$ 16,200	\$ 12,544	\$ -	\$ -	\$ 10,000					\$43,694
11	American Legion	Keyser Marston Assoc.	Low/Mod Housing Project	\$ -	\$ 384	\$ 2,563	\$ 6,553	\$ 2,924	\$ -	\$ -	\$ 10,000					\$22,424
12	American Legion	Hitzke Development	Low/Mod Housing Project	\$ -	\$ -	\$ -	\$ 100,000	\$ -	\$ 269,712	\$ 91,717	\$ 100,000	\$ 100,000	\$ 100,000	\$ 2,988,571		\$3,849,000
13	American Legion	Project Management	Low/Mod Housing Project								\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$25,000
14	Housing Element	Tam	Housing Element	\$ -	\$ -	\$ 3,090	\$ -	\$ 2,816	\$ 3,836	\$ -						\$9,742
15	Clean & Green**	A.E. CHARLES CONSTRUCTION	Tax Exempt Bond Indenture Project	\$10,000	\$7,000											\$17,000
16	Clean & Green**	AFFORDABLE RAINGUTTERS	Tax Exempt Bond Indenture Project		\$380											\$380
17	Clean & Green**	A-FRAME CONSTRUCTION, INC.	Tax Exempt Bond Indenture Project	\$2,500												\$2,500
18	Clean & Green**	ALTERNATIVE ENERGY TECHNOLOGIES	Tax Exempt Bond Indenture Project	\$0	\$13,879	\$24,580										\$38,459
19	Clean & Green**	BARROWS CONSTRUCTION	Tax Exempt Bond Indenture Project	\$9,794	\$1,380	\$800										\$11,974
20	Clean & Green**	CALIFORNIA ALUMINUM & VINYL WINDOWS	Tax Exempt Bond Indenture Project	\$6,054	\$0											\$6,054
21	Clean & Green**	CHICAGO TITLE INSUR CO	Tax Exempt Bond Indenture Project			\$500	\$4,000									\$4,500
22	Clean & Green**	COOK CONSTRUCTION AND DESIGN, INC.	Tax Exempt Bond Indenture Project		\$22,286											\$22,286
23	Clean & Green**	DELTA SOLAR ELECTRIC	Tax Exempt Bond Indenture Project	\$18,380	\$16,936											\$35,316
24	Clean & Green**	DON MOORE CONSTRUCTION	Tax Exempt Bond Indenture Project					\$15,620								\$15,620
25	Clean & Green**	GB'S FENCE COMPANY	Tax Exempt Bond Indenture Project			\$3,903	\$0									\$3,903
26	Clean & Green**	GREGORY HUGHES	Tax Exempt Bond Indenture Project	\$1,000	\$8,500		\$4,998									\$14,498
27	Clean & Green**	HARLAN CONSTRUCTION	Tax Exempt Bond Indenture Project	\$8,150	\$7,575		\$12,651	\$15,630	\$8,500							\$52,506
28	Clean & Green**	HELPERS ELECTRIC COMPANY, INC.	Tax Exempt Bond Indenture Project				\$1,000	\$0								\$1,000
29	Clean & Green**	KENNEY ROOFING	Tax Exempt Bond Indenture Project	\$21,400	\$22,160											\$43,560
30	Clean & Green**	MCBREARY CONSTRUCTION CORP.	Tax Exempt Bond Indenture Project		\$9,300	\$0										\$9,300
31	Clean & Green**	MILHOLLAND ELECTRIC, INC.	Tax Exempt Bond Indenture Project	\$254												\$254
32	Clean & Green**	ROCK AND ROSE LANDSCAPE	Tax Exempt Bond Indenture Project	\$6,010												\$6,010
33	Clean & Green**	RODS ROOTER	Tax Exempt Bond Indenture Project	\$13,250			\$0									\$13,250
34	Clean & Green**	SAM & SONS PLUMBING	Tax Exempt Bond Indenture Project	\$0			\$3,200									\$3,200
35	Clean & Green**	SIERRA WINDOW CONCEPTS, LTD	Tax Exempt Bond Indenture Project	\$6,000												\$6,000
36	Affordable Housing	SOUTH BAY COMMUNITY SVCS	Tax Exempt Bond Indenture Project	\$5,424												\$5,424
37	Clean & Green**	STORM GENERAL BUILDERS, INC.	Tax Exempt Bond Indenture Project	\$835												\$835
38	Clean & Green**	SUACCI	Tax Exempt Bond Indenture Project	\$24,404			\$11,420									\$35,824
39	Clean & Green**	U.S. BANK CORPORATE PAYMENT	Tax Exempt Bond Indenture Project	\$10												\$10
40	Clean & Green**	WEST COAST APPLIANCE SERVICES, INC.	Tax Exempt Bond Indenture Project	\$1,000	\$3,999											\$4,999
41	Clean & Green**	WESTERN WINDOW REPLACEMENT	Tax Exempt Bond Indenture Project	\$1,000	\$0					\$21,286						\$22,286
42	Clean & Green**	AI Charles Design	Tax Exempt Bond Indenture Project							\$2,400						\$2,400
43	Clean & Green**	Helpers Electric	Tax Exempt Bond Indenture Project							\$13,140						\$13,140
44	Clean & Green	Tax Exempt Bond Indenture	Tax Exempt Bond Indenture Project							\$380,000						\$380,000
45	Housing Project	Tax Exempt Bond Indenture	Tax Exempt Bond Indenture Project							\$558,000						\$558,000
46																\$0
47																\$0
Totals - This Page				\$140,773	\$129,594	\$62,770	\$170,732	\$59,012	\$306,729	\$1,091,087	\$140,000	\$120,000	\$120,000	\$120,000	\$3,033,362	\$5,494,059

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior the the Governor's signature of ABx1 26 on June 28, 2011.

** Pursuant to contract with homeowner participant

Project Area(s) _____

AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34167 and 34169

	Project Name / Debt Obligation	Payee	Description	Payments by month												Total
				July	August	September	October	November	December	January	February	March	April	May	June	
RDA Operating																
1	RDA Management	Various	Admin of RDA	\$ 49,719	\$ 90,933	\$ 208,573	\$ 66,361	\$ 67,412	\$ 202,835	\$ 27,523					\$713,356	
2	Oversight Admin Costs	City of Imperial Beach										\$ 56,667	\$ 56,667	\$ 56,667	\$ 56,667	
3	RDA Accrued Liabilities	City of Imperial Beach	Vacation/Sick Liability as of 1/31/2012								\$ 203,233				\$203,233	
4	RDA Unfunded PERS Liability	City of Imperial Beach	Unfunded Pension Liability as of 1/31/2012								\$ 319,590				\$319,590	
5	RDA 30 Layoff Notice Cost	City of Imperial Beach	Labor Contract Requirement								\$ 28,646				\$28,646	
6	RDA Outstanding WC Liability	City of Imperial Beach	Workers Compensation Liability 1/31/2012								\$ 2,928				\$2,928	
7	Graffiti Abatement	Various	RDA Staffing and Program Costs	\$ 6,246	\$ 25,696	\$ 20,766	\$ 11,029	\$ 11,698	\$ 18,227	\$ 3,857					\$97,519	
8	Continuing Disclosure	Wells Fargo	Mandatory Annual Bond Disclosure						\$3,200						\$3,200	
9	Continuing Disclosure	Bond Management	Mandatory Annual Bond Disclosure						\$3,000						\$3,000	
10	Continuing Disclosure	HDL	Assessment Information			\$2,025			\$2,025		\$2,025			\$2,025	\$8,100	
11	Continuing Disclosure	Lance Soll	Audit Fees						\$6,367						\$6,367	
12	IBCC Monitoring	City of Imperial Beach	IB Community Clinic Loan											\$ 2,611	\$2,611	
13	RDA Statue Compliance	City of Imperial Beach	Compliance											\$ 2,611	\$2,611	
14	City Service Agreement	City of Imperial Beach	Oversight and related costs								\$40,000	\$40,000	\$40,000	\$40,000	\$200,000	
15															\$0	
16															\$0	
17															\$0	
18															\$0	
19															\$0	
20															\$0	
21															\$0	
22															\$0	
23															\$0	
24															\$0	
25															\$0	
26															\$0	
27															\$0	
28															\$0	
29															\$0	
30															\$0	
Totals - This Page				\$55,965	\$116,629	\$231,364	\$77,390	\$79,110	\$235,654	\$585,777	\$96,667	\$98,692	\$96,667	\$96,667	\$103,914	\$1,874,496

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior the the Governor's signature of ABx1 26 on June 28, 2011.

AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE
 Per AB 28 - Section 34167 and 34169 (*)

Project Name / Debt Obligation	Payee	Description	Payments by month												Total	
			July	August	September	October	November	December	January	February	March	April	May	June		
RDA Projects																
1	Commercial Zoning	AECOM	Tax Exempt Bond Indenture Project	\$ -	\$ 27,234	\$ 67,270	\$ 9,529	\$ 17,720	\$ 7,637			\$ 80,333				\$199,723
2	Commercial Zoning	Project Management	Tax Exempt Bond Indenture Project									\$ 16,666	\$ 16,666	\$ 16,666	\$ 16,666	\$83,330
3	Highway 75 Improvements	Sudbery	Tax Exempt Bond Indenture Project								\$2,200,000				\$2,200,000	
4	Highway 75 Improvements	Dudek	Tax Exempt Bond Indenture Project			\$8,000									\$8,000	
5	Highway 75 Improvements	Nasland Engineering	Tax Exempt Bond Indenture Project		\$ 933	\$ 320		\$ 65				\$30,000	\$ 30,000	\$ 7,662	\$88,980	
6	Highway 75 Improvements	Project Design Consultant	Tax Exempt Bond Indenture Project		\$ 7,900					\$ 105,107					\$112,107	
7	Bayshore Bikeway Access	Project Management	Tax Exempt Bond Indenture Project	\$ -	\$ 377	\$ 1,096	\$ 407	\$ 202	\$ 2,164						\$4,246	
8	Bayshore Bikeway Access	RBF Consulting	Tax Exempt Bond Indenture Project							\$ 21,094					\$21,094	
9	Sand Replenishment	SANDAG	Tax Exempt Bond Indenture Project							\$ 174,003					\$174,003	
10	Street Improvements Phase 3	Nasland	Tax Exempt Bond Indenture Project			\$5,254	\$2,287			\$54,968					\$62,509	
11	Street Improvements Phase 3	SDGE	Tax Exempt Bond Indenture Project						\$552						\$552	
12	Street Improvements Phase 3	Eagle Newspaper	Tax Exempt Bond Indenture Project				\$400			\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$30,400	
13	Street Improvements Phase 3	Project Management	Tax Exempt Bond Indenture Project		\$269	\$2,016	\$2,314	\$1,754	\$1,158	\$26					\$7,537	
14	Street Improvements Phase 3	PAL General Engineering	Tax Exempt Bond Indenture Project							\$258,460	\$258,460	\$258,460	\$258,460	\$258,460	\$1,550,760	
15	Street Improvements Phase 4-5	BDS	Tax Exempt Bond Indenture Project												\$0	
16	Street Improvements Phase 4-5	Geosolls	Tax Exempt Bond Indenture Project		\$470										\$470	
17	Street Improvements Phase 4-5	Eagle Newspaper	Tax Exempt Bond Indenture Project				\$210	\$210							\$420	
18	Street Improvements Phase 4-5	Project Management	Tax Exempt Bond Indenture Project	\$322	\$460	\$2,651	\$2,485	\$2,556	\$1,476	\$117					\$10,067	
19	Street Improvements Phase 4-5	Southland Paving, Inc.	Tax Exempt Bond Indenture Project							\$674,555	\$674,555	\$674,555	\$674,555	\$674,555	\$4,047,331	
20	13th Street ADA Imp	Labor	Tax Exempt Bond Indenture Project	\$100		\$843		\$30	\$298						\$1,271	
21	Skatepark Fence	BDS	Tax Exempt Bond Indenture Project			\$ 95									\$95	
22	Skatepark Fence	Harris Steel Fence	Tax Exempt Bond Indenture Project					\$ 68,639		\$ 62,781					\$131,420	
23	Skatepark Fence	Project Management	Tax Exempt Bond Indenture Project	\$ 655	\$ 513	\$ 1,362	\$ 1,283	\$ 1,853	\$ 757	\$ 2,664					\$9,087	
24	Skatepark Fence	US Bank	Tax Exempt Bond Indenture Project					\$ 143							\$143	
25	Bikeway Village Project	Keyser Marston Assoc.	Tax Exempt Bond Indenture Project			\$1,096	\$2,151				\$8,052	\$10,000	\$10,000		\$31,299	
26	Bikeway Village Project	Bikeway Village, LLC	Tax Exempt Bond Indenture Project							\$1,574,700					\$1,574,700	
27	Bikeway Village Project	San Diego Airport Authority	Tax Exempt Bond Indenture Project							\$375,000					\$375,000	
28	Bikeway Village Project	Recon Environmental	Tax Exempt Bond Indenture Project	\$4,787	\$4,589	\$31,612		\$14,597	\$4,417	\$65,298					\$125,300	
29	Bikeway Village Project	Robert Backer	Tax Exempt Bond Indenture Project								\$35,000				\$35,000	
30	Bikeway Village Project	Opper Varco	Tax Exempt Bond Indenture Project								\$17,500				\$17,500	
31	Bikeway Village Project	Project Management	Tax Exempt Bond Indenture Project								\$10,000	\$10,000	\$5,000		\$25,000	
32	Facade Program	Barrow Construction	Tax Exempt Bond Indenture Project	\$4,800											\$4,800	
33	Facade Program	Calif Electric Supply	Tax Exempt Bond Indenture Project		\$2,174										\$2,174	
34	Facade Program	Sea Breeze Electric	Tax Exempt Bond Indenture Project		\$3,675										\$3,675	
35	Facade Program	Stanford Sign & Awning	Tax Exempt Bond Indenture Project		\$2,100										\$2,100	
36	Facade Program	El Tapilo	Tax Exempt Bond Indenture Project							\$20,000					\$20,000	
37	Facade Program	La Posta	Tax Exempt Bond Indenture Project	\$40						\$40,000					\$40,040	
38	Veterans Park Signage	US Bank	Tax Exempt Bond Indenture Project				\$317	\$119							\$436	
39	Veterans Park Signage	Project Management	Tax Exempt Bond Indenture Project	\$40			\$1,447	\$640							\$2,127	
40	Storm Drain Intercept	Various	Tax Exempt Bond Indenture Project								\$25,500	\$50,000	\$50,000	\$100,000	\$241,000	
41	Elm Ave. Undergrounding	A.M. Ortega Const. Inc.	Tax Exempt Bond Indenture Project	\$54,662											\$54,662	
42	Elm Ave. Undergrounding	Ameron International	Tax Exempt Bond Indenture Project	\$14,340											\$14,340	
43	Bond Project Contingency	Project Management	Tax Exempt Bond Indenture Project								\$0				\$0	
44	Date Street Seacoast Inn	Imperial Coast	Tax Exempt Bond Indenture Project								\$41,812		\$200,000		\$241,812	
45	Date Street	Nasland Engineering	Street Improvement Contract	\$ 445	\$ 2,560	\$ 1,158	\$ 1,445	\$ 1,560							\$7,168	
46	9th & Palm	Kane Bellmer	Tax Exempt Bond Indenture Project							\$24,007	\$10,000	\$10,000	\$10,489		\$54,496	
47	9th & Palm	Opper Varco	Tax Exempt Bond Indenture Project								\$17,500				\$17,500	
48	9th & Palm	Keyser Marston Assoc.	Tax Exempt Bond Indenture Project								\$10,000	\$9,926			\$19,926	
49	9th & Palm	Urban Systems	Tax Exempt Bond Indenture Project	\$5,687	\$10,380						\$10,000	\$10,000	\$4,933		\$41,000	
50	9th & Palm Southbay Relocation	Southbay Drugs	9th and Palm Project						\$150,000						\$150,000	
51	9th & Palm Goodwill Relocation	Goodwill Industries	9th and Palm Project								\$196,246		\$250,000	**	\$446,246	
52	9th & Palm Moran Relocation	Moran Food	9th and Palm Project	\$447,253											\$447,253	
53	9th & Palm	Nasland Engineering	9th and Palm Project	\$355											\$355	
54	9th & Palm	Grainger	9th and Palm Project	\$168											\$168	
55	9th & Palm	Mireles Landscaping	9th and Palm Project	\$1,000	\$1,000	\$1,000									\$3,000	
56	9th & Palm	Project Management	9th and Palm Project	\$161	\$487										\$648	
57	9th & Palm	Various	9th and Palm Project	\$923	\$1,647	\$1,176	\$488	\$1,101	\$296	\$0					\$5,631	
58	Eco-Bikeway	KQA Corporation	Bikeway Improvements	\$2,551				\$16,895		\$ 1,310					\$20,756	
59	Eco-Bikeway	Project Management	Bikeway Improvements		\$157	\$311	\$133		\$44						\$645	
60															\$0	
Totals - This Page				\$538,289	\$66,005	\$107,260	\$32,896	\$128,084	\$168,799	\$5,667,142	\$1,448,072	\$1,084,607	\$1,482,765	\$1,054,681	\$1,195,682	\$12,974,282

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior to the Governor's signature of ABx1 26 on June 28, 2011.

** Amount reflects range of disputed amount. Inclusion on this report should not be construed as the City's settlement amount.

AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34167 and 34169 (*)

Project Name / Debt Obligation	Payee	Description	Payments by month												
			July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Pass-Thru Payments															
1)	Section 33676 Payments	County General	Pass Thru Payments Amended Area			\$529,026									\$529,026
2)	Section 33676 Payments	County Library	Pass Thru Payments Amended Area			\$63,652									\$63,652
3)	Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Amended Area			\$297,147									\$297,147
4)	Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Amended Area			\$397,383									\$397,383
5)	Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Amended Area			\$107,083									\$107,083
6)	Section 33676 Payments	County Office of Education	Pass Thru Payments Amended Area			\$47,740									\$47,740
7)	Section 33676 Payments	Imperial Beach City Gen Fund	Pass Thru Payments Amended Area			\$281,924									\$281,924
8)	Section 33676 Payments	City of San Diego	Pass Thru Payments Amended Area			\$8,909									\$8,909
9)	Section 33676 Payments	CWA City of San Diego	Pass Thru Payments Amended Area			\$68									\$68
10)	Section 33676 Payments	San Diego City Zoological Exhibi	Pass Thru Payments Amended Area			\$226									\$226
11)	Section 33676 Payments	MWD D/S Remainder of SDCWA	Pass Thru Payments Amended Area			\$194									\$194
12)	Section 33676 Payments	County General	Pass Thru Payments Original Area T1			\$59,448									\$59,448
13)	Section 33676 Payments	County Library	Pass Thru Payments Original Area T1			\$9,443									\$9,443
14)	Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Original Area T1			\$81,686									\$81,686
15)	Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Original Area T1			\$46,138									\$46,138
16)	Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Original Area T1			\$12,433									\$12,433
17)	Section 33676 Payments	County Office of Education	Pass Thru Payments Original Area T1			\$5,543									\$5,543
18)	Section 33676 Payments	Imperial Beach City	Pass Thru Payments Original Area T1			\$79,308									\$79,308
19)	Section 33676 Payments	County General	Pass Thru Payments Original Area			\$5,538									\$5,538
20)	Section 33676 Payments	County Library	Pass Thru Payments Original Area			\$880									\$880
21)	Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Original Area			\$7,610									\$7,610
22)	Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Original Area			\$4,298									\$4,298
	Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Original Area			\$1,158									\$1,158
23)	Section 33676 Payments	County Office of Education	Pass Thru Payments Original Area			\$516									\$516
24)	Section 33676 Payments	Final - Various	Pass Thru Payments Original Area								\$576,814				\$576,814
Totals - Other Obligations				\$ -	\$ -	\$ 2,047,351	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 576,814	\$ -	\$ -	\$ 2,624,165

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior the the Governor's signature of ABx1 26 on June 28, 2011.

RESOLUTION NO. R-12-272**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH AMENDING ITS PREVIOUSLY ADOPTED PRELIMINARY DRAFT INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND APPROVING CERTAIN RELATED ACTIONS**

WHEREAS, the Redevelopment Agency of the City of Imperial Beach (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Imperial Beach (the "City"); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, AB 1X 26 and AB 1X 27 were signed by the Governor of California on June 29, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with § 34161) ("Part 1.8") and Part 1.85 (commencing with § 34170) ("Part 1.85") to Division 24 of the California Health and Safety Code; and

WHEREAS, the California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California (*California Redevelopment Association, et al. v. Matosantos, et al.* (Case No. S194861)) alleging that AB 1X 26 and AB 1X 27 were unconstitutional; and

WHEREAS, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding as constitutional AB 1X 26, invalidating as unconstitutional AB 1X 27, and holding that AB 1X 26 may be severed from AB 1X 27 and enforced independently; and

WHEREAS, the Supreme Court generally reformed and revised the effective dates and deadlines for performance of obligations under Health and Safety Code Part 1.85 arising before May 1, 2012 to take effect four months later while leaving the effective dates or deadlines for performance of obligations under Health and Safety Code Part 1.8 unchanged; and

WHEREAS, as a result of the Supreme Court's decision, on February 1, 2012, all California redevelopment agencies are dissolved and successor agencies are designated as successor agencies to the former redevelopment agencies; and

WHEREAS, pursuant to Health and Safety Code section 34169(a), until successor agencies are authorized, redevelopment agencies must continue to make all scheduled payments for enforceable obligations as defined in Health and Safety Code section 34167(a); and

WHEREAS, pursuant to Health and Safety Code section 34167(h), redevelopment agencies shall not make a payment unless it is listed in an adopted Enforceable Obligation Payment Schedule (the "EOPS"), other than payments required to meet obligations with respect to bonded indebtedness; and

WHEREAS, pursuant to Health and Safety Code section 34169 (h), the Agency is required to prepare a preliminary draft of the initial Recognized Obligation Payment Schedule (the "IOPS") and provide it to the Successor Agency, i.e., the City, upon its establishment; and

WHEREAS, on August 24, 2011, the Agency adopted Resolution No. R-11-266 approving an original EOPS, and on January 26, 2012 the Agency, by resolution, approved a further amendment to the EOPS; and

WHEREAS, on September 28, 2011, the Agency adopted Resolution No. R-11-267 which approved the Agency's preliminary draft of the IROPS, which was based on the original EOPS, pursuant to Health and Safety Code section 34169(h); and

WHEREAS, AB 1X 26 contemplates that the Successor Agency will utilize the IROPS as the basis on which the Successor Agency will prepare the formal ROPS on or before March 1, 2012 pursuant to Health and Safety Code section 34177(l)(2); and

WHEREAS, it is the intent of AB 1X 26 that the IROPS (and thereafter the formal ROPS) is the designated reporting mechanism for disclosing the Agency's bi-annual payment obligations by amount and source; and

WHEREAS, although the IROPS is based on the EOPS (which comprehensively discloses the entirety of the Agency's payment obligations), its purpose is to disclose the Agency's payment obligations in six (6) month increments; and

WHEREAS, ultimately and subsequent to the audit of the formal ROPS as specified in AB 1X 26, the County's Auditor-Controller will be responsible for ensuring that the Successor Agency receives revenues sufficient to meet the requirements of the ROPS during each bi-annual period; and

WHEREAS, in consideration that the Agency has amended its EOPS, it is also appropriate to amend its preliminary draft IROPS at this time to be consistent with what would be the amendment to the EOPS; and

WHEREAS, amending the preliminary draft IROPS will simplify the Successor Agency's duties with respect to its later adoption of the formal ROPS pursuant to Health and Safety Code section 34177(l)(2); and

WHEREAS, prior to dissolution, the Agency may amend its preliminary draft IROPS at any time; and

WHEREAS, the Agency's proposed amended preliminary draft IROPS, which is consistent with the requirements of Health and Safety Code section 34169, is attached to this Resolution as Exhibit "A"; and

WHEREAS, this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines; and

WHEREAS, this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

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

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The adoption of this Resolution is not intended to and shall not constitute a waiver by the Agency of any rights the Agency may have to challenge the effectiveness and/or legality of all or any portion of AB 1X 26 through administrative or judicial proceedings.
- Section 3.** The Agency's Amended preliminary draft IROPS, which is attached hereto as Exhibit "A" is approved and adopted.
- Section 4.** The Executive Director, or designee, is hereby authorized and directed to: i) provide the final preliminary draft of the IROPS to the Successor Agency upon its establishment; and ii) take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Agency.
- Section 5.** The Agency determines that this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.
- Section 6.** This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 26th day of January 2012, by the following vote:

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

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY

EXHIBIT "A"

**REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH
PRELIMINARY DRAFT
INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE
AMENDED JANUARY 26, 2012**

(See attached)

PRELIMINARY DRAFT INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34167 and 34169

	Project Name / Debt Obligation	Payee	Description	Payments by month												Total	
				July	August	September	October	November	December	January	February	March	April	May	June		
Debt Obligations																	
1	2003 Tax Allocation Bonds Series	Wells Fargo Bank	Bond Debt Service	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$ 129,434	\$1,553,208
2	2010 Tax Allocation Bonds Series	Wells Fargo Bank	Bond Debt Service	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$ 87,659	\$1,051,908
3	City Loan 1995	City of Imperial Beach	Loan to finance start up costs	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$ 37,381	\$448,572
4																	\$0
5																	\$0
6																	\$0
7																	\$0
8																	\$0
9																	\$0
10																	\$0
11																	\$0
12																	\$0
13																	\$0
14																	\$0
15																	\$0
16																	\$0
17																	\$0
18																	\$0
19																	\$0
20																	\$0
Totals - Debt Obligations - This Page				\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$254,474	\$3,053,688
Totals - Housing Program Related - Page 2				\$140,773	\$129,594	\$62,770	\$170,732	\$59,012	\$306,729	\$1,091,087	\$140,000	\$120,000	\$120,000	\$120,000	\$120,000	\$3,023,362	\$5,484,059
Totals - RDA Operating - Page 3				\$55,965	\$116,629	\$231,364	\$77,390	\$79,110	\$235,654	\$585,777	\$96,667	\$98,692	\$96,667	\$96,667	\$103,914	\$1,874,496	
Totals - RDA Projects - Page 4				\$538,289	\$66,005	\$107,260	\$32,896	\$128,084	\$168,799	\$5,667,142	\$1,448,072	\$1,084,607	\$1,482,765	\$1,054,681	\$1,195,682	\$12,974,282	
Totals - Pass Through Obligations- Page 5				\$0	\$0	\$2,047,351	\$0	\$0	\$0	\$0	\$0	\$576,814	\$0	\$0	\$0	\$2,624,165	
Total Enforceable Obligations				\$989,501	\$566,702	\$2,703,219	\$535,492	\$520,680	\$965,656	\$7,598,480	\$1,939,213	\$2,134,587	\$1,953,906	\$1,525,822	\$4,577,432	\$26,010,690	

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior the the Governor's signature of ABx1 26 on June 28, 2011.

PRELIMINARY DRAFT INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34167 and 34169

Project Name / Debt Obl	Payee	Description	Payments by month												Total	
			Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun		
Housing Programs																
1	Housing Management	See Attached	Mgt costs for Low/Mod Housing Program	\$ 4,928	\$ 12,574	\$ 25,005	\$ 10,710	\$ 9,478	\$ 25,681	\$ 24,544	\$ -	\$ -	\$ -	\$ -	\$ -	\$113,920
2	Housing Agreement	Imperial Beach	Support costs								\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$75,000
3	Hemlock Monitoring	Housing Authority/City Finance	South Bay Comm. Svcs Loan												\$ 2,611	\$2,611
4	Calla Monitoring	Housing Authority/City Finance	South Bay Comm. Svcs Loan												\$ 2,611	\$2,611
5	Beachwind Monitoring	Housing Authority/City Finance	Beachwood Loan												\$ 2,611	\$2,611
6	Housing Reporting	Housing Authority/City Finance	RDA Statutory Compliance												\$ 6,765	\$6,765
7	Clean & Green Monitori	Housing Authority	10 yr Contract Compliance												\$ 193	\$193
8	Deficit Housing Oblig.	Housing Authority	RDA Statutory Compliance												\$ 5,000	\$5,000
9	Age Proportionality	Housing Authority	RDA Statutory Compliance												\$ 5,000	\$5,000
10	American Legion	Kane Ballmer	Low/Mod Housing Project	\$ -	\$ 3,621	\$ 1,329	\$ 16,200	\$ 12,544	\$ -	\$ -	\$ 10,000					\$43,694
11	American Legion	Keyser Marston Assoc.	Low/Mod Housing Project	\$ -	\$ 384	\$ 2,563	\$ 6,553	\$ 2,924	\$ -	\$ -	\$ 10,000					\$22,424
12	American Legion	Hitzke Development	Low/Mod Housing Project	\$ -	\$ -	\$ -	\$ 100,000	\$ -	\$ 268,712	\$ 91,717	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 2,988,571	\$3,849,000
13	American Legion	Project Management	Low/Mod Housing Project								\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$25,000
14	Housing Element	Tam	Housing Element	\$ -	\$ -	\$ 3,080	\$ -	\$ 2,816	\$ 3,836	\$ -						\$9,742
15	Clean & Green**	A.E. CHARLES CONSTRUCTION	Tax Exempt Bond Indenture Project	\$10,000	\$7,000											\$17,000
16	Clean & Green**	AFFORDABLE RAINGUTTERS	Tax Exempt Bond Indenture Project	\$380												\$380
17	Clean & Green**	A-FRAME CONSTRUCTION, INC.	Tax Exempt Bond Indenture Project	\$2,500												\$2,500
18	Clean & Green**	ALTERNATIVE ENERGY TECHNOLOGIES	Tax Exempt Bond Indenture Project	\$0	\$13,879	\$24,580										\$38,459
19	Clean & Green**	BARROWS CONSTRUCTION	Tax Exempt Bond Indenture Project	\$9,794	\$1,380	\$600										\$11,974
20	Clean & Green**	CALIFORNIA ALUMINUM & VINYL WINDOWS	Tax Exempt Bond Indenture Project	\$6,054	\$0											\$6,054
21	Clean & Green**	CHICAGO TITLE INSUR CO	Tax Exempt Bond Indenture Project			\$500	\$4,000									\$4,500
22	Clean & Green**	COOK CONSTRUCTION AND DESIGN, INC.	Tax Exempt Bond Indenture Project		\$22,286											\$22,286
23	Clean & Green**	DELTA SOLAR ELECTRIC	Tax Exempt Bond Indenture Project	\$18,380	\$16,936											\$35,316
24	Clean & Green**	DON MOORE CONSTRUCTION	Tax Exempt Bond Indenture Project					\$15,620								\$15,620
25	Clean & Green**	GB'S FENCE COMPANY	Tax Exempt Bond Indenture Project			\$3,903	\$0									\$3,903
26	Clean & Green**	GREGORY HUGHES	Tax Exempt Bond Indenture Project	\$1,000	\$8,500		\$4,998									\$14,498
27	Clean & Green**	HARLAN CONSTRUCTION	Tax Exempt Bond Indenture Project	\$8,150	\$7,575		\$12,651	\$15,630	\$8,500							\$52,506
28	Clean & Green**	HELPER'S ELECTRIC COMPANY, INC.	Tax Exempt Bond Indenture Project				\$1,000	\$0								\$1,000
29	Clean & Green**	KENNEY ROOFING	Tax Exempt Bond Indenture Project	\$21,400	\$22,180											\$43,580
30	Clean & Green**	MCBREATHY CONSTRUCTION CORP.	Tax Exempt Bond Indenture Project		\$9,300	\$0										\$9,300
31	Clean & Green**	MILHOLLAND ELECTRIC, INC.	Tax Exempt Bond Indenture Project	\$254												\$254
32	Clean & Green**	ROCK AND ROSE LANDSCAPE	Tax Exempt Bond Indenture Project	\$6,010												\$6,010
33	Clean & Green**	RODS ROOTER	Tax Exempt Bond Indenture Project	\$13,250			\$0									\$13,250
34	Clean & Green**	SAM & SONS PLUMBING	Tax Exempt Bond Indenture Project	\$0			\$3,200									\$3,200
35	Clean & Green**	SIERRA WINDOW CONCEPTS, LTD	Tax Exempt Bond Indenture Project	\$6,000												\$6,000
36	Affordable Housing	SOUTH BAY COMMUNITY SVCS	Tax Exempt Bond Indenture Project	\$5,424												\$5,424
37	Clean & Green**	STORM GENERAL BUILDERS, INC.	Tax Exempt Bond Indenture Project	\$835												\$835
38	Clean & Green**	SUACCI	Tax Exempt Bond Indenture Project	\$24,404			\$11,420									\$35,824
39	Clean & Green**	U.S. BANK CORPORATE PAYMENT	Tax Exempt Bond Indenture Project	\$10												\$10
40	Clean & Green**	WEST COAST APPLIANCE SERVICES, INC.	Tax Exempt Bond Indenture Project	\$1,000	\$3,999											\$4,999
41	Clean & Green**	WESTERN WINDOW REPLACEMENT	Tax Exempt Bond Indenture Project	\$1,000	\$0					\$21,286						\$22,286
42	Clean & Green**	Al Charles Design	Tax Exempt Bond Indenture Project							\$2,400						\$2,400
43	Clean & Green**	Helfers Electric	Tax Exempt Bond Indenture Project							\$13,140						\$13,140
44	Clean & Green	Tax Exempt Bond Indenture	Tax Exempt Bond Indenture Project							\$380,000						\$380,000
45	Housing Project	Tax Exempt Bond Indenture	Tax Exempt Bond Indenture Project							\$558,000						\$558,000
46																\$0
47																\$0
Totals - This Page				\$140,773	\$129,594	\$62,770	\$170,732	\$59,012	\$306,729	\$1,091,087	\$140,000	\$120,000	\$120,000	\$120,000	\$3,033,362	\$5,494,059

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior the the Governor's signature of ABx1 26 on June 28, 2011.

** Pursuant to contract with homeowner participant

PRELIMINARY DRAFT INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34167 and 34169

	Project Name / Debt Obligation	Payee	Description	Payments by month												Total
				July	August	September	October	November	December	January	February	March	April	May	June	
RDA Operating																
1	RDA Management	Various	Admin of RDA	\$ 49,719	\$ 90,933	\$ 208,573	\$ 66,361	\$ 67,412	\$ 202,835	\$ 27,523					\$713,356	
2	Oversight Admin Costs	City of Imperial Beach									\$ 56,667	\$ 56,667	\$ 56,667	\$ 56,667	\$ 56,667	
3	RDA Accrued Liabilities	City of Imperial Beach	Vacation/Sick Liability as of 1/31/2012							\$ 203,233					\$203,233	
4	RDA Unfunded PERS Liability	City of Imperial Beach	Unfunded Pension Liability as of 1/31/2012							\$ 319,590					\$319,590	
5	RDA 30 Layoff Notice Cost	City of Imperial Beach	Labor Contract Requirement							\$ 28,646					\$28,646	
6	RDA Outstanding WC Liability	City of Imperial Beach	Workers Compensation Liability 1/31/2012							\$ 2,928					\$2,928	
7	Graffiti Abatement	Various	RDA Staffing and Program Costs	\$ 6,246	\$ 25,696	\$ 20,766	\$ 11,029	\$ 11,698	\$ 18,227	\$ 3,857					\$97,519	
8	Continuing Disclosure	Wells Fargo	Mandatory Annual Bond Disclosure						\$3,200						\$3,200	
9	Continuing Disclosure	Bond Management	Mandatory Annual Bond Disclosure						\$3,000						\$3,000	
10	Continuing Disclosure	HDL	Assessment Information			\$2,025			\$2,025		\$2,025			\$2,025	\$8,100	
11	Continuing Disclosure	Lance Soil	Audit Fees						\$8,367						\$8,367	
12	IBCC Monitoring	City of Imperial Beach	IB Community Clinic Loan											\$ 2,611	\$2,611	
13	RDA Statue Compliance	City of Imperial Beach	Compliance											\$ 2,611	\$2,611	
14	City Service Agreement	City of Imperial Beach	Oversight and related costs								\$40,000	\$40,000	\$40,000	\$40,000	\$200,000	
15															\$0	
16															\$0	
17															\$0	
18															\$0	
19															\$0	
20															\$0	
21															\$0	
22															\$0	
23															\$0	
24															\$0	
25															\$0	
26															\$0	
27															\$0	
28															\$0	
29															\$0	
30															\$0	
Totals - This Page				\$55,965	\$116,629	\$231,364	\$77,390	\$79,110	\$235,654	\$585,777	\$96,667	\$98,692	\$96,667	\$96,667	\$103,914	\$1,874,496

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior the the Governor's signature of ABx1 26 on June 28, 2011.

PRELIMINARY DRAFT INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE
 Per AB 26 - Section 34167 and 34169 (*)

Project Name / Debt Obligation	Payee	Description	Payments by month												Total	
			July	August	September	October	November	December	January	February	March	April	May	June		
RDA Projects																
1	Commercial Zoning	AECOM	Tax Exempt Bond Indenture Project	\$ -	\$ 27,234	\$ 57,270	\$ 9,529	\$ 17,720	\$ 7,637		\$ 80,333				\$199,723	
2	Commercial Zoning	Project Management	Tax Exempt Bond Indenture Project								\$ 16,666	\$ 16,666	\$ 16,666	\$ 16,666	\$83,330	
3	Highway 75 Improvements	Sudberry	Tax Exempt Bond Indenture Project								\$2,200,000				\$2,200,000	
4	Highway 75 Improvements	Dudek	Tax Exempt Bond Indenture Project				\$8,000								\$8,000	
5	Highway 75 Improvements	Nasland Engineering	Tax Exempt Bond Indenture Project		\$ 933	\$ 320		\$ 65				\$30,000	\$ 30,000	\$ 7,662	\$68,960	
6	Highway 75 Improvements	Project Design Consultant	Tax Exempt Bond Indenture Project		\$ 7,000						\$ 105,107				\$112,107	
7	Bayshore Bikeway Access	Project Management	Tax Exempt Bond Indenture Project	\$ -	\$ 377	\$ 1,095	\$ 407	\$ 202	\$ 2,164						\$4,246	
8	Bayshore Bikeway Access	RBF Consulting	Tax Exempt Bond Indenture Project							\$ 21,094					\$21,094	
9	Sand Replenishment	SANDAG	Tax Exempt Bond Indenture Project							\$ 174,003					\$174,003	
10	Street Improvements Phase 3	Nasland	Tax Exempt Bond Indenture Project			\$5,254	\$2,287				\$54,968				\$62,509	
11	Street Improvements Phase 3	SDGE	Tax Exempt Bond Indenture Project						\$552						\$552	
12	Street Improvements Phase 3	Eagle Newspaper	Tax Exempt Bond Indenture Project				\$400			\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$30,400	
13	Street Improvements Phase 3	Project Management	Tax Exempt Bond Indenture Project		\$269	\$2,016	\$2,314	\$1,754	\$1,158	\$26					\$7,537	
14	Street Improvements Phase 3	PAL General Engineering	Tax Exempt Bond Indenture Project							\$258,460	\$258,460	\$258,460	\$258,460	\$258,460	\$1,550,760	
15	Street Improvements Phase 4-5	BDS	Tax Exempt Bond Indenture Project												\$0	
16	Street Improvements Phase 4-5	Geosolls	Tax Exempt Bond Indenture Project		\$470										\$470	
17	Street Improvements Phase 4-5	Eagle Newspaper	Tax Exempt Bond Indenture Project				\$210	\$210							\$420	
18	Street Improvements Phase 4-5	Project Management	Tax Exempt Bond Indenture Project	\$322	\$460	\$2,651	\$2,485	\$2,556	\$1,476	\$117					\$10,067	
19	Street Improvements Phase 4-5	Southland Paving, Inc.	Tax Exempt Bond Indenture Project							\$674,555	\$674,555	\$674,555	\$674,555	\$674,555	\$4,047,331	
20	13th Street ADA Imp	Labor	Tax Exempt Bond Indenture Project	\$100		\$843		\$30	\$298						\$1,271	
21	Skatepark Fence	BDS	Tax Exempt Bond Indenture Project		\$ 95										\$95	
22	Skatepark Fence	Harris Steel Fence	Tax Exempt Bond Indenture Project					\$ 68,639		\$ 62,781					\$131,420	
23	Skatepark Fence	Project Management	Tax Exempt Bond Indenture Project	\$ 655	\$ 513	\$ 1,362	\$ 1,263	\$ 1,853	\$ 757	\$ 2,664					\$9,087	
24	Skatepark Fence	US Bank	Tax Exempt Bond Indenture Project					\$ 143							\$143	
25	Bikeway Village Project	Keyser Marston Assoc.	Tax Exempt Bond Indenture Project			\$1,096	\$2,151			\$8,052	\$10,000	\$10,000			\$31,299	
26	Bikeway Village Project	Bikeway Village, LLC	Tax Exempt Bond Indenture Project							\$1,574,700					\$1,574,700	
27	Bikeway Village Project	San Diego Airport Authority	Tax Exempt Bond Indenture Project							\$375,000					\$375,000	
28	Bikeway Village Project	Recon Environmental	Tax Exempt Bond Indenture Project	\$4,787	\$4,589	\$31,612		\$14,597	\$4,417	\$65,298					\$126,300	
29	Bikeway Village Project	Robert Backer	Tax Exempt Bond Indenture Project								\$35,000				\$35,000	
30	Bikeway Village Project	Oppe Varco	Tax Exempt Bond Indenture Project								\$17,500				\$17,500	
31	Bikeway Village Project	Project Management	Tax Exempt Bond Indenture Project								\$10,000	\$10,000	\$5,000		\$25,000	
32	Façade Program	Barrow Construction	Tax Exempt Bond Indenture Project	\$4,800											\$4,800	
33	Façade Program	Call Electric Supply	Tax Exempt Bond Indenture Project		\$2,174										\$2,174	
34	Façade Program	Sea Breeze Electric	Tax Exempt Bond Indenture Project		\$3,675										\$3,675	
35	Façade Program	Stanford Sign & Awning	Tax Exempt Bond Indenture Project		\$2,100										\$2,100	
36	Façade Program	El Tapilo	Tax Exempt Bond Indenture Project							\$20,000					\$20,000	
37	Façade Program	La Posta	Tax Exempt Bond Indenture Project	\$40						\$40,000					\$40,040	
38	Veterans Park Signage	US Bank	Tax Exempt Bond Indenture Project				\$317	\$119							\$436	
39	Veterans Park Signage	Project Management	Tax Exempt Bond Indenture Project	\$40			\$1,447	\$640							\$2,127	
40	Storm Drain Intercept	Various	Tax Exempt Bond Indenture Project								\$25,000	\$50,000	\$50,000	\$100,000	\$241,000	
41	Elm Ave. Undergrounding	A.M. Ortega Const. Inc.	Tax Exempt Bond Indenture Project	\$54,662											\$54,662	
42	Elm Ave. Undergrounding	Ameron International	Tax Exempt Bond Indenture Project	\$14,340											\$14,340	
43	Bond Project Contingency	Project Management	Tax Exempt Bond Indenture Project								\$0				\$0	
44	Date Street Seacoast Inn	Imperial Coast	Tax Exempt Bond Indenture Project								\$41,812		\$200,000		\$241,812	
45	Date Street	Nasland Engineering	Street Improvement Contract	\$ 446	\$ 2,560	\$ 1,158	\$ 1,446	\$ 1,560							\$7,168	
46	9th & Palm	Kane Ballmer	Tax Exempt Bond Indenture Project							\$24,007	\$10,000	\$10,000	\$10,489		\$54,496	
47	9th & Palm	Oppe Varco	Tax Exempt Bond Indenture Project								\$17,500				\$17,500	
48	9th & Palm	Keyser Marston Assoc.	Tax Exempt Bond Indenture Project								\$10,000	\$9,926			\$19,926	
49	9th & Palm	Urban Systems	Tax Exempt Bond Indenture Project	\$5,687	\$10,380						\$10,000	\$10,000	\$4,933		\$41,000	
50	9th & Palm Southbay Relocation	Southbay Drugs	9th and Palm Project						\$150,000						\$150,000	
51	9th & Palm Goodwill Relocation	Goodwill Industries	9th and Palm Project								\$196,246		\$250,000	**	\$446,246	
52	9th & Palm Moran Relocation	Moran Food	9th and Palm Project	\$447,263											\$447,263	
53	9th & Palm	Nasland Engineering	9th and Palm Project	\$355											\$355	
54	9th & Palm	Granger	9th and Palm Project	\$168											\$168	
55	9th & Palm	Miroles Landscaping	9th and Palm Project	\$1,000	\$1,000	\$1,000									\$3,000	
56	9th & Palm	Project Management	9th and Palm Project	\$161	\$467										\$628	
57	9th & Palm	Various	9th and Palm Project	\$923	\$1,647	\$1,176	\$488	\$1,101	\$296	\$0					\$5,631	
58	Eco-Bikeway	KOA Corporation	Bikeway Improvements	\$2,551				\$16,895		\$ 1,310					\$20,766	
59	Eco-Bikeway	Project Management	Bikeway Improvements		\$157	\$311	\$133		\$44						\$645	
60															\$0	
Totals - This Page				\$538,289	\$66,005	\$107,260	\$32,896	\$128,084	\$168,799	\$5,667,142	\$1,448,072	\$1,084,607	\$1,482,765	\$1,054,681	\$1,195,682	\$12,974,282

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior to the Governor's signature of ABx1 26 on June 28, 2011.

** Amount reflects range of disputed amount. Inclusion on this report should not be construed as the City's settlement amount.

PRELIMINARY DRAFT INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34167 and 34169 (*)

Project Name / Debt Obligation	Payee	Description	Payments by month												Total
			July	August	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Pass-Thru Payments															
1)	Section 33676 Payments	County General	Pass Thru Payments Amended Area			\$529,026									\$529,026
2)	Section 33676 Payments	County Library	Pass Thru Payments Amended Area			\$63,652									\$63,652
3)	Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Amended Area			\$297,147									\$297,147
4)	Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Amended Area			\$397,383									\$397,383
5)	Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Amended Area			\$107,083									\$107,083
6)	Section 33676 Payments	County Office of Education	Pass Thru Payments Amended Area			\$47,740									\$47,740
7)	Section 33676 Payments	Imperial Beach City Gen Fund	Pass Thru Payments Amended Area			\$281,924									\$281,924
8)	Section 33676 Payments	City of San Diego	Pass Thru Payments Amended Area			\$8,909									\$8,909
9)	Section 33676 Payments	CWA City of San Diego	Pass Thru Payments Amended Area			\$68									\$68
10)	Section 33676 Payments	San Diego City Zoological Exhibi	Pass Thru Payments Amended Area			\$226									\$226
11)	Section 33676 Payments	MWD D/S Remainder of SDCWA	Pass Thru Payments Amended Area			\$194									\$194
12)	Section 33676 Payments	County General	Pass Thru Payments Original Area T1			\$59,448									\$59,448
13)	Section 33676 Payments	County Library	Pass Thru Payments Original Area T1			\$9,443									\$9,443
14)	Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Original Area T1			\$81,686									\$81,686
15)	Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Original Area T1			\$46,138									\$46,138
16)	Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Original Area T1			\$12,433									\$12,433
17)	Section 33676 Payments	County Office of Education	Pass Thru Payments Original Area T1			\$5,543									\$5,543
18)	Section 33676 Payments	Imperial Beach City	Pass Thru Payments Original Area T1			\$79,308									\$79,308
19)	Section 33676 Payments	County General	Pass Thru Payments Original Area			\$5,538									\$5,538
20)	Section 33676 Payments	County Library	Pass Thru Payments Original Area			\$880									\$880
21)	Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Original Area			\$7,610									\$7,610
22)	Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Original Area			\$4,298									\$4,298
	Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Original Area			\$1,158									\$1,158
23)	Section 33676 Payments	County Office of Education	Pass Thru Payments Original Area			\$516									\$516
24)	Section 33676 Payments	Final - Various	Pass Thru Payments Original Area								\$576,814				\$576,814
Totals - Other Obligations				\$ -	\$ -	\$ 2,047,351	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 576,814	\$ -	\$ -	\$ 2,624,165

* Notwithstanding the provisions of California Health and Safety Code section 34177(a)(1), agreements between the City and the Agency have been included in this payment schedule because, among other things, they have been validated by operation of law prior the the Governor's signature of ABx1 26 on June 28, 2011.



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: JANUARY 26, 2012

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR *GW*

SUBJECT: ADOPTION OF RESOLUTION NO. 2012-7145 AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH THE AIRPORT AUTHORITY FOR PROPERTY LOCATED AT THE NORTHERN TERMINUS OF 13TH STREET (APN 616-021-10) AND ADOPTION OF RESOLUTION NO. 2012-7140 AUTHORIZING THE CITY MANAGER TO ENTER INTO AN OWNER PARTICIPATION AGREEMENT WITH BIKEWAY VILLAGE LLC FOR THE ACQUISITION OF PROPERTY BELONGING TO THE AIRPORT AUTHORITY AND FOR THE DEVELOPMENT OF THE BIKEWAY VILLAGE PROJECT LOCATED AT 535 FLORENCE STREET AND 536 13TH STREET (APN 626-192-03 AND 04) FOR THE DEVELOPMENT OF THE BIKEWAY VILLAGE PROJECT

BACKGROUND:

City staff has been processing an application for site plan review, design review and rezone for the Bikeway Village project. The Bikeway Village project proposes an adaptive reuse of two existing warehouse structures with a variety of retail, commercial, recreational and personal service uses at the northern terminus of 13th Street adjacent to the City's 13th Street access point to the Bayshore Bikeway. The project will also provide significant public benefit including a public patio/deck area adjacent to the Bayshore Bikeway, bicycle parking, public restrooms, public rest areas, improved bike paths and Bayshore Bikeway access, and additional public parking. The project applicant has also proposed the development of a hostel in the western building which would provide affordable visitor accommodations along this important local and regional bikeway facility.

On October 6, 2010, the City Council and Redevelopment Agency authorized a professional services contract with RECON in an amount not to exceed \$125,300 to prepare a mitigated negative declaration (MND) for the proposed rezone, site plan review, design review and, ultimately, the Coastal Development Permit which will be processed directly through the Coastal Commission. Preparation of the MND has been on-going since that time concurrent with the processing of the project application and proposed rezone.

DISCUSSION:

Purchase Agreement for Airport Authority Property

As part of the proposed project, the Developer has proposed a public plaza and rest area that would occupy land currently owned by the Airport Authority. During the project application review process, City staff negotiated a potential lease agreement with Airport Authority staff for the lease of their property in order to develop the public plaza adjacent to the Bikeway Village project. After successfully negotiating the terms of a Use and Occupancy Permit for the Airport Authority property, environmental site assessments conducted by and on behalf of the City indicated the presence of low level soil contaminants requiring remediation for use of the site. Additionally, during cultural resource surveys as part of the MND, significant cultural resources were also identified on the site. This environmental work resulted in costs incurred by the City and will also result in additional future costs in order to address the contamination issues as well as the significant cultural resources. In August 2010, an appraisal conducted by and on behalf of the City estimated the value of the Airport Authority property at \$520,000 for the 1.15-acre site. Given the costs already incurred by the City, together with the future costs that will be required in order to prepare the site for development of the public plaza, the City met with Airport Authority staff and offered to purchase the property. The Airport Authority has conducted an appraisal and has expressed an interest in entering into a purchase agreement with the City for sale of their property. City staff recommends that the City Council authorize the City Manager to enter into a purchase agreement for the site at a price acceptable to both parties. Though the purchase price would be subject to mutual agreement between both parties, the draft agreement currently identifies a purchase price of \$375,000. A Purchase and Sale Agreement has been drafted and is included as Attachment 3 to this staff report.

Owner Participation Agreement (OPA)

Also during processing of the project application, the applicant, Bikeway Village LLC, made a request for financial assistance. In addition to the on-site improvements which will consist of the adaptive reuse of two commercial warehouse structures for commercial/retail use including a restaurant/café, bike shop, public restrooms, and, potentially, a hostel, the project also proposes the enhancement of bicycle and pedestrian access to the Bayshore Bikeway within the 13th Street right-of-way, bicycle parking, public parking, and a large public plaza on what is property owned by the Airport Authority. The project will also include the undergrounding of overhead utilities surrounding the site. Together, these off-site public improvements total \$1,602,543 as follows:

<u>Off-Site Improvement</u>	<u>Cost</u>
Park/Plaza Area	\$596,687
13 th Street Parking	\$179,491
13 th Street Improvements	\$206,567
Building B Tenant Improvements	\$191,021
Public Restrooms	\$10,097
Alley Way Improvements	\$76,111
Florence Street Improvements	\$52,521
Underground Utilities	<u>\$290,048</u>
Total	\$1,602,543

The Cooperation Agreement between the Redevelopment Agency and the City allocates \$300,000 of tax-exempt bond proceeds towards the Bikeway Village Project for environmental documents and public improvements. As stated above, on October 6, 2010, the City and

Agency authorized a professional services contract for preparation of an MND for the project at a cost of \$125,300, leaving \$174,700 available for public improvements under this line item. The Cooperation Agreement also allocates \$1.8 million for potential acquisition of property such as the airport property. As such, if authorized by the City, additional funds could be provided for property acquisition to facilitate development of the project. As discussed above, the City has an appraisal for the Airport Authority property of \$520,000 and has made an offer to purchase the property. This land could then be made available for development of the public plaza adjacent to the project. If authorized by the City, additional acquisition funds may be provided to the project through an Owner Participation Agreement (OPA) with Bikeway Village LLC. Terms of such an agreement may be as follows:

- City acquires Airport Property (offer \$375,000)
- City either leases or deeds property to Developer
- City acquires land under eastern warehouse building and leases back to Developer (price to be determined)
- City provides \$174,700 for public improvements

Keyser Marston and Associates (KMA) have analyzed the pro forma for the Bikeway Village project. KMA prepared a financial feasibility analysis of the proposed development concept, comprising adaptive re-use of the two existing buildings as a mix of retail, café, and hostel uses. The total development budget, including the developer's cost of property acquisition and the proposed public improvements, is estimated to be approximately \$7.4 million. The developer's preliminary projection of achievable rental income upon completion and stabilization is \$202,000 annually. Assuming a target return on investment of 10.0%, KMA estimates a warranted investment for the proposed project of \$2.0 million. The warranted investment represents the maximum amount that prudent investors and lenders would be willing to invest in a project of this type, mix, and location in the current market. In other words, the project exhibits a financing deficit of \$5.4 million (\$7.4 million in total costs less \$2.0 million in warranted investment). On this basis, therefore, KMA concludes that City and/or Agency financial assistance up to \$5.4 million can be justified for this project. Should the City acquire a portion of the subject property, KMA has prepared a Summary Report pursuant to Section 33433 of the California Redevelopment Law which makes the required findings of fact to support such an acquisition (see Attachment 5).

ENVIRONMENTAL REVIEW:

A Draft Mitigated Negative Declaration (MND) has been prepared for the project. The MND identifies mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance.

FISCAL IMPACT:

Pursuant to the City/Agency Cooperation Agreement, the City possesses funds in the amount of \$300,000 from tax-exempt bond proceeds to be used towards the Bikeway Village Project for environmental documents and public improvements. A professional services contract in the amount \$125,300 has already been approved for the preparation of the MND, leaving \$174,700 of tax-exempt bond proceeds available for public improvements. Additionally, the City also possesses \$1.8 million of tax-exempt bond proceeds from the City/Agency Cooperation Agreement which are available for property acquisition (including the Airport Authority property) that could be contributed to the project.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council:

1. Adopt Resolution No. 2012-7140 authorizing the City Manager to enter into an Owner Participation Agreement with Bikeway Village LLC for the Bikeway Village project; and
2. Adopt Resolution No. 2012-7145 authorizing the City Manager to enter into a Purchase and Sale Agreement with the Airport Authority for the acquisition of Airport Authority-owned property located at the northern terminus of 13th Street between 13th Street and Florence Street (APN 616-021-10) for \$375,000.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. City Council Resolution No. 2012-7140
2. City Council Resolution No. 2012-7145
3. Draft Purchase & Sale Agreement
4. Draft Owner Participation Agreement
5. Summary Report

RESOLUTION NO. 2012-7140

A RESOLUTION OF THE CITY OF IMPERIAL BEACH, AUTHORIZING THE CITY MANGER TO ENTER INTO AN OWNER PARTICIPATION AGREEMENT BY AND BETWEEN THE CITY OF IMPERIAL BEACH AND BIKEWAY VILLAGE LLC FOR THE BIKEWAY VILLAGE PROJECT LOCATED AT 535 FLORENCE STREET AND 536 13TH STREET (APN 626-192-03 AND 04) AND AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY AND APPROPRIATE TO CARRY OUT AND IMPLEMENT THE OWNER PARTICIPATION AGREEMENT AND TO ADMINISTER THE CITY'S OBLIGATIONS, RESPONSIBILITIES, AND DUTIES TO BE PERFORMED UNDER SAID AGREEMENT

WHEREAS, on February 6, 1996, the City Council of the City of Imperial Beach (the "City") adopted Ordinance No. 96-901 approving and adopting a redevelopment plan (the "Redevelopment Plan") for the Palm Avenue/Commercial Redevelopment Project Area (the "Project Area") by, as amended; and

WHEREAS, on January 24, 2011, the City and the Redevelopment Agency of the City of Imperial Beach ("Agency") approved a Cooperation Agreement ("Cooperation Agreement"), which was subsequently amended on February 16, 2011 and March 9, 2011, pursuant to which the City has agreed to aid and cooperate with the Agency in the planning, undertaking, construction or operation of redevelopment projects in the Project Area in accordance with California Health and Safety Code Sections 33205 and 33220 and other provisions of the California Community Redevelopment Law (CRL); and

WHEREAS, the Agency has adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan"), with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization; and

WHEREAS, pursuant to the Cooperation Agreement, among other things, the City has agreed to acquire real property such as that owned by the Airport Authority and to construct certain public improvements for the purpose of aiding and cooperating with the Agency in the redevelopment of real property and the Agency has agreed to reimburse the City for such property acquisition and public improvements from available tax-exempt bond proceeds; and

WHEREAS, the City desires to enter into an Owner Participation Agreement ("OPA") with Bikeway Village LLC ("Developer") in furtherance of the Cooperation Agreement for the purpose of and related to the development of Bikeway Village, a commercial/retail development consisting of the adaptive reuse of two warehouse structures for commercial, retail and visitor-serving uses and the development of a public plaza, public restrooms, public parking and bicycle and pedestrian access improvements to the Bayshore Bikeway (the "Project") on the project site (the "Site") and the construction of certain public improvements (the "Public Improvements"); and

WHEREAS, pursuant to Government Code Section 65402, the acquisition and disposition of the Airport Authority property and/or any portion of the Site for the purposes and uses proposed by the Developer as outlined and provided for in the OPA, will conform in every respect with the adopted General Plan and Local Coastal Program of the City of Imperial Beach; and

WHEREAS, pursuant to Section 33433 of the CRL, in the event the City acquires a portion of the Site, the City has prepared a Summary Report which contains all required findings of fact; and

WHEREAS, pursuant to Section 33445 of the CRL, the construction of Public Improvements will assist in the elimination of blight and is consistent with the goals and objectives of the Implementation Plan; and

WHEREAS, a Mitigated Negative Declaration has been prepared (MND) for the Project pursuant to the provisions of the California Environmental Quality Act (CEQA), and the MND identifies mitigation measures that, through adoption of a Mitigation Monitoring and Reporting Program, will avoid or reduce all potentially significant environmental effects of the Project to below a level of significance; and

WHEREAS, the City has duly considered all terms and conditions of the proposed sale or lease of real property, the information contained in the staff report, and any public comment received at the duly noticed meeting and believes that the development of the Site and construction of the Public Improvements pursuant to the proposed Agreement is in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

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

1. The City Council hereby finds and determines that the foregoing recitals are true and correct.
2. The City Council has reviewed and approves the OPA.
3. In the event the City acquires a portion of the Site, the City hereby finds and determines:
 - a. The purchase and lease the Site will assist in the elimination of blight and is consistent with the Implementation Plan adopted pursuant to Health and Safety Code Section 33490.
 - b. That the consideration to be paid by the Developer for the sale of the Site as described in the Summary Report is not less than the fair reuse value at the use and with the covenants and conditions and development costs contemplated for the Project.
 - c. That all consideration to be paid is in amounts necessary to effectuate the purposes of the Redevelopment Plan.
4. In the event the City decides to construct the Public Improvements in accordance with the OPA, the City hereby finds and determines:

- a. That the Public Improvements are within the Project Area and that the construction and installation of the Public Improvements, which shall be publicly owned, are of benefit to the Project Area by helping to eliminate blight within the Project Area.
- b. That no other reasonable means of financing the Public Improvements are available to the community.
- c. That the payment of funds for the Public Improvements is consistent with the Implementation Plan.

5. The City Manager, or designee, is hereby authorized to execute the OPA and all documents and agreements required for the implementation of the OPA on behalf of the City, subject to the approval as to form by the City Attorney and Special Counsel.

6. The City Manager, or designee, is hereby authorized, on behalf of the City, subject to approval as to form by the City Attorney and Special Counsel, to make such changes to the attachments and provisions of the OPA, sign all documents and take such actions that as City Manager may determine are necessary and appropriate to carry out and implement the purposes of the OPA, and to administer the City's obligations, responsibilities and duties to be performed under the OPA.

PASSED, APPROVED, AND ADOPTED by the City of Imperial Beach at its meeting held on the 26th day of January 2012, by the following roll call vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC
CITY CLERK

RESOLUTION NO. 2012-7145

A RESOLUTION OF THE CITY OF IMPERIAL BEACH, AUTHORIZING THE CITY MANGER TO ENTER INTO A PURCHASE AND SALE BY AND BETWEEN THE CITY OF IMPERIAL BEACH AND SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY FOR THE PROPERTY LOCATED AT THE NORTHERN TERMINUS OF 13TH STREET IN THE CITY OF IMPERIAL BEACH (APN 616-021-10) AND AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS NECESSARY AND APPROPRIATE TO CARRY OUT AND IMPLEMENT THE PURCHASE AND SALE AGREEMENT AND TO ADMINISTER THE CITY'S OBLIGATIONS, RESPONSIBILITIES, AND DUTIES TO BE PERFORMED UNDER SAID AGREEMENT

WHEREAS, on February 6, 1996, the City Council of the City of Imperial Beach (the "City") adopted Ordinance No. 96-901 approving and adopting a redevelopment plan (the "Redevelopment Plan") for the Palm Avenue/Commercial Redevelopment Project Area (the "Project Area") by, as amended; and

WHEREAS, on January 24, 2011, the City and the Redevelopment Agency of the City of Imperial Beach ("Agency") approved a Cooperation Agreement ("Cooperation Agreement"), which was subsequently amended on February 16, 2011 and March 9, 2011, pursuant to which the City has agreed to aid and cooperate with the Agency in the planning, undertaking, construction or operation of redevelopment projects in the Project Area in accordance with California Health and Safety Code Sections 33205 and 33220 and other provisions of the California Community Redevelopment Law (CRL); and

WHEREAS, the Agency has adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan"), with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization; and

WHEREAS, pursuant to the Cooperation Agreement, among other things, the City desires to acquire real property such as that owned by the Airport Authority (the "Property") and to construct certain public improvements for the purpose of aiding and cooperating with the Agency in the redevelopment of the Site and the Agency has agreed to reimburse the City for such property acquisition and public improvements from available tax-exempt bond proceeds; and

WHEREAS, the City desires to execute a Purchase and Sale ("PSA") with the San Diego County Regional Airport Authority (the "Authority") in furtherance of the Cooperation Agreement for the purpose of and related to the development of Bikeway Village, a commercial/retail development consisting of the adaptive reuse of two warehouse structures for commercial, retail and visitor-serving uses and the development of a public plaza and bicycle and pedestrian access improvements the Property; and

WHEREAS, the City also desires to enter into an Owner Participation Agreement ("OPA") with Bikeway Village LLC ("Developer") in furtherance of the Cooperation Agreement for the purpose of and related to the development of Bikeway Village, a commercial/retail development consisting of the adaptive reuse of two warehouse structures for commercial, retail and visitor-serving uses and the development of a public plaza, public restrooms, public parking and bicycle and pedestrian access improvements to the Bayshore Bikeway, portion of which is proposed for the Property; and

WHEREAS, pursuant to Government Code Section 65402, the acquisition and disposition of the Property for the purposes and uses proposed by the Developer as outlined and provided for in the OPA, will conform in every respect with the adopted General Plan and Local Coastal Program of the City of Imperial Beach; and

WHEREAS, the sale or lease of the Property and the development of the Property will assist in the elimination of blight and is consistent with the goals and objectives of the Implementation Plan; and

WHEREAS, a Mitigated Negative Declaration has been prepared (MND) for the Project pursuant to the provisions of the California Environmental Quality Act (CEQA), and the MND identifies mitigation measures that, through adoption of a Mitigation Monitoring and Reporting Program, will avoid or reduce all potentially significant environmental effects of the Project to below a level of significance; and

WHEREAS, the City has duly considered all terms and conditions of the proposed acquisition of the Property, the information contained in the staff report, and any comments from the public made at the duly noticed meeting and believes that the acquisition of the Property is in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

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

1. The City Council hereby finds and determines that the foregoing recitals are true and correct.
2. The City Council has reviewed and approves the Purchase and Sale Agreement between the San Diego County Regional Airport Authority and the City of Imperial Beach to purchase the Property for \$375,000.00.
3. The City Manager, or designee, is hereby authorized to execute the Purchase and Sale Agreement and all documents and agreements required for the implementation of the Purchase and Sale Agreement on behalf of the City, subject to the approval as to form by the City Attorney and Special Counsel and is hereby authorized to accept the grant deed for the Property.
4. The City Manager, or designee, is hereby authorized, on behalf of the City, subject to approval as to form by the City Attorney and Special Counsel, to make such changes to the attachments and provisions of the Purchase and Sale Agreement, sign all documents and take such actions that as City Manager may determine are necessary and appropriate to carry out and implement the purposes of the Purchase and Agreement, and to administer the City's obligations, responsibilities and duties to be performed under the Agreement.

PASSED, APPROVED, AND ADOPTED by the City of Imperial Beach at its meeting held on the 26th day of January 2012, by the following roll call vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC
CITY CLERK

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

This AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this “**Agreement**”) dated this 31st day of January 2012 (the “**Effective Date**”), is entered into by and between the CITY OF IMPERIAL BEACH, a general law city, duly formed, validly existing and in good standing under the laws of the State of California (the “**BUYER**” or “**CITY**”) and the SAN DIEGO REGIONAL AIRPORT AUTHORITY, a local governmental entity of regional government (the “**SELLER**” or “**AUTHORITY**”). BUYER and SELLER are each a “**Party**” and are collectively the “**Parties.**”

RECITALS

A. The City Council of the City of Imperial Beach (the “**City Council**”) adopted the redevelopment plan (the “**Redevelopment Plan**”) for the Palm Avenue/Commercial Redevelopment Project Area on February 6, 1996 (the “**Project Area**”) by Ordinance No.96-901. The Redevelopment Plan was subsequently amended on July 18, 2001 by Ordinance No. 2001-70 (the “**First Amendment**”) to add territory to the Project Area, and on December 20, 2006 by Ordinance No. 2006-1050 (the “**Second Amendment**”) to make certain clarifications, and on March 5, 2008 by Ordinance No. 2008-1066 (the “**Third Amendment**”) to extend the eminent domain authority of the Redevelopment Agency of the City of Imperial Beach, a public body corporate and public (the “**Agency**”). The Redevelopment Plan, as amended by the First Amendment, the Second Amendment and the Third Amendment shall be referred to herein as the “**Redevelopment Plan**”.

B. The intent of the Redevelopment Plan is, in part, to provide for the construction and installation of necessary public infrastructure and facilities and to facilitate the repair, restoration and/or replacement of existing public facilities and to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Area; and to increase, improve and preserve the community’s supply of low and moderate income housing; and to take all other necessary actions to implement the Redevelopment Plan and to expend tax increment to accomplish the goals and objectives of the Redevelopment Plan.

C. Pursuant to Redevelopment Plan objectives, the City desires to acquire approximately 1.15 acres of unimproved land located in the northwest corner of the northern terminus of 13th Street, in the City of Imperial Beach, California, described in the “**Legal Description**” attached hereto as Exhibit A and incorporated herein by this reference, and known as APN: 616-021-10 (the “**Property**”), with available tax-exempt bond proceeds secured by a pledge of net available

Attachment 3

tax increment pursuant to that certain Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Projects dated February 16, 2011 by and between the City and the Agency, as amended on March 9, 2011 by City Council Resolution No. 2011-7019 and Agency Board Resolution No. R-11-251 (collectively, the “**Cooperation Agreement**”), a public record on file in the offices of the City.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement

1. Purchase and Sale. Pursuant to the terms and conditions set forth in this Agreement, SELLER does hereby agree to sell to BUYER and BUYER does hereby agree to purchase from SELLER the Property as hereinafter defined, together with all Improvements as hereinafter defined, on the terms and conditions hereinafter set forth, including as follows:

a. The terms and conditions of this Agreement and the instructions to an escrow company mutually agreed upon by the parties (“**Escrow Holder**”) with regard to the escrow (“**Escrow**”) created pursuant hereto shall constitute the joint escrow instructions of BUYER and SELLER to Escrow Holder as well as an agreement between BUYER and SELLER. In the event of a conflict between the provisions of this Agreement and Escrow Holder’s general escrow instructions, the provisions of this Agreement shall prevail.

b. Validation. As further consideration for the sale of the Property and all of the Improvements thereon, BUYER shall cause this Agreement to be validated in accordance with state law; provided, however, this obligation may first be satisfied if no validation action is commenced within the statutory time periods and this Agreement is deemed validated in accordance with state law.

c. FAA Action. Notwithstanding anything to the contrary in this Agreement, in the event the Federal Aviation Administration (“**FAA**”) makes a formal finding prior to the Close of Escrow that this Agreement violates federal law and further by formal action requires termination of this Agreement, then the SELLER shall have the right to terminate this Agreement upon thirty (30) days written notice to BUYER. SELLER agrees to notify BUYER upon receipt of any FAA inquiry concerning the Agreement’s potential violation of federal law and cooperate with BUYER concerning a negative FAA finding requiring termination of this Agreement.

2. Property. For purposes of this Agreement, the term “Property” shall mean and include the parcel of land described in Recital C, above, and any fixtures and equipment, buildings, structures and/or improvements located on said land (“**Improvements**”), and all singular estates, rights, privileges, easements and appurtenances owned by SELLER and

Attachment 3

belonging or in any way appertaining to the Property. SELLER currently owns fee title to the Property and all of the Improvements.

3. Acquisition.

a. Purchase Price. Pursuant to the terms and conditions set forth in this Agreement, SELLER does hereby agree to sell to BUYER and BUYER does hereby agree to purchase from SELLER the Property and all Improvements for the sum of Three Hundred and Seventy Five Thousand Dollars (\$375,000).

b. As-Is. The Property and all existing Improvements on the Property shall be conveyed in its present "as is" condition. Except for SELLER'S representations and warranties set forth in this Agreement, neither SELLER nor any of SELLER'S agents, contractors, consultants, attorneys or representatives have made, make and specifically negate and disclaim, and BUYER is not relying on, any representations, warranties, promises, covenants, agreements or guarantees of any kind whatsoever, whether express or implied, oral or written, past, present or future with respect to the Property.

4. Payment of Purchase Price.

a. Payment. The Purchase Price for the Property shall be payable by BUYER at the Close of Escrow.

b. Special Limited Obligation. SELLER acknowledges and agrees that to the extent that the BUYER has any financial obligation to SELLER pursuant to this Agreement, such financial obligation is and shall be a special limited obligation, payable solely from payments made to the City by the Agency and its successors and shall not be a pledge of or obligation payable through the City's general fund. Accordingly, nothing in this Agreement shall require or be deemed to require the City to expend or commit to expend monies from its general fund to satisfy any of the obligations set forth in this Agreement. In the event the City does not have the funds to fulfill any financial obligation under this Agreement including payment of the Purchase Price, it shall not be considered a default under this Agreement.

c. Subordination. The indebtedness of BUYER under this Agreement shall be subordinate to the rights of the holder or holders of any existing bonds, notes or other instruments of indebtedness (all referred to herein as "indebtedness") incurred or issued to finance the heretofore defined Project Area, including without limitation any pledge of tax increment revenues from the Project Area to pay any portion of the principal (and otherwise comply with the obligations and covenants) of any bond or bonds issued or sold with respect to the Project Area.

Attachment 3

d. Closing Funds. Within five (5) days of written request from Escrow Holder, and in any event prior to the Close of Escrow (as defined in Paragraph 5(b) below), BUYER shall deposit or cause to be deposited with Escrow Holder, in cash or by a certified or bank cashier's check made payable to Escrow Holder or a confirmed wire transfer of funds, the Purchase Price and BUYER's share of its Closing Costs as provided in Paragraph 10 below. All escrow, recording and title insurance costs shall be paid by SELLER and BUYER in accordance with Paragraph 10 below.

5. Escrow.

a. Opening of Escrow. For purposes of this Agreement, the Escrow shall be deemed opened on the date Escrow Holder shall have received an executed original counterpart of this Agreement from both BUYER and SELLER ("**Opening Date**"). Escrow Holder shall notify BUYER and SELLER, in writing, of the Opening Date and the Closing Date, as defined in paragraph 5(b), below. In addition, BUYER and SELLER agree to execute, deliver, and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder, or other instruments as may reasonably be required by Escrow Holder, in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend, or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, then this Agreement shall control.

b. Close of Escrow. The Close of Escrow shall occur on or before January 31, 2013, unless extended in writing by the parties ("**Closing Date**").

c. Due Diligence Period. BUYER shall have the later of: (i) fifteen (15) days from the Opening Date or (ii) the determination of the Fair Market Value of the Property in accordance with the terms and conditions of this Agreement (the "**Due Diligence Period**") to inspect the Property and Due Diligence Materials. In the event BUYER finds the Property unsatisfactory for any reason, BUYER at its sole discretion shall notify SELLER and Escrow Holder in writing prior to expiration of the Due Diligence Period. Thereafter, BUYER and SELLER shall have no obligation to each other (except as otherwise set forth herein). In the event of a cancellation of Escrow, BUYER and SELLER shall each bear one-half of any Escrow cancellation fees.

6. Conditions of Title. It shall be a condition to the Close of Escrow and a covenant of SELLER that SELLER shall convey good and marketable fee simple title to the Property by the Grant Deed, subject only to the following approved conditions of title (herein the "**Approved Condition of Title**"):

a. Matters affecting the Approved Condition of Title created by or with the written consent of BUYER.

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b. Exceptions which are disclosed by the Preliminary Title Report described in Paragraph 7(a)(1) hereof and which are approved or deemed approved by BUYER in accordance with Paragraph 7(a)(2) hereof.

c. Title to the Property shall be conveyed from SELLER to BUYER under this Agreement free and clear of any easement, right of way or any other right whatsoever in SELLER to access or use the Property.

d. SELLER covenants and agrees during the term of this Escrow, SELLER will not cause or knowingly permit title to the Property to differ from the Approved Condition of Title described in this Paragraph 6. Any liens, encumbrances, easements, restrictions, conditions, covenants, rights, rights-of-way, or other matters affecting the Approved Condition of Title which may appear of record or be revealed after the date of the Preliminary Title Report described in Paragraph 7(a)(1) below, shall also be subject to BUYER's approval. BUYER shall have the right to disapprove such matters by delivery of written notice to SELLER within five (5) days after the date BUYER receives knowledge of such matters, and SELLER shall have the right to elect to cure the same, upon delivery of written notice to BUYER within five (5) days after SELLER'S receipt of such notification from BUYER.

7. Conditions to Close of Escrow.

a. Conditions to BUYER's Obligations. The Close of Escrow and BUYER's obligation to consummate the transaction contemplated by this Agreement are subject to the satisfaction of the following conditions for BUYER's benefit on or prior to the dates designated below for the satisfaction of such conditions:

(1) Delivery of Due Diligence Materials/Title. Within thirty (30) days of the Opening Date, SELLER will deliver to BUYER copies of the following items, if and to the extent such items are in SELLER'S possession: (i) a current preliminary title report for the Property and legible copies of all documents, whether recorded or unrecorded, referred to in said preliminary title report (the "**Preliminary Title Report**"); (ii) a copy of the most recent tax bill relating to the Property; (iii) any and all environmental reports relating to the Property; and (iv) copies of any and all material documents that pertain to the physical and/or economic condition of the Property (collectively referred to herein as the "**Due Diligence Materials**").

(2) Review and Approval of Documents and Materials. Prior to the expiration of the Due Diligence Period, BUYER shall have the right to review and approve or disapprove, in its sole and subjective discretion, at BUYER's sole cost and expense, any environmental reports, soils inspection, conditions of title, zoning, surveys, all physical inspections of the Property, the Due Diligence Materials, and all other reports or inspections as BUYER may deem necessary or appropriate in connection with this Agreement. Failure of BUYER to give disapproval of the Due Diligence Materials on or before the expiration of the

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Due Diligence Period shall be deemed to constitute BUYER's approval of all Due Diligence Materials. If BUYER disapproves or conditionally approves any matters of title shown in any of the title reports, then SELLER may, within fourteen (14) days after its receipt of BUYER's notice of disapproval of the Due Diligence Materials, elect to eliminate or ameliorate to BUYER's satisfaction the disapproved or conditionally approved title matters. SELLER shall thereupon give BUYER written notice of those disapproved or conditionally approved title matters, if any, which SELLER covenants and agrees to either eliminate from the Approved Condition of Title as exceptions to title to the Property or to ameliorate to BUYER's satisfaction by the Closing Date as a condition to the Close of Escrow for BUYER's benefit. If SELLER does not elect to eliminate or ameliorate to BUYER's satisfaction any disapproved or conditionally approved title matters, or if BUYER disapproves of SELLER'S notice, or if, despite its commercially reasonable efforts, SELLER is unable to eliminate or ameliorate to BUYER's satisfaction all such disapproved matters prior to the Closing Date, then BUYER shall have the right to, by a writing delivered to SELLER and Escrow Holder: (i) waive its prior disapproval, in which event the disapproved matters shall be deemed approved; or (ii) terminate this Agreement and the Escrow created pursuant thereto, in which event BUYER shall be entitled to the return of all monies previously deposited with Escrow Holder or released to SELLER pursuant to this Agreement, and the Escrow and the rights and obligations of the parties hereunder shall thereafter terminate.

(3) Representations, Warranties, and Covenants of SELLER. SELLER shall have duly performed each and every agreement to be performed by SELLER hereunder and SELLER'S representations, warranties, and covenants set forth in Paragraph 13 shall be true and correct as of the Closing Date.

(4) No Material Changes. At the Closing Date, there shall have been no material adverse changes in the physical condition of the Property.

(5) Inspections and Studies. Prior to the expiration of the Due Diligence Period, BUYER shall have approved the results of any and all inspections, investigations, tests and studies (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, economic feasibility studies and soils, seismic and geologic reports) with respect to the Property (including all structural and mechanical systems and leased areas) as BUYER may elect to make or obtain. The failure of BUYER to approve the results on or prior to the expiration of the Due Diligence Period shall be deemed to constitute BUYER's disapproval of the results. The cost of any such inspections, tests and studies shall be borne by BUYER. During the term of this Escrow, BUYER, its agents, contractors and subcontractors, upon at least twenty-four (24) hours' written notice, shall have the right to enter upon the Property, at reasonable times during ordinary business hours, to make any and all inspections and tests as may be necessary or desirable in BUYER's sole judgment and discretion. BUYER shall use care and consideration in connection

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with any of its inspections. BUYER shall indemnify, defend and hold SELLER and the Property harmless from any and all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of, or resulting from the negligence of BUYER's, and/or BUYER's agents, contractors and/or subcontractors directly resulting from such entry or activities upon the Property.

(6) Bikeway Village. The City desires the development of Bikeway Village, a commercial/retail development consisting of the adaptive reuse of two warehouse structures for commercial, retail and visitor-serving uses and the development of a public plaza, public restrooms, public parking and bicycle and pedestrian access improvements to the Bayshore Bikeway (the "**Bikeway Village Project**") on a site comprised of the Property and the adjacent property and/or properties, as more particularly described in Exhibit B, attached hereto and incorporated herein by this reference. It shall be a condition precedent of this Agreement that BUYER shall have negotiated and entered into a formal written agreement(s) with the owner(s) of the adjacent property and/or properties for development and construction of the Bikeway Village Project demonstrating to the reasonable satisfaction of the City Manager that said project can be completed within the next 3 years from the Effective Date of this Agreement. Failure to enter into said agreement(s) shall not constitute a default of this Agreement.

BUYER shall have the authority to waive any condition of disbursement set forth herein; however any waiver must be expressly made in writing. The decision to waive any condition of disbursement shall be in the sole discretion of the City Manager or designee, and the decision to waive any requirement may be conditioned upon its satisfaction at a later date and/or upon the substitution of another condition.

b. Conditions Precedents to SELLER'S Obligation. For the benefit of SELLER, the Close of Escrow shall be conditioned upon the occurrence and satisfaction of each of the following conditions (or SELLER'S waiver thereof, it being agreed SELLER may waive any or all of such conditions):

(1) BUYER'S Obligations. BUYER shall have timely performed all of the obligations required by the terms of this Agreement to be performed by BUYER.

(2) BUYER'S Representations. All representations and warranties made by BUYER to SELLER in this Agreement shall be true and correct as of the Close of Escrow.

SELLER shall have the authority to waive any condition of disbursement set forth herein; however any waiver must be expressly made in writing. The decision to waive any condition of disbursement shall be in the sole discretion of the SELLER, and the decision to waive any

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requirement may be conditioned upon its satisfaction at a later date and/or upon the substitution of another condition.

8. Deposits by SELLER. At least three (3) business days prior to the Close of Escrow, SELLER shall deposit or cause to be deposited with Escrow Holder the following documents and instruments:

a. Grant Deed. A grant deed in a form and substance mutually approved by the parties (the "**Grant Deed**") conveying the Property to BUYER duly executed by SELLER, acknowledged and in recordable form. Upon receiving said executed Grant Deed, Escrow Holder is instructed to forward a copy of Grant Deed to BUYER so that an Original Certificate of Acceptance can be attached.

9. Deposits by BUYER. At least three (3) business days prior to the Close of Escrow, BUYER shall deposit or cause to be deposited with Escrow Holder all funds required under this Agreement from BUYER.

10. Costs and Expenses. The cost and expense of the Title Policy attributable to ALTA coverage, plus the cost attributable to an endorsement insuring BUYER's title against any mechanics' liens as of the Closing Date, shall be paid by BUYER. BUYER shall pay any Escrow fees. BUYER shall pay all documentary transfer taxes, if any, payable in connection with the recordation of the Grant Deed. The amount of such transfer taxes shall not be posted on the Grant Deed, but shall be supplied by separate affidavit. BUYER shall pay the Escrow Holder's customary charges to BUYER and SELLER for document drafting, recording, and miscellaneous charges. Each party shall be responsible for their respective legal fees and costs in connection with this transaction.

11. Prorations. Escrow Holder shall prorate all rents, real estate taxes, bonds or assessments (general and special) as of 12:01 a.m. on the date of the Close of Escrow.

a. All operating expenses of the Property including, without limitation, utility charges, maintenance charges, management fees, and other costs and expenses shall be prorated between BUYER and SELLER as of 12:01 a.m. on the date of Close of Escrow. Any utility services shall be transferred to the name of the BUYER effective as of the Close of Escrow and SELLER shall be relieved of any future liability for such charges incurred after the Close of Escrow. In the event SELLER has made any utility deposits, SELLER shall be entitled to a refund of such deposits directly from the utility companies and any future deposits shall be paid directly to the utility companies by BUYER; provided, however, that BUYER may elect, in its sole discretion, to require SELLER to assign the rights to utility deposits to BUYER in exchange for a credit to SELLER through Escrow for the amount of such deposits.

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b. At least three (3) business days prior to the Closing Date, SELLER shall provide to BUYER a schedule of all prorations accompanied by the latest available billings for any operating expenses and statements for rent, if applicable. BUYER and SELLER shall agree upon such prorations and notify Escrow Holder on or before two (2) business days prior to the Closing Date.

c. SELLER shall pay all bills incurred with respect to the Property prior to the Close of Escrow; provided, however, with respect to bills not received by SELLER before the Close of Escrow, SELLER shall pay the portion of such bills attributable to the period prior to the Close of Escrow within ten (10) days after SELLER'S receipt of same. Said covenant of SELLER shall survive the Close of Escrow. BUYER shall pay all bills incurred with respect to the Property following the Close of Escrow.

d. In the event that there are any unknown amounts to be prorated as of the Close of Escrow, then SELLER and BUYER will prorate the same promptly after the Close of Escrow and outside the escrow.

12. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, the Escrow Holder shall promptly undertake all of the following in the manner indicated:

a. Prorations. Prorate all matters referenced herein, based upon the statement delivered into Escrow signed by the parties.

b. Recording. Cause the Grant Deed and any other documents which the parties hereto may mutually direct, to be recorded in the Official Records of San Diego County, California, in the order set forth in this subparagraph. Escrow Holder is instructed not to affix the amount of documentary transfer tax on the face of the Grant Deed, but to supply same by separate affidavit.

c. Funds. Disburse from funds deposited by BUYER with Escrow Holder toward payment of all items chargeable to the account of BUYER, pursuant thereto in payment of such costs, and disburse the balance of such funds to BUYER.

d. Documents to BUYER. Deliver the Bill of Sale, executed by SELLER, and, when issued, the Title Policy to BUYER.

e. Pay demands of existing lienholders. Pay all demands of lienholders with valid claims as of the Closing Date.

13. SELLER'S Representations and Warranties. In consideration of BUYER entering into this Agreement, and as an inducement to BUYER to purchase the Property, SELLER makes the following representations and warranties, each of which is material and is being relied upon

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by BUYER (and the continued truth and accuracy of which shall constitute a condition precedent to BUYER's obligations hereunder):

a. Validly Existing. SELLER is a public body corporate and politic, duly formed, validly existing and in good standing under the laws of the State of California.

b. Authorization. This Agreement has been duly and validly authorized, executed and delivered by SELLER, and no other action is requisite to the execution and delivery, and performance of this Agreement by SELLER.

c. Threatened Actions. There are no actions, suits or proceedings pending against, or, to SELLER'S actual knowledge, threatened or affecting the Property in law or equity.

d. Third Party Consents. No consents or waivers of, or by, any third party are necessary to permit the consummation by SELLER of the transactions contemplated pursuant to this Agreement.

e. No Violation of Law. To SELLER'S actual knowledge, there is no violation of law or governmental regulation by SELLER with respect to the Property.

f. Condemnation. There are no pending, or, to SELLER'S actual knowledge, threatened proceedings in eminent domain or otherwise, which would affect the Property or any portion thereof.

g. Compliance with Law. To SELLER'S actual knowledge, all laws, ordinances, rules, and requirements and regulations of every governmental authority, body, or subdivision thereof bearing on the Property have been complied with by SELLER.

h. Agreements. SELLER is not a party to any agreement (whether oral or written) affecting or relating to the right of any party with respect to the possession of the Property, or any portion thereof, which are obligations which will affect the Property or any portion thereof subsequent to the recordation of the Grant Deed, except as may be reflected in the Approved Condition of Title.

i. Documents. To SELLER'S actual knowledge, all documents delivered to BUYER pursuant to this Agreement are true and complete copies of originals, and any and all information supplied to BUYER by SELLER in accordance with Paragraph 7(a)(2) hereof is true and complete.

j. Occupancy Agreements. There are no leases, subleases, occupancies or tenancies in effect pertaining to the Property, and SELLER has no knowledge of any oral agreements with anyone, including tenants, with respect to the occupancy of the Property.

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k. Hazardous Materials. As of the date of the execution of this Agreement, SELLER has no actual knowledge of any use or condition of the Property by SELLER or by any predecessor in interest of SELLER not otherwise previously disclosed to BUYER which BUYER hereby acknowledges which would have caused Hazardous Materials to exist in, on, under or about the Property. SELLER agrees to and shall defend, indemnify and hold harmless BUYER, and its officers, agents and employees (the “**Indemnified Parties**”) from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys’ fees and court costs) incurred by the Indemnified Parties, arising from or as a result of any Hazardous Materials which may be found on the Property, at any time, which (a) were caused to exist in, on, under or about the Property by SELLER, and (b) which existed on the Property prior to the Closing Date. For purposes of this Agreement, the term “**Hazardous Materials**” means any substance, material or waste which is regulated as hazardous/contaminating or potentially hazardous/contaminating by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code; (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code; (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) lead; (viii) a polychlorinated biphenyl; (ix) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (x) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, with respect to which any governmental regulations or requirements provide for special handling in its use, transportation, generation, collection, storage, treatment or disposal; (xiv) any substance, product, waste, or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (xv) petroleum or crude oil other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (xvi) asbestos.

l. Due Diligence Materials. To SELLER’S knowledge, there are no other reports relating to the physical condition of the Property that are in existence, but not in SELLER’S possession.

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SELLER'S representations and warranties made in this Paragraph 13 shall be continuing and shall be true and correct as of the Close of Escrow with the same force and effect as if remade by SELLER in a separate certificate at that time. The truth and accuracy of SELLER'S representations and warranties made herein shall survive the Close of Escrow for such period permitted by applicable law (the "Survival Period").

14. BUYER's Representations and Warranties. In consideration of SELLER entering into this Agreement, and as an inducement to SELLER to sell the Property to BUYER, BUYER makes the following representations and warranties, each of which is material and is being relied upon by SELLER (the continued truth and accuracy of which shall constitute a condition precedent to SELLER'S obligations hereunder):

a. BUYER is a general law city, duly formed, validly existing and in good standing under the laws of the State of California.

b. The persons executing this Agreement, the instruments referenced herein, and any other documents executed and delivered on behalf of BUYER have been duly authorized to do so by BUYER.

c. The City Manager, upon adoption of a resolution approving the purchase of the Property, has the authority to accept the Property on behalf of BUYER.

d. This Agreement and all documents executed by BUYER under this Agreement which are to be delivered to SELLER are, or at the time of Close of Escrow will be executed and delivered by BUYER.

The representations and warranties of BUYER set forth in this Paragraph 14 shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time and shall survive the Close of Escrow for the Survival Period.

15. Damage or Condemnation Prior to Closing.

a. Material Damage or Destruction. In the event of material damage to or destruction of the Property prior to Closing, through no fault of SELLER, BUYER shall have the right, but not the obligation, exercisable by giving notice to SELLER within fifteen (15) days after receiving written notice of such damage or destruction, either (i) to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder except that (a) all funds deposited into Escrow or documents in Escrow shall be returned to the party depositing the same, and (b) BUYER and SELLER each shall be responsible for one-half of any title or escrow cancellation fee, or (ii) to accept the Property in its then condition and to proceed with the Closing, in which event upon the Close of Escrow, BUYER shall be entitled to receive an assignment of all of SELLER'S rights to any insurance proceeds payable by reason of

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such damage or destruction. If BUYER elects to proceed under clause (ii) above, SELLER shall not compromise, settle or adjust any claims to such proceeds without BUYER's prior written consent.

b. Eminent Domain. In the event that prior to the Closing, all or any material portion of the Property is subject to a taking or a threatened taking by a public authority, BUYER shall have the right, but not the obligation, exercisable by giving notice to SELLER within fifteen (15) days after receiving written notice of such taking, either (i) to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder except that (a) all funds deposited into Escrow or documents in Escrow shall be returned to the party depositing the same, and (b) BUYER and SELLER each shall be responsible for one-half of any title or escrow cancellation fee, or (ii) to accept the Property in its then condition and to proceed with the Closing without an abatement or reduction in the Purchase Price, in which case BUYER shall be entitled to receive an assignment of all of SELLER'S rights to any condemnation award payable by reason of such taking. If BUYER elects to proceed under clause (ii) above, SELLER shall not compromise, settle or adjust any claims to such award without BUYER's prior written consent.

c. Non-Material Taking or Damage. In the event that prior to the Closing, any Non-Material portion of the Property is damaged, destroyed or subject to a taking or a threatened taking by a public authority, BUYER shall accept the Property in its then condition and proceed with the Closing without any abatement or reduction in the Purchase Price, in which case BUYER shall be entitled to receive an assignment of all of SELLER'S rights to (i) any applicable insurance proceeds; and/ or (ii) any condemnation award payable by reason of such taking. In the event of any such Non-Material damage, destruction or taking, SELLER shall not compromise, settle or adjust any claims to such award without BUYER's prior written consent.

16. Notices. Formal notices, demands and communications between BUYER and SELLER shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of the BUYER and SELLER as set forth below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission (delivered during normal business hours) followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

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To BUYER: City of Imperial Beach
Attn: City Manager
Civic Center
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Facsimile: (619) 628-1395

To SELLER: San Diego County Regional Airport Authority
Attn: President/CEO
Post Office Box 82776
San Diego, CA 92138-2776
Facsimile: () _____

Notice of change of address shall be given by written notice in the manner detailed in this paragraph. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request, or communication sent.

17. Legal Fees. Each party shall be responsible for their respective legal fees and costs in connection with any action or suit against the other party hereunder arising out of this Agreement.

18. Assignment. BUYER shall not be entitled to assign this Agreement without the prior written consent of SELLER, which consent shall not be unreasonably withheld.

19. Legal and Equitable Enforcement of this Agreement.

a. Default by SELLER. In the event the Close of Escrow and the acquisition of the Property by BUYER does not occur by reason of any default by SELLER, which default continues for a period of at least five (5) days following SELLER'S receipt of written notice from BUYER, then BUYER shall be entitled to the return of all of its out-of-pocket expenses incurred in connection with the transaction, and shall have the right to pursue any other remedy available to it at law or in equity, including the specific performance of this Agreement.

b. Default by BUYER. In the event the Close of Escrow and the acquisition of the Property by BUYER does not occur by reason of any default by BUYER, which default continues for a period of at least five (5) days following BUYER's receipt of written notice from SELLER, then SELLER shall be entitled to the return of all of its out-of-pocket expenses incurred in connection with the transaction; and shall have the right to pursue any other remedy available to it at law or in equity, including the specific performance of this Agreement; provided, however, the source of such expenses to be returned shall be limited to any available

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proceeds received by the City from the Agency and its successors and shall not be a pledge of or obligation payable through the City's general fund and the limitation in Section 4(b) of this Agreement shall also apply to this Section 19.

20. Miscellaneous.

a. Survival of Covenants. The covenants, representations and warranties of both BUYER and SELLER set forth in this Agreement shall survive the recordation of the Grant Deed and the Close of Escrow for the Survival Period.

b. Required Actions of BUYER and SELLER. BUYER and SELLER agree to execute such instruments and documents and to diligently undertake such actions as may be reasonably required in order to consummate the purchase and sale herein contemplated, and shall use their commercially reasonable efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

c. Time of Essence. Time is of the essence of each and every term, condition, obligation, and provision hereof.

d. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. The signature page of this Agreement may be detached from and added to any counterpart of this Agreement identical in form.

e. Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

f. Broker. BUYER and SELLER each represent and warrant to the other party that neither has dealt with or engaged a broker in connection with this transaction, and agrees to indemnify and save harmless the other party from and against all claims, costs, liabilities and expense (including court costs and reasonable attorneys' fees) incurred by the other party as a result of a breach of this representation.

g. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

h. Exhibits and Schedules. The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference.

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i. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

j. Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

k. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

l. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, in which case the time shall be extended to the next business day.

m. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

n. Conflicts of Interest. No member, official or employee of the BUYER or the SELLER shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

o. Gender and Number. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

p. Severability. If any provision of this Agreement shall be adjudged invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. Mutual Indemnification. In contemplation of the provisions of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895 of said Code, the parties hereto, as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents or employees by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such liability would be

Attachment 3

imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose each party indemnifies and holds harmless the other party for any loss, cost or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if fully set forth herein.

22. Indemnification of Escrow Holder.

a. If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, BUYER and SELLER agree, jointly and severally, to hold Escrow Holder free and harmless from any loss or expense, including attorney's fees, that may be suffered by it by reason thereof except for losses or expenses as may arise from Escrow Holder's negligent or willful misconduct. If conflicting demands are made or notices served upon Escrow Holder with respect to this Agreement, the parties expressly agree that Escrow Holder shall be entitled to file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the filing of the action in interpleader, Escrow Holder shall be fully released and discharged from any obligations imposed upon it by this Agreement, and

b. Escrow Holder shall not be liable for the sufficiency or correctness as to form, manner, execution, or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of BUYER or SELLER to comply with any of the provisions of any agreement, contract or other instrument filed with Escrow Holder, or referred to herein. Escrow Holder's duties hereunder shall be limited to the safekeeping of all monies, instruments, or other documents received by it as Escrow Holder, and for their disposition in accordance with the terms of this Agreement.

23. Entire Agreement, Waivers and Amendments.

a. This Agreement shall be executed in four (4) duplicate originals each of which is deemed to be an original. This Agreement and its attached Exhibits shall constitute the entire understanding and agreement of the parties.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all (or any part of or any interest in) the Property. This Agreement and all documents incorporated herein contain the entire understanding among the parties hereto relating to the transactions contemplated herein and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written.

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the BUYER and the SELLER, and all amendments hereto must be in writing and signed by the appropriate authorities of the parties to be bound thereby.

Attachment 3

This Agreement and any provisions hereof may be amended by mutual written agreement by the BUYER's City Manager or designee, subject to the approval of the City Council of the City of Imperial Beach, and SELLER'S President/CEO or designee, subject to review and approval by the Authority, as needed to comply with applicable law and internal policies and procedures. The waiver by BUYER or SELLER of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach.

24. Further Actions. The BUYER's City Manager or designee and the SELLER'S President/CEO or designee are hereby authorized and directed to take such other and further actions, and sign such other and further agreements and documents on behalf of the BUYER and the SELLER, respectively, as may be necessary or proper to effect the terms of this Agreement.

[Signatures being on following page.]

DRAFT

Attachment 3

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

“BUYER”
CITY OF IMPERIAL BEACH

Gary Brown, City Manager

ATTEST:

Jacqueline M. Hald, City Clerk

APPROVED AS TO FORM

Jennifer Lyon, City Attorney

APPROVED AS TO FORM

Theodore (Ted) M. Ballmer, Special Counsel

[Signatures continue on following page.]

Attachment 3
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY

Dated: _____

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM

By: _____

Office of General Counsel

DRAFT

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Imperial Beach, County of San Diego, State of California, described as follows:

That portion of the Northwest Quarter of the Southeast Quarter of Section 20, Township 18, South, Range 2 West, in the City of San Diego, County of San Diego State of California being described as follows:

BEGINNING at the Southeast corner of said Northwest Quarter of the Southeast Quarter of said Section 20; thence along the Southerly line thereof North $89^{\circ}21'08''$ West, 420.06 feet; thence leaving said Southerly line North $00^{\circ}37'24''$ East, 87.74 feet to the Southerly line of said San Diego and Arizona Eastern Railway right-of-way, said point being a point on a curve concave to the North having a radius of 997.95 feet, to which said beginning a radial bears South $00^{\circ}20'53''$ West; thence Easterly 434.13 feet along said curve through a central angle of $24^{\circ}55'29''$ to the Easterly line of said Northwest Quarter of the Southeast Quarter; thence along said Easterly line South $00^{\circ}38'17''$ West 182.87 feet to the POINT OF BEGINNING.

EXHIBIT B

BIKEWAY VILLAGE PROJECT DESCRIPTION

BASIC DESCRIPTION

The Bikeway Village project (the “**Project**”) proposes an adaptive reuse of two existing warehouse structures with a variety of retail, commercial, recreational and personal service uses at the northern terminus of 13th Street adjacent to the City’s 13th Street access point to the Bayshore Bikeway. The Project will also provide significant public benefit including a public patio/deck area adjacent to the Bayshore Bikeway, bicycle parking, public restrooms, public rest areas, improved bike paths and Bayshore Bikeway access, and additional public parking, all as more particularly depicted on the concept drawings attached hereto as Attachment No. 1 and incorporated herein (the “**Concept Drawings**”). The Project applicant has also proposed the development of a hostel in the eastern building which would provide affordable visitor accommodations along this important local and regional bikeway facility.

AIRPORT AUTHORITY PROPERTY

As part of the Project, the proposed developer has proposed a public plaza and rest area that would occupy the subject Property as depicted on the Site Map attached hereto as Attachment No. 2 and incorporated herein (the “**Site Map**”).

PUBLIC IMPROVEMENTS

In addition to the on-site improvements which will consist of the adaptive reuse of two commercial warehouse structures for commercial/retail use including a restaurant/café, bike shop, public restrooms, and, potentially, a hostel, the Project also proposes the enhancement of bicycle and pedestrian access to the Bayshore Bikeway within the 13th Street right-of-way, bicycle parking, public parking, and a large public plaza on the Property (as defined herein). The Project will also include the undergrounding of overhead utilities surrounding the site.

ATTACHMENT NO. 1 TO PROJECT DESCRIPTION

CONCEPT DRAWINGS

[Behind this page.]

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ATTACHMENT NO. 2 TO PROJECT DESCRIPTION

SITE MAP

[*Behind this page.*]

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Cypress Avenue View - Building B

Bikeway Village • Imperial Beach, California

land LAB STUDIO E
ARCHITECTS



View from Observation Deck - Building B

Bikeway Village • Imperial Beach, California

land LAB STUDIO E
ARCHITECTS



Aerial View

Bikeway Village • Imperial Beach, California

landLAB STUDIO E
ARCHITECTS

OWNER PARTICIPATION AGREEMENT
BY AND BETWEEN
THE CITY OF IMPERIAL BEACH
AND
BIKEWAY VILLAGE, L.L.C.
A CALIFORNIA LIMITED LIABILITY COMPANY
FOR
MIXED-USE DEVELOPMENT

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT dated as of January 31, 2012 (“**Agreement**”) is entered into by and between THE CITY OF IMPERIAL BEACH, a public body, corporate and politic, (“**City**”) and BIKEWAY VILLAGE, L.L.C., a California limited liability company (“**Developer**”). The City and the Developer agree as follows:

RECITALS

A. The City Council of the City of Imperial Beach (the “**City Council**”) adopted the redevelopment plan (the “**Redevelopment Plan**”) for the Palm Avenue/Commercial Redevelopment Project Area on February 6, 1996 (the “**Project Area**”) by Ordinance No.96-901, which results in the allocation of property taxes from the Project Area to the Redevelopment Agency of the City of Imperial Beach (“**Agency**”) for purposes of redevelopment. The Redevelopment Plan was subsequently amended on July 18, 2001 by Ordinance No. 2001-70 (the “**First Amendment**”) to add territory to the Project Area, and on December 20, 2006 by Ordinance No. 2006-1050 (the “**Second Amendment**”) to make certain clarifications, and on March 5, 2008 by Ordinance No. 2008-1066 (the “**Third Amendment**”) to extend the eminent domain authority of the Redevelopment Agency of the City of Imperial Beach, a public body corporate and public (the “**Agency**”). The Redevelopment Plan, as amended by the First Amendment, the Second Amendment and the Third Amendment shall be referred to herein as the “**Redevelopment Plan**”.

B. The intent of the Redevelopment Plan is, in part, to provide for the construction and installation of necessary public infrastructure and facilities and to facilitate the repair, restoration and/or replacement of existing public facilities and to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Area; and to increase, improve and preserve the community’s supply of low and moderate income housing; and to take all other necessary actions to implement the Redevelopment Plan and to expend tax increment to accomplish the goals and objectives of the Redevelopment Plan.

C. To carry out the Agency’s redevelopment program in accordance with the objectives and purposes of the Redevelopment Plan for the Project Area and the Implementation Plan thereof, the Agency and the City entered into a Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Projects dated February 16, 2011, as amended on March 9, 2011 by City Council Resolution No. 2011-7019 and Agency Board Resolution No. R-11-251 (collectively, the “**Cooperation Agreement**”), which provides for the implementation and completion of certain redevelopment projects and programs listed in the revised Exhibit 1 attached thereto, which are incorporated herein by this reference (the “**Agency-City Projects**”).

D. The activities associated with the Agency-City Projects include but are not limited to acquisition and disposition of property, development of design criteria, design, planning, preparation of construction bid documents, financial analysis, financing and new construction or rehabilitation, construction management, mortgage assistance to qualifying households, subsidies to individuals and families, asset management, project monitoring and administration of agreements. To carry out the Agency-City Projects in accordance with the Cooperation Agreement and the objectives and purposes of the Redevelopment Plan for the Project Area and the Implementation Plan thereof, the City desires assistance and cooperation in the implementation and completion of the project described in Exhibit 1 attached hereto and incorporated herein by this reference (the “**Project**”).

E. The Developer wishes to enter into this Agreement to expeditiously implement the Project in accordance with this Agreement, the Cooperation Agreement, the Redevelopment Plan and the Implementation Plan thereof.

F. In considering the City’s desire to ensure timely implementation and completion of the Project, the City wishes to enter into this Agreement with the Developer for the payment of bond proceeds secured by a pledge of net available tax increment received by the City under the Cooperation Agreement to finance the Project subject to and conditioned upon the terms and conditions of this Agreement.

G. The purpose of this Agreement is to facilitate the implementation of the Project and to provide funding necessary to effectuate the completion of the Project with bond proceeds secured by a pledge of net available tax increment received by the City from the Agency in this current fiscal year and forthcoming fiscal years.

H. By approving and entering into this Agreement, the City has approved the commitment of bond proceeds secured by a pledge of net available tax increment from the Project Area received by the City from the Agency under the Cooperation Agreement to pay for the Project.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. INTRODUCTORY PROVISIONS

1. The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

2. The City is a municipal corporation, exercising governmental functions and powers and organized and existing under the Constitution and the laws of the State of California. The principal office of the City is located at 825 Imperial Beach Boulevard, Imperial Beach, California 91932 or such other location of which notice is given pursuant to this Agreement. Its facsimile number is (619) 628-1395. “**City**” as used in this Agreement includes the City of Imperial Beach and any assignee of or successor to its

rights, powers and responsibilities, whether voluntary or involuntary successors, or whether successors by operation of law.

3. The Developer is Bikeway Village, L.L.C., a California limited liability company. The principal office of the Developer is located at 2 Sandpiper Strand, Coronado, California 92118, Attn: Rex Butler, President or such other location of which notice is given pursuant to this Agreement. Its facsimile number is _____.

4. The qualifications and identity of the Developer are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly approved by the City. Any transfer or attempted transfer of the Developer's rights, interests and/or obligations under this Agreement without the prior written approval of the City shall be void *ab initio*. Notwithstanding the foregoing, the Developer may, by instrument in writing reasonably satisfactory to the City, transfer its rights, interests and obligations under this Agreement to a limited partnership in which the Developer, or an entity affiliated with the Developer and reasonably approved by the City, is the managing general partner or to a limited liability company in which the Developer, or an entity affiliated with the Developer and reasonably approved by the City, is the managing member.

5. The Developer shall promptly notify the City of any and all changes whatsoever in the identity of the parties in ownership and/or in control of the Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by the City and the City may exercise any and all available remedies if there is any significant change (voluntary or involuntary) in membership, ownership, management or control, of the Developer or any general partner or member of the Developer (other than such changes occasioned by the death or incapacity of any individual) without the prior written consent of the City.

6. Developer shall not assign or attempt to assign this Agreement or any right herein without prior written approval of the City Manager, except as expressly permitted by this Agreement. Any proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City to fulfill the obligations undertaken in this Agreement by the Developer. Any such proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the City shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all conditions and restrictions applicable to the Developer in this Agreement. There shall be submitted to the City for review all instruments and other legal documents proposed to affect any such transfer, and if approved by the City, its approval shall be indicated to the Developer in writing. In the absence of specific written agreement by the City, no transfer, or approval thereof by the

City, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement. Consent to any transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers.

II. CITY'S OBLIGATIONS

1. The Project to be implemented and completed by the Developer is described on the attached Exhibit 1. Subject to and conditioned upon the terms and conditions of this Agreement, the City agrees to provide to the Developer, but solely from funds as described in Paragraph 2, below, an amount not to exceed the amount set forth in the Project Budget attached hereto as Exhibit 2, which is incorporated herein by this reference, to assist the Developer in paying the costs of carrying out the Project, including without limitation and as applicable to the Project, costs incurred by the Developer for the acquisition and disposition of property, development of design criteria, design, planning, preparation of construction bid documents, financial analysis, financing and new construction or rehabilitation, construction management, asset management, mortgage assistance to qualifying households, subsidies to qualifying individuals and families, project monitoring and administration of agreements and other reasonable, customary and lawful expense incurred by the Developer and approved by the City related to carrying out the Project. The Developer shall be responsible, without cost to the City, for any additional sources of funds that may be needed to complete the Project.

2. The obligations of the City under this Agreement shall be a special limited obligation, payable solely out of funds received by the City from the Agency pursuant to the aforementioned Cooperation Agreement, and is not and shall not be a pledge of or obligation payable through the City's general fund. Accordingly, nothing in this Agreement shall require or be deemed to require the City to expend or commit to expend monies from its general fund to satisfy any of the obligations set forth in this Agreement. In the event the City does not have the funds or property to fulfill any obligation under this Agreement, it shall not be considered a default under this Agreement. The City shall have no obligation whatsoever to utilize any other source of funds, other than funds received by the City from the Agency under the Cooperation Agreement, to make the payments to the Developer required hereunder.

3. All payments due to be made by the City to the Developer under this Agreement shall be made only as necessary to pay the costs and expenses incurred by the Developer in performing its obligations hereunder and shall be subject to the conditions set forth in this Agreement. As a condition precedent to each payment by the City to the Developer, the Developer shall have duly performed each and every obligation to be performed by Developer hereunder and Developer's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of such payment.

4. If the Project requires the use or improvement of property owned by the City, the City and the Developer shall meet and confer in good faith, with the objective of reaching agreement upon the rights and interests in the property to be conveyed to the Developer, which may include without limitation rights of entry, licenses, easements, ground leases, and/or conveyance of fee title, and the terms upon which such rights and interests shall be conveyed, including without limitation the terms and timing of payment and the ownership of any improvements to be made upon the property.

5. Except as otherwise expressly provided in this Agreement, the City does not undertake nor assume nor will have any responsibility, right or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the Project, whether with respect to the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Project, any person furnishing the same or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the City in connection with such matter is for the public purposes set forth in the Recitals hereof, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon.

III. DEVELOPER'S OBLIGATIONS

1. Developer shall accept any funds offered by the City pursuant to this Agreement and shall devote those funds solely to completion of the Project by reimbursing itself for approved costs paid, or using such funds to make approved expenditures, to perform the work required to carry out and complete the Project pursuant to this Agreement.

2. Developer acknowledges and agrees that to the extent that the City has any financial obligation to Developer pursuant to this Agreement, such financial obligation is and shall be a special limited obligation, payable solely from payments made to the City by the Agency pursuant to the aforementioned Cooperation Agreement, and is not and shall not be a pledge of or obligation payable through the City's general fund. Accordingly, nothing in this Agreement shall require or be deemed to require the City to expend or commit to expend monies from its general fund to satisfy any of the obligations set forth in this Agreement.

3. Developer shall obtain all land use entitlements, approvals and permits, including any review and clearance under the California Environmental Quality Act ("CEQA"), necessary for Developer's completion of the Project and shall pay all City and California Coastal Commission fees in connection therewith. The City shall provide reasonable assistance to Developer in obtaining these permits but shall have no obligation to accelerate the permitting process and shall have no liability to Developer for damages incurred as a result of the Developer's inability to obtain, or delay in obtaining, such permits, approvals or entitlements. Developer understands and agrees that the City's

obligations hereunder are solely in its capacity as a lender and facilitator of the Project; by entering into this Agreement the City is not waiving any requirements that Developer comply with the City's Municipal Code, including those ordinance related to zoning, building, and other applicable regulations, and the approval of this Agreement shall not constitute or guarantee approvals required from the City or any other governmental agency. This Agreement is not a "Development Agreement" as provided in Section 65864 et seq. of the California Government Code. Developer shall comply with all applicable conditions of approval required by the City.

4. Developer's architect and general contractor (if applicable) and other members of Developer's Project team, as designated by the City, shall be subject to the reasonable approval of the City.

5. It is anticipated that Developer will contract for performance of specific activities in the implementation and completion of the Project. Such contracts shall not in any way diminish or waive Developer's obligations under this Agreement.

6. Unless otherwise approved by the City in its sole discretion, the Developer shall obtain a minimum of three (3) competitive bids for contracts to be let by the Developer for performance of work under this Agreement. If the Developer or an affiliate of the Developer proposes to serve as the general contractor for the Project, then such competitive bidding requirement shall also apply to subcontracts to be let by the Developer or its affiliate.

7. During the preparation of all drawings and plans for the Project (if applicable), the City staff and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by the City. The City staff and Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive timely consideration. The City shall have the right to review and approve all design drawings and plans for the Project. All plans for construction of the Project shall be subject to applicable City design review and approval procedures, and shall be consistent with the logical evolution of the approved scope of development, except as otherwise approved by the City.

8. If the Project requires new construction or rehabilitation, the Developer shall submit an audited cost certification following completion of the construction/rehabilitation. If the City funds are provided in the form of a loan, for each year during the term of the City loan after the completion of construction, an annual audited income and expense statement, balance sheet and statement of all changes in financial position shall be submitted, signed by an authorized officer of the Developer.

9. As a condition precedent to the City's funding of Project costs, the Developer must, unless waived in writing by the City in its sole discretion:

- a. Prepare and submit a reasonably detailed Project scope for approval by the City. Developer's proposed Project scope shall be consistent with the Project Description attached hereto as Exhibit 1, which is incorporated herein by this reference.
- b. Propose a reasonably detailed budget for approval by the City, which shall indicate the items for which payment will be sought, the anticipated cost of each item, the proposed source of funding and a proposed payment schedule. Line item estimates of costs shall be backed up by such documentation, including appraisals and construction cost estimates, as may reasonably be required by the City. Developer's proposed budget shall be consistent with the Project Budget attached hereto as Exhibit 2, which is incorporated herein by this reference. Developer acknowledges that the City is relying on Developer's experience and expertise in establishing the costs for the Project and Developer agrees that its proposed budget shall be based on the best, good faith estimate of the Developer of the costs that are likely to be incurred for the Project.
- c. Propose to the City for its consideration whether funds to be provided by the City would be in the form of direct payment for costs incurred or in the form of loans, deferred payments, or other funding mechanism. Prior to the City funding any of the costs incurred by the Developer, the Developer shall enter into promissory notes, deeds of trust and/or other instruments as are customary and appropriate to the agreed funding mechanism and in a form that is mutually acceptable to the parties. Payment of approved costs shall be made in accordance with the City's customary disbursement procedures and requirements.
- d. Submit for approval by the City evidence of financing, including loan commitments and documents, consistent with the approved project scope (including plans and drawings approved by the City) and the approved budget and sufficient to completely finance the completion of the Project, including the financing required to convert from the construction to the permanent phase of the Project.
- e. Prepare and submit for City approval a schedule of performance providing for the timely satisfaction of all conditions precedent to the City's funding of the Project and the timely commencement and completion of Developer's performance of its obligations under this Agreement. Except as otherwise approved by the City, failure to comply with the approved schedule of performance shall be a default under the terms of this Agreement. Developer's proposed schedule shall be consistent with the Schedule of Performance attached hereto as Exhibit 3 and incorporated herein by this reference. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing by Developer and the City.

- f. If applicable to the Project, submit to the City a Phase 1 Environmental Site Assessment and conduct such additional environmental testing as may be necessary to determine that hazardous materials are not present on the site, or that any hazardous materials on the site may be remediated without adversely affecting the feasibility of the Project. To the extent applicable, the Developer shall execute an environmental indemnity in favor of the City similar to the form of environmental indemnity used in other transactions of a similar nature in San Diego County.
- g. If applicable to the Project, execute instruments in connection with the conveyance to the Developer of rights or interests in property owned by the City, in a form that is mutually acceptable to the parties.
- h. Submit for City review and approval all corporate and partnership or limited liability formation documents for any entity to be formed by the Developer for the performance of the Project and its constituent general partners or members, certificates of good standing and/or other evidence of current authority for all such entities to conduct business within the State of California, agreements with the tax credit investor (if any), and express consents and resolutions consenting to this transaction, as the City may determine to be applicable.
- i. Obtain and maintain policies of insurance in the form and in the amounts required by the City, naming the City and the Agency as additional insureds and, if applicable, naming the City as a loss payee, and meeting the insurance requirements customarily included in City agreements.

10. The City may require the execution by the appropriate parties of covenants restricting the use of the site for a certain period that is consistent with the Project (“**Covenants**”), and which shall be recorded against property acquired or improved, in whole or in part, with funds provided by the City. The Covenants shall be in the customary form required by the City, as applicable. Unless otherwise approved by the City, in its sole discretion, the Covenants must be recorded in senior position to any financing for the Project.

11. Developer shall perform its obligations hereunder in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws, including but not limited to the applicable requirements of the California Environmental Quality Act. The provision of any funds to the Project is conditioned on the City’s determination to proceed with, modify or cancel the Project based on the results of a subsequent environmental review. Developer must not undertake or unconditionally commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance.

12. Developer shall carry out its activities under this Agreement, including, without limitation, any and all public works (as defined by applicable law), if any, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any applicable requirement to pay state prevailing wages). Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer shall indemnify, protect, defend and hold harmless the Agency, the City of Imperial Beach, and their respective elected and appointed officers, employees, contractors and agents, with counsel reasonably acceptable to the Agency and the City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (if any) (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Chapter 804, Statutes of 2003; (3) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (4) failure by Developer to provide any required disclosure representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; (5) failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time; (6) failure to comply with the California Coastal Act; (7) failure to comply with the California Environmental Quality Act; or any other provision of law. Developer hereby expressly acknowledges and agrees that neither the Agency nor the City has ever previously affirmatively represented to the Developer or its contractor(s) in writing or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. It is agreed by the parties that, in connection with Developer's performance of the work, including, without limitation, any public work (as defined by applicable law), if any, Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Chapter 804, Statutes of 2003 and/or Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section 11 shall have the meaning ascribed to it in

Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement.

13. Developer and its successors-in-interest shall indemnify, defend and hold harmless the Agency and the City, their elected and appointed officials, officers, employees, agents, contractors and consultants (individually and collectively, the “**Indemnitees**”) from and against any and all claims, lawsuits, judgments, liability, injury or damage, including without limitation associated and reasonably incurred attorneys’ fees and court and litigation costs arising out of the defense of any such claims and/or lawsuits, and actual attorneys’ fees and court and litigation costs that may be awarded by the court and required to be paid by the Indemnitees resulting or arising from or in any way connected to this Agreement including but not limited to the following: (i) any plans or designs for improvements prepared by or on behalf of Developer, including without limitation any errors or omissions with respect to such plans or designs; (ii) any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer under this Agreement; (iii) the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person and (iv) those damages or liabilities described in this Article III, in any event, which shall be directly or indirectly caused by the acts of, or any errors or omissions of, the Developer or its officers, shareholders, directors, members, agents, servants, employees, contractors, or invitees. Developer shall not be responsible for any liability, loss, damage, cost, or expense (including reasonable attorney’s fees and court costs) arising from or as a result of the gross negligence or willful misconduct of the Indemnitees. The Agency and/or City shall have the sole discretion to select legal counsel to represent the Agency’s and/or City’s legal interests in the defense of any such lawsuits, claims or other actions filed against the Agency and/or City. Agency and City shall hire joint outside legal counsel, except to the extent separate counsel is necessary, such as where there may be a potential conflict of interest between them.

14. Developer shall comply with the requirements of all applicable relocation laws, including, but not limited to, the Uniform Relocation Act and the California Relocation Assistance Act, and shall comply with related tenant notice requirements and shall provide the City with true and correct copies of such notices to tenants. Developer shall also retain all required records and the originals and/or copies of tenant notices in its files as mandated by applicable law. If the Project is subject to relocation laws, Developer shall contract with a relocation consultant approved by the City to prepare a Relocation Plan for the City’s approval and to implement the approved Relocation Plan, but performance by the relocation consultant shall not in any way diminish or waive Developer’s relocation obligations under this Agreement. Except as otherwise expressly agreed by the City, the cost of complying with all applicable relocation requirements for the Project, including the cost of the relocation consultant, shall be the responsibility of the Developer.

15. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, age, class, income (other than as required by applicable regulatory agreements), religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of property conveyed by the City to the Developer, or any part thereof, or in the Developer's employment practices, or in the awarding of contracts for the Project, nor shall Developer, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the property, or any part thereof, in employment practices, or in the awarding of contracts for the Project. Developer shall comply with all applicable federal, state and local nondiscrimination, fair housing, and equal opportunity requirements.

16. All deeds, leases or contracts entered into by the Developer in connection with the Project shall contain or be subject to substantially the following nondiscrimination or nonsegregation clause:

- a. In Deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."
- b. In Leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions. That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any

person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

- c. In Contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

IV. GENERAL PROVISIONS

1. City’s Authorized Representative.

Unless otherwise specified or the context requires otherwise, all references to the City in this Agreement and its attachments shall mean the City Manager of the City or any officer or employee of the City to whom the City Manager or the City Council of the City delegates authority to perform, carry out and/or enforce this Agreement. Whenever an administrative action is required by the City to implement the terms of this Agreement, the City Manager, or an authorized designee, shall have authority to act on behalf of the City, except with respect to matters reserved under California law wholly for determination by the City’s governing body. By way of example, the City Manager or designee shall have the authority to issue interpretations, waivers and/or enter into certain implementing agreements to this Agreement on behalf of the City.

2. Notices, Demands And Communications Between The Parties.

Formal notices, demands and communications between the City and Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by the recipient; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

3. Real Estate Commissions or Finders Fees

Neither the City nor the Developer shall be liable for any real estate commissions, brokerage fees or finders fees which may arise from this transaction. The City and the Developer each represent to the other that it has employed no broker, agent, or finder in connection with this transaction.

4. Conflict of Interest.

To the extent prohibited by law, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

5. Non-liability of Officials and Employees.

(a) No member, official or employee of the Agency or the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or on any obligations under the terms of this Agreement.

(b) No member, official or employee of Developer shall be personally liable to the City, or any successor in interest, in the event of any default or breach by Developer or for any amount which may become due to the City or its successor or on any obligations under the terms of this Agreement. This release shall not apply in the event of fraud, waste or intentional damage by Developer or any partner, member, officer, or employee of Developer or any partner, member, officer, or employee of a partner or member of Developer.

6. Inspection of Books and Records.

The Developer shall maintain at a location in San Diego County, or at another location mutually agreed by the parties, complete, accurate, and current records pertaining to the Project for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records, during regular business hours. Records must be kept accurate and current.

7. Interpretation of Agreement; Terminology; Application of Law.

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters addressed herein. In addition, each party has been given the opportunity to consult with experienced and knowledgeable legal counsel. Accordingly, any rule of law (including Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against

the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the purpose and intent of the parties to this Agreement. This Agreement shall be construed and enforced in accordance with the internal laws of California and not the law regarding conflict of laws, except to the extent that Federal law preempts State law

When the context so requires when used in this Agreement, the masculine gender shall be deemed to include the feminine and neuter gender and the neuter gender shall be deemed to include the masculine and feminine gender. When the context so requires when used in this Agreement, the singular shall be deemed to include the plural. The paragraph and section headings have been used for convenience only, and shall not be used in the interpretation hereof.

8. Assurance to Act in Good Faith.

Developer and the City agree to execute all documents and instruments and to take all action, including timely depositing funds as required hereby, and shall use their respective best efforts to accomplish the implementation and completion of the Project in accordance with the provisions hereof. Approvals required of the City or the Developer shall not be unreasonably withheld. Any reference in this Agreement to an action, approval, or consent on the part of the City or Developer shall require such party to act reasonably in all respects except as otherwise expressly provided.

9. Waivers.

A waiver by the City or Developer of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach. All waivers must be in writing and signed by the appropriate representatives of the City or Developer.

10. Time of the Essence.

Time is of the essence in this Agreement and each and all of its provisions in which performance is a factor.

11. Default

If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this Agreement, including without limitation the right to sue for damages for breach of contract and the right to seek specific performance of the terms of this Agreement; provided however that the limitations and protections for the City under Sections II(2) and III(2) of this Agreement apply to this section. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the United

States District Court for the Southern District of California. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party. All notices of defaults shall clearly indicate a notice of default under this Agreement. Either party shall have the right to terminate this Agreement in the event the other party is in default of any material term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in this paragraph. Notwithstanding the foregoing, neither party shall have the right to seek damages or, provided that the defaulting party has acted in good faith and used commercially reasonable best efforts to carry out its obligations under this Agreement, specific performance from the other party for a failure of any condition or the occurrence of a default prior to the closing of construction financing for the Project that is not, following notice, cured with the time provided in this paragraph, and the sole remedy in such case shall be to terminate this Agreement. Developer expressly waives any right to remove any such action as is otherwise provided in California Code of Civil Procedure section 394.

12. Attorneys' Fees and Costs.

If any action or proceeding is brought by any party against any other party under this Agreement, whether for interpretation, enforcement or otherwise, the prevailing party shall be entitled to recover all costs and expenses, including the reasonable fees of its attorney and any expert witnesses in such action or proceeding; provided however that the limitations and protections for the City under Sections II(2) and III(2) of this Agreement apply to this section. This provision shall also apply to any post-judgment action by either party, including without limitation efforts to enforce a judgment.

13. Severability.

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

14. Entire Understanding of The Parties; Amendments.

This Agreement, including any document or instrument incorporated herein by reference, contains a complete and final expression of the agreement between the City and Developer relating to this Agreement, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Agreement. Any and all previous discussions or agreements between the City and Developer with respect to this Agreement, whether oral or written, are superseded by this Agreement. No amendment, change, or addition to, or waiver of

termination of, this Agreement or any part hereof shall be valid unless in writing and signed by the City and Developer.

15. No Third Party Beneficiaries.

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the Agency, the City and the Developer, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

16. Further Assurances.

Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all necessary acts and things in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties.

17. Execution in Counterparts.

This Agreement may be executed in several counterparts and all such executed counterparts shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart. This Agreement shall not be binding unless and until all parties hereto have executed this Agreement.

18. Developer's Representations; City to Sign

Developer represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable Developer to fully comply with the terms of this Agreement; (2) that it is duly organized, validly existing and in good standing under the laws of the State of California; (3) that it has the full power and authority to undertake the Project and to execute this Agreement; (4) that the person(s) executing and delivering this Agreement are authorized to execute and deliver such documents on behalf of Developer; (5) except as disclosed to the City in writing, there are no actions or proceedings pending or, to the best of the Developer's knowledge, threatened against the Developer or Developer's members before any court or administrative agency in any way connected with the Project which could adversely affect the Developer's ability to perform the activities contemplated hereunder. The individual executing this Agreement on behalf of Developer hereby represents that he has full authority to do so and to bind Developer to perform pursuant to the terms and conditions of this Agreement.

19. Binding on Successors

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

20. Effectiveness

This Agreement shall not be effective until executed by the City Manager.

[Signatures begin on following page.]

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

“CITY”
CITY OF IMPERIAL BEACH

Gary Brown, City Manager

ATTEST:

Jacqueline M. Hald, City Clerk

APPROVED AS TO FORM

Jennifer Lyon, City Attorney

APPROVED AS TO FORM

Theodore M. Ballmer, Special Counsel

[Signatures continue on following page.]

**“DEVELOPER”
BIKEWAY VILLAGE, L.L.C.**

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

EXHIBIT 1

PROJECT DESCRIPTION

BASIC DESCRIPTION

The Bikeway Village project (the “**Project**”) proposes an adaptive reuse of two existing warehouse structures with a variety of retail, commercial, recreational and personal service uses at the northern terminus of 13th Street adjacent to the City’s 13th Street access point to the Bayshore Bikeway. The Project will also provide significant public benefit including a public patio/deck area adjacent to the Bayshore Bikeway, bicycle parking, public restrooms, public rest areas, improved bike paths and Bayshore Bikeway access, and additional public parking, all as more particularly depicted on the concept drawings attached hereto as Attachment No. 1 and incorporated herein (the “**Concept Drawings**”). The Project applicant has also proposed the development of a hostel in the eastern building which would provide affordable visitor accommodations along this important local and regional bikeway facility.

AIRPORT AUTHORITY PROPERTY

As part of the Project, the Developer has proposed a public plaza and rest area that would occupy adjacent land currently owned by the Airport Authority as depicted on the Site Map attached hereto as Attachment No. 2 and incorporated herein (the “**Site Map**”). In August 2010, an appraisal conducted by the City estimated the value of the Airport Authority property at \$520,000 for the 1.15 acre site. Given the future costs that will be required in order to prepare the site for development of the public plaza, the City offered to purchase the property for \$350,000. The Airport Authority is now conducting an appraisal but has expressed an interest to enter into a purchase agreement with the City at price to be determined for development of the Airport Authority property for the Project.

PUBLIC IMPROVEMENTS

In addition to the on-site improvements which will consist of the adaptive reuse of two commercial warehouse structures for commercial/retail use including a restaurant/café, bike shop, public restrooms, and, potentially, a hostel, the Project also proposes the enhancement of bicycle and pedestrian access to the Bayshore Bikeway within the 13th Street right-of-way, bicycle parking, public parking, and a large public plaza on what is property currently owned by the Airport Authority. The Project will also include the undergrounding of overhead utilities surrounding the site.

ATTACHMENT NO. 1 TO PROJECT DESCRIPTION

CONCEPT DRAWINGS

[Behind this page.]



Cypress Avenue View - Building B

Bikeway Village • Imperial Beach, California

landLAB STUDIO E
ARCHITECTS



View from Observation Deck - Building B

Bikeway Village • Imperial Beach, California

land LAB STUDIO E
ARCHITECTS



Aerial View

Bikeway Village • Imperial Beach, California

landLAB STUDIO E
ARCHITECTS

ATTACHMENT NO. 2 TO PROJECT DESCRIPTION

SITE MAP

[Behind this page.]

EXHIBIT 2

PROJECT BUDGET

Property Acquisition

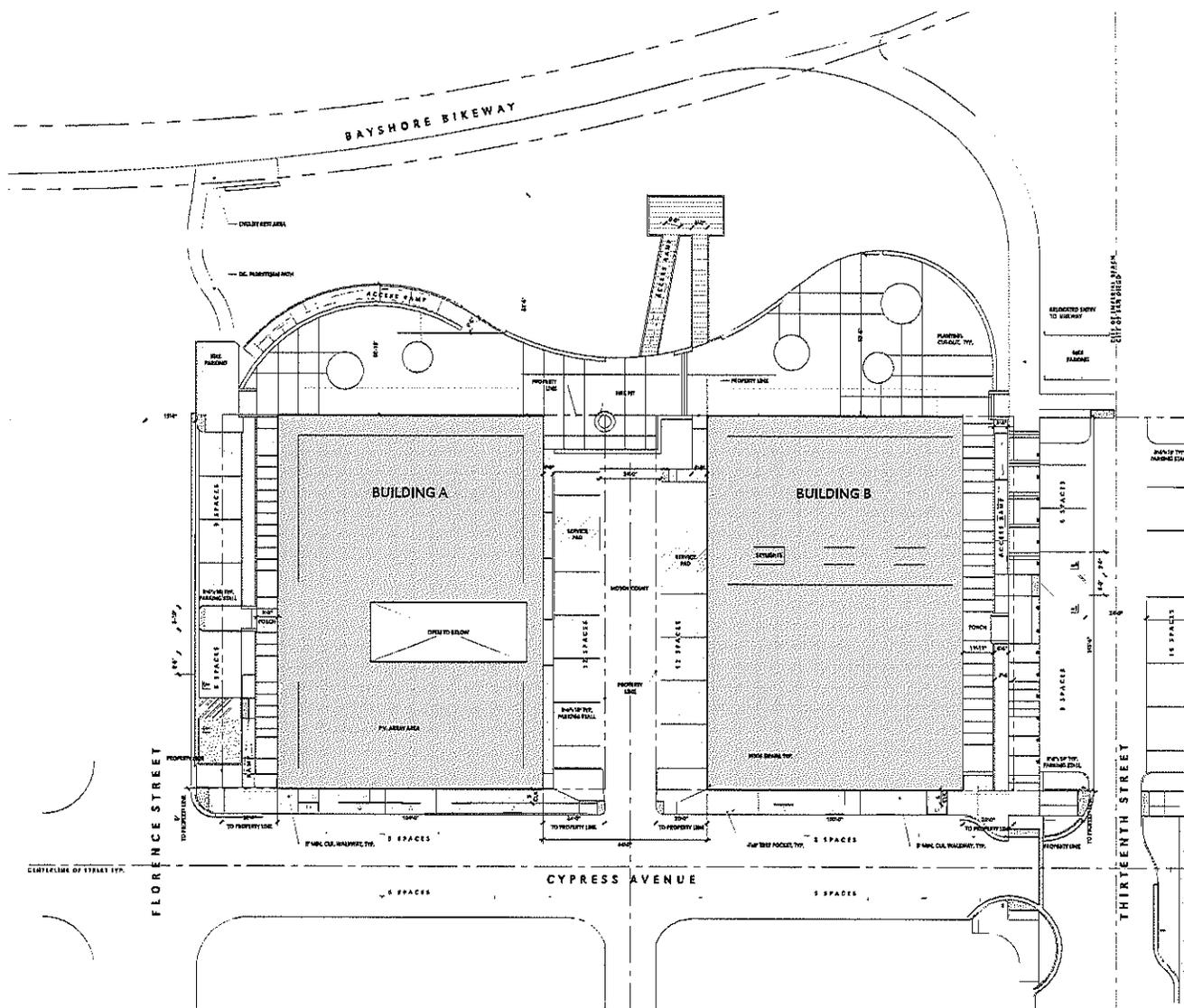
In accordance with the Cooperation Agreement, the City shall commit an amount of up to \$1,800,000 for potential acquisition of property towards the Project, including the eastern building located on the site, less any amount necessary to purchase or lease the Airport Property as described in Exhibit 1 attached to this Agreement. In the event the Airport Property is acquired by the City, said property shall be incorporated into the Project, and the City shall sell, lease, and/or otherwise make available use of the Airport Property for the Project subject to and in accordance with all state and federal law.

Public Improvements

In accordance with the Cooperation Agreement, the City shall commit an amount up to \$174,700 for the development of public improvements.

Project Costs

The development costs for the Project shall be as set forth in the Estimated Development Costs set forth in the table attached behind this page and incorporated herein.



Proposed Site Plan/Roof Plan

Bikeway Village • Imperial Beach, California



STUDIO E
ARCHITECTS

25 OCTOBER 2011

TABLE 4

**ESTIMATED DEVELOPMENT COSTS
BIKEWAY VILLAGE
CITY OF IMPERIAL BEACH**

I. Direct Costs (1)

Streetscape, Parking, and Park Improvement Area			
Park Area (2)	\$597,000	\$13	Per SF - Park Area
13th Street Parking Improvements (South)	\$207,000	\$24	Per SF - 13th Street Parking Imps. (South)
13th Street Parking Lot	\$179,000	\$17	Per SF - 13th Street Parking Lot
Alley Way Asphalt	\$76,000	\$10	Per SF - Alley Way Asphalt
Florence Street Asphalt	<u>\$53,000</u>	\$24	Per SF - Florence Street Asphalt
Subtotal, Streetscape, Parking, and Park Improvement Area	\$1,112,000	\$14	Per SF - Streetscape, Parking, and Park Imp. Area
On-Site Improvements	\$65,000	\$0.69	Per SF Site
Demolition	\$82,000		Allowance
Parking			Included above
Shell Construction	\$1,545,000	\$53	Per SF GBA
Tenant Improvements - Hostel	\$947,000	\$61	Per SF GBA - Building A (West Building)
Tenant Improvements - Building B (East Building)	\$191,000	\$14	Per SF GBA - Building B (East Building)
Tenant Improvements - Community Room	\$112,000		Allowance
Public Restrooms	\$10,000		Allowance
Contingency	<u>\$0</u>	0.0%	of Directs
Total Direct Costs	\$4,064,000	\$140	Per SF GBA

II. Indirect Costs

Architecture & Engineering	\$241,000	5.9%	of Directs
Permits & Fees (2)	\$0	\$0	Per SF GBA
Legal & Accounting	\$0	0.0%	of Directs
Taxes & Insurance	\$0	0.0%	of Directs
Developer Fee	\$0	0.0%	of Directs
Marketing/Lease-Up	\$0	\$0	Per SF GBA
Contingency	<u>\$0</u>	0.0%	of Indirects
Total Indirect Costs	\$241,000	5.9%	of Directs

III. Financing Costs

Loan Fees	\$0	0.0%	of Directs
Interest During Construction	\$0	0.0%	of Directs
Interest During Lease-Up	<u>\$0</u>	0.0%	of Directs
Total Financing Costs	\$0	0.0%	of Directs

IV. Total Development Costs (Excl. Acquisition of West Building Parcel)	\$4,305,000	\$148	Per SF GBA
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V. Acquisition Costs

West Building Parcel	<u>\$1,500,000</u>	\$96	Per SF GBA - West Building Parcel
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VI. Total Development Costs (Incl. Acquisition of West Building Parcel)	\$5,805,000	\$200	Per SF GBA
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(1) Assumes the payment of prevailing wages.

(2) Per Developer. Not verified by KMA or City.

EXHIBIT 3

SCHEDULE OF PERFORMANCE

PROJECT	YEARS
Bikeway Village Mixed-Use Development	1-5 years

**PALM/COMMERCIAL REDEVELOPMENT PROJECT AREA
IMPERIAL BEACH, CALIFORNIA**

**SUMMARY REPORT PERTAINING TO THE PROPOSED CONVEYANCE
OF CERTAIN REAL PROPERTY WITHIN THE
REDEVELOPMENT PROJECT AREA**

**California Community Redevelopment Law
Section 33433**

**PURSUANT TO PROPOSED OWNER PARTICIPATION AGREEMENT
BETWEEN
THE CITY OF IMPERIAL BEACH
AND
BIKEWAY VILLAGE, LLC**

City of Imperial Beach, California

January 2012



KEYSER MARSTON ASSOCIATES

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I. INTRODUCTION

A. Purpose of Report

This Summary Report was prepared in accordance with Section 33433 of the California Community Redevelopment Law in order to inform the City of Imperial Beach (City) and the public about the proposed Owner Participation Agreement (Agreement) between the City and Bikeway Village, LLC (Developer).

As described in Table 1, the Developer intends to adaptively re-use two existing warehouse buildings to provide for a variety of retail, commercial, recreational, and personal service uses. The development will include 15,500 square feet (SF) of retail space and a potentially a 13,500-SF hostel (Project) along the north side of Cypress Avenue between Florence and 13th Streets (Site) in the City of Imperial Beach. The Project will also provide public facilities such as rest areas, bathrooms, bicycle parking, and improved bike paths and accessibility to the adjacent Bayshore Bikeway.

This Report and attached tables describe the transaction between the City and the Developer. This Report specifies:

1. The costs to be incurred by the City under the Agreement;
2. The estimated value of the interests to be conveyed at the highest and best use permitted under the Redevelopment Plan;
3. The estimated value of the interests to be conveyed at the proposed use and with the conditions, covenants, and development costs required by the Agreement;
4. The compensation to be paid to the City pursuant to the proposed transaction;
5. An explanation of the difference, if any, between the compensation to be paid to the City under the proposed transaction, and the fair market value at the highest and best use consistent with the Redevelopment Plan; and
6. An explanation of why the Agreement will assist with the elimination of blight.

B. Summary of Findings

The City engaged its economic consultant, Keyser Marston Associates, Inc. (KMA), to analyze the proposed financial terms. The principal KMA conclusions are summarized as follows:

- The estimated costs of the Agreement to the City total \$2,120,000.

- The estimated fair market value of the East Building Parcel and Airport Authority Parcel at their highest and best use is \$1,875,000, broken out as follows:
 - East Building Parcel: \$1,500,000
 - Airport Authority Parcel: \$375,000
- The estimated re-use value of the interests to be conveyed is *negative* \$3,775,000.
- The estimated value of the compensation to be received by the City is \$56.

C. Description of Area and Proposed Project

Description of Environs and Surrounding Area

The City is located just north of the Mexico border in southwestern San Diego County. The City's boundaries encompass an area of 4.4 square miles. Over the past several years, the City has renewed itself as a popular destination due to the City's beachfront (including the Imperial Beach Pier), the Tijuana Estuary Natural Preserve, and San Diego Bay. The City continues to be proactive in its efforts to provide amenities for visitors while increasing the quality of life for residents. One such example is the recently approved 78-room Seacoast Inn located on Seacoast Drive which commenced construction in early 2011.

Project Description

The Site is a 2.15-acre site located along the north side of Cypress Street between Florence and 13th Streets. The Site contains three (3) parcels, two of which are currently owned by the Developer and occupied by two existing warehouse buildings. The warehouse buildings front Cypress Street and are bisected by a public alley (East Building Parcel and West Building Parcel). The remaining parcel is located directly north of the warehouse buildings and is owned by the San Diego County Regional Airport Authority (Airport Authority Parcel). The following delineates the distribution of parcels:

Parcel	Land Area
East Building Parcel	0.50 acres
West Building Parcel	0.50 acres
Airport Authority Parcel	1.15 acres
Total Site Area	2.15 acres

The Developer proposes to adaptively re-use the existing warehouse buildings for use as a 15,500-SF retail space/café and potentially a 13,500-SF hostel. In addition, the Developer will construct public facilities such as rest areas, bathrooms, a civic plaza, and bicycle parking. The Developer will also improve bike paths and enhance accessibility to the adjacent Bayshore Bikeway.

D. Proposed Transaction Terms

This section summarizes the salient aspects of the proposed Agreement between the City and the Developer.

- The City may acquire the Airport Authority Parcel and convey fee interest in the Airport Authority Parcel to the Developer. The Developer will pay the City the nominal sum of \$1.00 for the Airport Authority Parcel.
- The City may acquire the East Building Parcel from the Developer at a purchase price of \$1,500,000 and lease the East Building Parcel to the Developer. The Developer will pay the City the nominal sum of \$1.00 per year for the East Building Parcel for a total of 55 years.
- The Developer will be obligated to obtain all necessary land use entitlements, approvals, and permits for completion of the Project and will be required to pay all City and California Coastal Commission fees.
- The Developer will adaptively re-use the existing warehouse buildings to allow for 15,500 SF of retail space/café and potentially a 13,500-SF hostel.
- In addition to the \$125,300 that has already been contributed by the City for environmental documentation for development of the Project, the City will contribute \$174,700 for public improvements.
- The Developer will construct public facilities such as rest areas, bathrooms, a civic plaza, and bicycle parking for use by the public.
- The Developer will improve and enhance pedestrian and bicycle accessibility to the Bayshore Bikeway within the 13th Street right-of-way.
- The Developer will improve the public alley to include parking.
- The Developer will underground all overhead utilities surrounding the Site.

II. COSTS OF THE AGREEMENT TO THE CITY

The estimated costs of the Agreement to the City total \$2,120,000, and include the following items:

Acquisition-Related Costs⁽¹⁾	Amount
Land Acquisition Budget	\$1,800,000
Environmental Documents	\$125,300
Public Improvements	\$174,700
Other Third-Party Costs ⁽²⁾	\$
<i>Kane, Ballmer & Berkman</i>	\$0
<i>Keyser Marston Associates, Inc.</i>	\$20,000
<i>Appraisal</i>	\$0
Total City Costs	\$2,120,000

(1) Per City.

(2) Includes appraisal, legal, and economic consultants.

III. ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED AT THE HIGHEST AND BEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

This section presents an analysis of the fair market value of the East Building Parcel and Airport Authority Parcel at their highest and best use. KMA finds that the fair market value of the East Building Parcel at its highest and best use is \$1,500,000. KMA finds that the fair market value of the Airport Authority Parcel at its highest and best use is \$375,000.

Typically, the analysis of fair market value at highest and best use does not consider the specific transaction or development concept, but rather the most profitable use that is consistent with the Redevelopment Plan, or other governing land use regulations. The purpose of the analysis is to estimate the maximum compensation that the City could achieve if it were to offer the Site on the open market.

The highest and best use of the Site is that use that generates the highest property value. By definition, the highest and best use is the use that is physically possible, financially feasible, and legally permitted.

East Building Parcel

The East Building Parcel is currently occupied by a 15,500-SF industrial building. The existing zoning for the East Building Parcel according to the City's General Plan and Local Coastal Plan allows for the development of single-family homes. Therefore, KMA concludes that the current use as a multi-tenant industrial building represents the highest and best use of the East Building Parcel. KMA reviewed comparable sales of industrial buildings ranging between 10,000 SF and 20,000 SF in size within South County from January 2011 to the present. The KMA survey included: the City of Imperial Beach; the cities of National City and Chula Vista west of Interstate 805; and the South San Diego communities of San Ysidro and Nestor. As indicated in Table 2, surveyed sales ranged from \$40 to \$140 per SF of building. The median and average prices per SF were \$84 and \$91, respectively.

The property with the highest per-SF value (\$140 per SF) is located in a more urban area and was purchased by an owner/user. At the other extreme, the property with the lowest per-SF value (\$40 per SF) is located in Olay Mesa and was a Real Estate Owned (REO) sale. In KMA's view, the most relevant surveyed sales in terms of comparable location are in the cities of Chula Vista and National City where sales ranged from \$92 to \$140 per SF of building, or a median of \$118 per SF.

In consideration of the above issues, as well as factors such as timing, location, size, and proposed use, the KMA conclusion of fair market value for the East Building Parcel at its highest and best use is \$110 per SF of building area. Therefore, KMA estimates the total fair

market value of the East Building Parcel at its highest and best use to be \$1,500,000 (13,500 SF at \$110 per SF building).

Airport Authority Parcel

The City of Imperial Beach engaged Robert Backer & Associates to prepare an appraisal of the Airport Authority Parcel. The appraisal carries a date of value of August 1, 2010. Robert Backer & Associates found that the highest and best use of the Airport Authority Parcel is for single-family residential development. The Robert Backer & Associates appraisal concluded that the indicated fair market value of the Airport Authority Parcel was \$520,000, or \$10 per SF of land.

KMA finds that the appraised value may be substantially overstated due to several encumbering factors, as follows:

- An environmental site assessment of the Airport Authority Parcel indicated the presence of low level contaminants, which may result in cost of remediation.
- A cultural resource survey identified significant cultural resources on the Airport Authority Parcel.
- An existing paved bicycle path (Bayshore Bikeway) runs through the Airport Authority Parcel.
- Accessibility to the Airport Authority Parcel is limited from public rights-of-way.

KMA reviewed land sales for in-fill residential development sites within South County from January 2010 to the present. The KMA survey included: the City of Imperial Beach; the cities of National City and Chula Vista west of Interstate 805; and the South San Diego communities of San Ysidro and Nestor. As shown in Table 3, surveyed land sales ranged from \$5 to \$14 per SF of land, with a median price per SF of \$12. The site with the highest per-SF value is located in Imperial Beach and the site with the lowest per-SF value (\$5 per SF of land) is located in western Chula Vista. In KMA's view, the Airport Authority Parcel is encumbered by several limiting factors which diminish the value of the property. Therefore, KMA finds that a substantial adjustment to the median price of the comparable sales is warranted. On this basis, then, KMA estimates the fair market value of the Airport Authority Parcel at its highest and best use to be approximately \$7.50 per SF of land, or \$375,000.

IV. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT THE USE AND WITH THE CONDITIONS, COVENANTS, AND DEVELOPMENT COSTS REQUIRED BY THE AGREEMENT

This section explains the principal conditions and covenants which the Developer of the Site must meet in order to comply with the Redevelopment Plan (Plan). The Agreement contains specific covenants and conditions designed to ensure that the conveyance of the Site will be carried out in a manner to achieve the City's objectives, standards, and criteria under the Plan. Based on a detailed financial feasibility analysis of the proposed Project, KMA concludes that the fair re-use value of the East Building Parcel and Airport Authority Parcel is *negative* \$3,775,000.

KMA estimated the re-use value of the East Building Parcel and Airport Authority Parcel based on the anticipated income characteristics of the proposed Project. Re-use value is defined as the highest price in terms of cash or its equivalent which a property or development right is expected to bring for a specified use in a competitive open market, subject to the covenants, conditions, and restrictions imposed by the Agreement.

KMA solved for residual value based on the terms of the Agreement absent any City financial assistance. Tables 4 through 6 present KMA's residual value analysis for the proposed Project.

Development Costs

In estimating the direct costs of the development, KMA reviewed the financial pro forma submitted by the Developer. KMA made various adjustments to the Developer pro forma based on industry standards and our experience with comparable projects in Southern California. As shown in Table 4, the development costs for the Project, including land acquisition for the West Building Parcel, are estimated to total \$5,805,000. This equates to \$200 per SF of total gross building area (GBA). These costs include the following:

- Direct construction costs, such as site preparation, streetscape, parking, park areas, shell construction, and tenant improvements are estimated to total \$4,064,000. This equates to \$152 per SF total GBA. These costs are inclusive of the requirement to pay prevailing wages during construction.
- Indirect costs, such as architecture and engineering are projected to be \$241,000, or 5.9% of direct costs.
- There are no financing costs associated with development of the Project.
- Acquisition costs for the West Building Parcel are estimated to be \$1,500,000.

Net Operating Income

Table 5 presents the estimate of stabilized Net Operating Income (NOI) for the Project. KMA reviewed the revenue projection provided by the Developer and compared it to other similar projects with which we are familiar in San Diego County. The NOI projection of \$203,000 reflects the following assumptions:

- An average rent of \$1.28 per SF triple net (NNN). KMA reviewed the projected rents from the Developer and current market rent in the Imperial Beach and South Bay areas. Based on this review, KMA found the projected rents to be reasonable considering the type of space, location, and prevailing market factors.
- A vacancy factor of 15%.
- Annual unreimbursed operating expenses have been calculated at \$5 per SF per year.

Residual Value

The residual value supported by the Project can be estimated as the difference between the total development costs, inclusive of land acquisition for the West Building Parcel, and the warranted investment that can be attracted to the Project based on current real estate investment standards. As shown in Table 6, KMA estimates warranted investment to be \$2,030,000, based on a target return on investment (ROI) of 10.0%. KMA has assumed a 10.0% ROI due to the risk associated with the proposed Project, which is an untested concept in a pioneering location.

The difference between the total supportable investment and total development costs of \$5,805,000 represents the residual value for the East Building Parcel and Airport Authority Parcel of *negative* \$3,775,000, as follows:

Residual Value	Totals
Net Operating Income (NOI)	\$203,000
Target Return on Investment (ROI)	10.0%
Total Supportable Investment	\$2,030,000
(Less) Total Development Costs	(\$5,805,000)
Residual Value	(\$3,775,000)

Conclusion

Based on the foregoing, KMA concludes that the fair re-use value of the East Building Parcel and Airport Authority Parcel is *negative* \$3,775,000.

V. COMPENSATION WHICH THE DEVELOPER WILL BE REQUIRED TO PAY

The compensation to be received by the City for the East Building Parcel and Airport Authority Parcel under the terms of the Agreement is estimated to be \$56 comprised of the following:

Sources	Totals
Developer Purchase Price for Airport Authority Parcel	\$1
Developer 55-Year Lease for East Building Parcel at \$1 per year	\$55
Total Payments to City	\$56

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VI. EXPLANATION OF THE DIFFERENCE, IF ANY, BETWEEN THE COMPENSATION TO BE PAID TO THE CITY BY THE PROPOSED TRANSACTION AND THE FAIR MARKET VALUE OF THE INTERESTS TO BE CONVEYED AT THE HIGHEST AND BEST USE CONSISTENT WITH THE REDEVELOPMENT PLAN

The City will receive estimated total compensation of \$56. The estimated fair market value at highest and best use of the interests to be conveyed is \$1,875,000. The compensation to the City is lower than the fair market value at highest and best use for the following reasons:

- The Agreement obligates the Developer to construct certain public improvements as part of the Project.
- The Agreement imposes the obligation on the Developer and its contractors to comply with applicable governmental requirements, including (to the extent applicable) the payment of State prevailing wages during construction.
- The Developer is required to adhere to the Schedule of Performance contained in the Agreement, notwithstanding current market and financing conditions for the proposed uses.

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VII. EXPLANATION OF WHY THE SALE OF THE SITE WILL ASSIST WITH THE ELIMINATION OF BLIGHT

The Palm/Commercial Redevelopment Plan contains the goals and objectives and the projects and expenditures proposed to eliminate blight within the Project Area. These blighting factors include:

- Areas suffering from economic dislocation and disuse.
- Areas which are stagnant or improperly utilized, and which the planning, redesign, or redevelopment could not be accomplished by private enterprises acting alone, without public participation.

Implementation of the proposed Agreement can be expected to assist in the alleviation of blighting conditions through the following:

- Elimination and prevention of blight and deterioration; and the conservation, rehabilitation, and redevelopment of the Project Area in accord with the General Plan, Redevelopment Plan, and local codes and ordinances.
- Achievement of an environment reflecting a high level of concern for architectural, landscape, and urban design and land use principles appropriate to attainment of the objectives of the Redevelopment Plan.
- Provision for increased revenues to the City, including sales, business license, and other fees, taxes, and revenues to the City.
- Creation and development of local job opportunities and the preservation of the area's existing employment base.
- Elimination or amelioration of certain environmental deficiencies, including substandard vehicular circulation systems; inadequate water, sewer, and storm drain systems; insufficient off-street parking; and other similar public improvements, facilities, and utilities deficiencies adversely affecting the Project Area.

VIII. LIMITING CONDITIONS

The estimates of re-use and fair market value at the highest and best use contained in this Summary Report assume compliance with the following assumptions:

1. There are no known soil or subsoil problems, including toxic or hazardous conditions on the Site that need to be remediated in order to develop the Site.
2. The ultimate development will not vary significantly from that assumed in this Summary Report.
3. The title of the property is good and marketable; no title search has been made, nor have we attempted to determine the ownership of the property. The value estimates are given without regard to any questions of title, boundaries, encumbrances, liens or encroachments. It is assumed that all assessments, if any are paid.
4. The Site will be in conformance with the applicable zoning and building ordinances.
5. Information provided by such local sources as governmental agencies, financial institutions, realtors, buyers, sellers, and others was considered in light of its source, and checked by secondary means.
6. If an unforeseen change occurs in the economy, the conclusions herein may no longer be valid.
7. The development will adhere to the schedule of performance described in the Agreement.
8. Both parties are well informed and well advised and each is acting prudently in what he/she considers his/her own best interest.

attachments

TABLE 1

**PROJECT DESCRIPTION
BIKEWAY VILLAGE
CITY OF IMPERIAL BEACH**

I. Site Area

Developer Parcels

West Building Parcel	21,780 SF	0.50 Acres
East Building Parcel	<u>21,780</u> SF	<u>0.50</u> Acres
Subtotal, Developer Parcels	43,560 SF	1.00 Acres
San Diego Airport Authority Parcel	<u>50,094</u> SF	<u>1.15</u> Acres
Total Site Area	93,654 SF	2.15 Acres

II. Streetscape, Parking, and Park Improvement Area

Park Area (1)	47,585 SF	1.09 Acres
13th Street Parking Improvements (South)	8,560 SF	0.20 Acres
13th Street Parking Lot	10,827 SF	0.25 Acres
Alley Way Asphalt	7,904 SF	0.18 Acres
Florence Street Asphalt	<u>2,184</u> SF	<u>0.05</u> Acres
Total Streetscape, Parking, and Park Improvement Area	77,060 SF	1.77 Acres

III. Building Area

	<u>Gross Area</u>	<u>Net Area</u>
Building A - Retail/Café (West Building)	15,547 SF	13,992 SF
Building B - Hostel (East Building)	<u>13,453</u> SF	<u>8,072</u> SF
Total Gross Building Area (GBA)	29,000 SF	22,064 SF

IV. Parking

Number of Spaces	124 Spaces
Parking Ratio	4.3 Spaces per 1,000 SF GBA

(1) Located within San Diego Airport Authority Parcel.

TABLE 2

INDUSTRIAL BUILDING SALES COMPARABLES (1)
BIKEWAY VILLAGE
CITY OF IMPERIAL BEACH

<u>Sale Date</u>	<u>Address</u>	<u>City/Submarket</u>	<u>Sale Price</u>	<u>Acres</u>	<u>Building</u>		<u>Year Built</u>	<u>Property Description</u>
					<u>SF</u>	<u>\$/SF</u>		
07/13/11	1411 Harding Ave.	National City	\$1,400,000	0.46	10,000	\$140	1976	Class C warehouse building
01/11/11	2756 Main St.	Chula Vista	\$1,800,000	2.31	14,200	\$127	1965 (2)	Class C warehouse building
09/27/11	630 L St.	Chula Vista	\$2,050,000	1.25	17,400	\$118	1968	Class C warehouse building
06/01/11	2255 National Ave.	National City	\$1,200,000	0.32	11,000	\$109	1979	Class C service building
04/05/11	1480 Frontage Rd.	Chula Vista	\$1,200,000	0.51	13,000	\$92	2002	Class C manufacturing building
08/16/11	8527 Avenida Costa Sur, Unit 8534	Otay Mesa	\$1,038,000	N/A	13,845	\$75	2008	Class B distribution condominium
03/15/11	9476 Customhouse Plaza	Otay Mesa	\$885,000	0.76	12,005	\$74	1996	Class C warehouse building
07/12/11	8735 Dead Stick Rd., Building 2	Otay Mesa	\$1,000,000	1.04	14,156	\$71	2006	Class B warehouse building
12/19/11	8594 Siempre Viva Rd., Unit 3	Otay Mesa	\$683,000	0.92	11,190	\$61	2000	Class C manufacturing building
09/22/11	8675 Avenida Costa Norte	Otay Mesa	\$650,000	0.92	16,300	\$40	1989	Class C warehouse building
		Minimum	\$650,000	0.32	10,000	\$40	1965	
		Maximum	\$2,050,000	2.31	17,400	\$140	2008	
		Median	\$1,119,000	0.92	13,423	\$84	1993	
		Average	\$1,190,600	0.94	13,310	\$91	1989	

(1) Selected sales transactions for industrial buildings in Imperial Beach, National City, Chula Vista (west of I-805), and South San Diego County from January 2011 to present.

(2) Renovated in 2000.

Source: CoStar Group, Inc.

Prepared by: Keyser Marston Associates, Inc.

Filename: IB - Bikeway Village - 33433 pro forma;1/24/2012;ema

TABLE 3

IN-FILL RESIDENTIAL LAND SALES COMPARABLES (1)
 BIKEWAY VILLAGE
 CITY OF IMPERIAL BEACH

<u>Sale Date</u>	<u>Address</u>	<u>City/Submarket</u>	<u>Sale Price</u>	<u>Acres</u>	<u>Land</u>	
					<u>SF</u>	<u>\$/SF</u>
12/21/11	1368 14th St.	Imperial Beach	\$170,000	0.28	12,197	\$14
04/07/10	315 Sycamore Rd.	San Ysidro	\$515,000	1.00	43,560	\$12
06/09/10	35 Tamarindo Way	Chula Vista	\$441,500	2.16	94,090	\$5
		Minimum	\$170,000	0.28	12,197	\$5
		Maximum	\$515,000	2.16	94,090	\$14
		Median	\$441,500	1.00	43,560	\$12
		Average	\$375,500	1.15	49,949	\$10

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(1) Selected land sales transactions for in-fill residential sites in Imperial Beach, National City, Chula Vista (west of I-805), and South San Diego County from January 2010 to present.

TABLE 4

**ESTIMATED DEVELOPMENT COSTS
BIKEWAY VILLAGE
CITY OF IMPERIAL BEACH**

I. Direct Costs (1)

Streetscape, Parking, and Park Improvement Area			
Park Area (2)	\$597,000	\$13	Per SF - Park Area
13th Street Parking Improvements (South)	\$207,000	\$24	Per SF - 13th Street Parking Imps. (South)
13th Street Parking Lot	\$179,000	\$17	Per SF - 13th Street Parking Lot
Alley Way Asphalt	\$76,000	\$10	Per SF - Alley Way Asphalt
Florence Street Asphalt	\$53,000	\$24	Per SF - Florence Street Asphalt
Subtotal, Streetscape, Parking, and Park Improvement Area	\$1,112,000	\$14	Per SF - Streetscape, Parking, and Park Imp. Area
On-Site Improvements	\$65,000	\$0.69	Per SF Site
Demolition	\$82,000		Allowance
Parking			Included above
Shell Construction	\$1,545,000	\$53	Per SF GBA
Tenant Improvements - Hostel	\$947,000	\$61	Per SF GBA - Building A (West Building)
Tenant Improvements - Building B (East Building)	\$191,000	\$14	Per SF GBA - Building B (East Building)
Tenant Improvements - Community Room	\$112,000		Allowance
Public Restrooms	\$10,000		Allowance
Contingency	\$0	0.0%	of Directs
Total Direct Costs	\$4,064,000	\$140	Per SF GBA

II. Indirect Costs

Architecture & Engineering	\$241,000	5.9%	of Directs
Permits & Fees (2)	\$0	\$0	Per SF GBA
Legal & Accounting	\$0	0.0%	of Directs
Taxes & Insurance	\$0	0.0%	of Directs
Developer Fee	\$0	0.0%	of Directs
Marketing/Lease-Up	\$0	\$0	Per SF GBA
Contingency	\$0	0.0%	of Indirects
Total Indirect Costs	\$241,000	5.9%	of Directs

III. Financing Costs

Loan Fees	\$0	0.0%	of Directs
Interest During Construction	\$0	0.0%	of Directs
Interest During Lease-Up	\$0	0.0%	of Directs
Total Financing Costs	\$0	0.0%	of Directs

IV. Total Development Costs (Excl. Acquisition of West Building Parcel)	\$4,305,000	\$148	Per SF GBA
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V. Acquisition Costs

West Building Parcel	\$1,500,000	\$96	Per SF GBA - West Building Parcel
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VI. Total Development Costs (Incl. Acquisition of West Building Parcel)	\$5,805,000	\$200	Per SF GBA
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(1) Assumes the payment of prevailing wages.
(2) Per Developer. Not verified by KMA or City.

TABLE 5

NET OPERATING INCOME
BIKEWAY VILLAGE
CITY OF IMPERIAL BEACH

	<u>SF</u>	<u>Rent/SF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
I. Gross Scheduled Income				
Gross Scheduled Income (GSI)	26,100	\$1.28	\$33,500	\$402,000
II. Effective Gross Income				
(Less) Vacancy		15% of GSI		<u>(\$60,000)</u>
Effective Gross Income (EGI)				\$342,000
III. Unreimbursed Operating Expenses				
(Less) Operating Expenses		11% of EGI		(\$36,000)
(Less) Management Fee		10% of EGI		(\$34,000)
(Less) Taxes and Insurance		<u>20% of EGI</u>		<u>(\$69,000)</u>
Total Unreimbursed Operating Expenses		41% of EGI		(\$139,000)
		\$5 /SF/Year		
IV. Net Operating Income (NOI)				\$203,000

TABLE 6

RESIDUAL VALUE
BIKEWAY VILLAGE
CITY OF IMPERIAL BEACH

I. Warranted Investment

Total Net Operating Income	\$203,000
Target Return on Investment (ROI)	10.0%
Warranted Investment	\$2,030,000

II. Total Supportable Investment

Total Warranted Investment	\$2,030,000
(Less) Development Costs (including land)	<u>(\$5,805,000)</u>

III. Residual Value **(\$3,775,000)**

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IMPERIAL BEACH HOUSING AUTHORITY

TO: HONORABLE CHAIRMAN AND BOARDMEMBERS

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: JANUARY 26, 2012

ORIGINATING DEPT: GREG WADE, ASSISTANT CITY MANAGER
GERARD E. SELBY, REVELOPMENT COORDINATOR

SUBJECT: APPROVAL OF GUIDELINES FOR THE CLEAN AND GREEN PROGRAM AND AUTHORIZATION FOR THE EXECUTIVE DIRECTOR TO ENTER INTO GRANT AGREEMENTS CONSISTENT WITH THE GUIDELINES

BACKGROUND

In January of 2011, the City of Imperial Beach declared the need and created the Imperial Beach Housing Authority ("Authority"). In addition, the Executive Director was authorized to transfer any and all low and moderate income housing funds and certain tax exempt bond proceeds (referred to herein collectively as "Housing Funds") from the City of Imperial Beach Redevelopment Agency ("Agency") to the Authority so that the Authority can carry out housing functions in accordance with applicable law. The Agency has administered the Clean and Green Program ("Program") since December 2007. On January 26, 2012, the Authority Board approved Resolution HA-12-07 to allocate certain Housing Funds constituting \$380,000.00 in tax exempt bond proceeds to be utilized for the Authority's implementation of the Program.

DISCUSSION

The Authority has funds available for implementation of the Program and the Authority Board specifically allocated \$380,000 of tax exempt bond proceeds to implement the Program. Thus, the Authority now desires to formally approve the proposed Guidelines for the Program ("Guidelines") which Guidelines are substantially based on the Guidelines previously approved by the Agency in December 2007 and amended in April 2010. The only change in the proposed Guidelines is substituting the Authority's name for the Agency's name throughout. In furtherance of the prior actions of the Authority, and upon the Board's authorization herein, the Executive Director will enter into grant agreements with qualified participants consistent with the Guidelines.

ENVIRONMENTAL DETERMINATION

Not a project under CEQA.

FISCAL IMPACT

In January of 2011, the Agency authorized the transfer of the funds (including the tax exempt bond proceeds for the Clean and Green Program) to the Authority and the funds were in fact transferred thereafter to the Authority prior to the end of fiscal year 2010-2011. On January 18,

2012, the Authority Board specifically allocated \$380,000 of tax exempt bond proceeds to be used toward implementation of the Clean and Green Program pursuant to Resolution HA-12-07.

DEPARTMENT RECOMMENDATION

1. Receive this report.
2. Adopt attached Housing Authority Resolution HA-12-09 Approval of the Guidelines for the Clean and Green Program and Authorization for the Executive Director to Enter into Grant Agreements with Qualified Participants Consistent with the Guidelines.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve resolution.



Gary Brown
Executive Director of the Housing Authority

Attachments:

1. Resolution No. HA-12-09
2. Housing Authority Guidelines for the Clean and Green Program

RESOLUTION NO.-HA-12-09**A RESOLUTION OF THE IMPERIAL BEACH HOUSING AUTHORITY APPROVING THE GUIDELINES FOR THE CLEAN AND GREEN PROGRAM AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO GRANT AGREEMENTS CONSISTENT WITH THE GUIDELINES.**

WHEREAS, the Imperial Beach Housing Authority ("Authority") is authorized pursuant to Division 24, Part 2, Chapter 1, Article 4, Section 34312(b) of the California Health and Safety Code (the "Act") to provide for the construction, reconstruction, improvement, alteration, repair of all or part of any housing; and

WHEREAS, pursuant to Section 34312.5(b) of the Act, the Authority may use low and moderate income housing funds and certain tax exempt bond proceeds (referred to herein collectively as "Housing Funds") of the City of Imperial Beach Redevelopment Agency ("Agency") to increase or improve the City's supply of low and moderate income housing; and

WHEREAS, in January of 2011, the Agency authorized the transfer of Housing Funds to the Authority in order for the Authority to increase or improve the City's supply of low and moderate income housing in accordance with applicable law; and

WHEREAS, the Authority has established objectives for the rehabilitation of affordable housing in accordance the Authority's policies; and

WHEREAS, in order to further the Authority's objectives, the Authority desires to assist in the rehabilitation of existing single family housing; and

WHEREAS, the Authority administers the Clean and Green Program ("Program") which provides grants to very low, low and moderate-income single-family homeowners to improve energy and water efficiency, health and safety; and

WHEREAS, the Authority authorized the expenditure of certain Housing Funds constituting \$380,000 of tax exempt bond proceeds to be utilized for the Authority's implementation of the Program; and

WHEREAS, the Authority desires to approve the Guidelines for the Program for the Authority's implementation of the Program and to authorize the Executive Director to enter into grant agreements consistent with such Guidelines.

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

1. That the Authority approve the Clean and Green Program Guidelines ("Guidelines") and authorize the Executive Director to enter into grant agreements consistent with the Guidelines.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Housing Authority of the City of Imperial Beach at its meeting held on the 26th day of January 2012, by the following roll call vote:

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

James C. Janney

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

Jacqueline M. Hald

JACQUELINE M. HALD, CMC
SECRETARY



CLEAN AND GREEN

Neighborhood Revitalization Program Guidelines

Revised: 03/01/11

PROGRAM DESCRIPTION

The Clean and Green Program provides a grant for very low, low and moderate-income individuals and families to improve energy and water efficiency, health and safety, and/or enhance the physical appearance of their home and property.

One (1) grant is allowed to an owner or property in a ten year period. For example: an owner could receive a grant for a property, make the improvements and, after a period of time, sell the property. If that same property owner purchased another property in the City of Imperial Beach he would not be eligible for a new grant for his new home within the 10-year period of the date of his first grant. Grants will stay with the property. If a property has been improved through a Clean & Green grant, but then sold by that owner, the new owner would not be eligible for a grant for that property until the 10-year period expires.

ELIGIBLE APPLICANT

Assistance from the Program is available only to persons who:

- Are of legal age and have the capacity to competently enter into financial and contractual agreements.
- Reside in and own the property located in the City of Imperial Beach ("City").
- Have income that does not exceed 120% of the area median income, adjusted by family size, as determined by the U.S. Department of HUD.

<i>Low/Moderate Income</i>	<i>Annual Income*</i>
<i>1 Person</i>	<i>\$63,400</i>
<i>2 Persons</i>	<i>\$72,500</i>
<i>3 Persons</i>	<i>\$81,550</i>
<i>4 Persons</i>	<i>\$90,600</i>
<i>5 Persons or More</i>	<i>\$97,850</i>

*These income caps are based on the Department of Housing and Urban Development (HUD) 2011 median incomes. These income limits are subject to change annually.

- Agree to comply with any and all applicable permit, code and other regulations of the City and the Authority.

- Property owned by a Trust is eligible to participate in the program (At least one of the trustees must reside in the home). All trustees must sign all the appropriate documentation. The income of all beneficiaries is used to determine income eligibility. Transfer of an assisted property into a trust would not automatically trigger any repayment.

DETERMINATION OF GROSS INCOME

In calculating gross income, all income of the applicant and other non-dependent household members eighteen years of age or older, and not full-time students, will be considered as follows:

- The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses, and other compensation for personal services;
- The net income from an operation of a business or profession, as calculated by averaging the net income manifested by their Federal income taxes for the past three years;
- Interest, dividends, and other net income of any kind, from real or personal property (where the net family assets are in excess of \$5,000, excluding the household's full time residence, gross income shall include the greater of the actual income derived from the net family assets or ten percent (10%) of the value of such assets);¹
- The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;
- Payment in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance;
- Periodic and determinable allowances, such as alimony and child support payment, and regular contributions or gifts received from persons not residing in the dwelling to the extent that such payments are reasonably expected to continue;
- All regular pay, special pay, and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the family, spouse, or other person whose dependents are residing in the unit;
- Any earned income tax credit to the extent it exceeds income tax liability;
- Any other income that must be reported for Federal and State income tax purposes; and

¹ For example, if the household has (1) equity in rental property valued at \$50,000, which generates \$12,000 of net annual rental income and (2) \$100,000 in bonds, which generate net annual income of \$5,000, the household's gross annual income must include the sum of (1) \$12,000 (which is the greater of 10% of \$50,000 or \$12,000) plus (2) \$10,000 (which is the greater of 10% of \$100,000 or \$5,000).

- Gross Self-employed income, as reported on Schedule C, IRS 1040.

ELIGIBLE IMPROVEMENTS

Examples of eligible improvements include, but are not limited to the following:

- Roofing (except tile), double-paned energy efficient windows, exterior solid core doors and replacement of existing fencing (except chain link and must be in the front yard setback)
- Central heating & cooling systems
- Attic insulation, caulking, and weather stripping of doors
- The replacement of turf lawn with water efficient (xeriscape) landscaping (front and/or side yards of corner lots)
- Solar Energy Equipment including photo-voltiacs
- Solar and Tank-less Water Heaters
- Clean-up and removal of trash or debris from property
- Accessibility (railing & ramps)

INELIGIBLE IMPROVEMENTS

Examples of ineligible improvements include, but are not limited to the following:

- Repair, purchase or installation of kitchen appliances, sinks, counter tops, or cabinets
- Tile roofs
- Exterior or interior wall insulation
- Wall or space heaters
- Repair, purchase or installation of bathroom fixtures
- Personal use amenities such as barbecues, bathhouses, greenhouses, swimming pools, saunas, television antennae, tennis courts
- Luxury items such as burglar alarms, burglar protection bars, dumbwaiters, kennels, murals, awnings, patios, decks and storage sheds/workshops
- Chain Link Fencing
- Other items as deemed ineligible by the Executive Director or Program Administrator

PROGRAM CONDITIONS

The Authority will guarantee that all information regarding the loan transaction will be kept confidential.

The Authority will not discriminate upon the basis of sex, age, race, creed, color, class, national origin, sexual orientation or ancestry in the awarding of financial assistance.

In the event that the applicant fails to adhere to the conditions and restrictions contained within the Program Conditions or provides false information, the Authority reserves the right to terminate the individual's participation in the grant program and demand full repayment of any grant money paid out.

PROGRAM PROCEDURES

- The Program Administrator will provide application to homeowner.
- Homeowner submits application.
- The Program Administrator will establish a file for each applicant and determine eligibility by reviewing income and household size.
- The Program Administrator will notify the applicant, if the applicant is not eligible.
- The Program Administrator coordinates a site visit to document eligible improvements.
- The Program Administrator will prepare and execute necessary grant documents that include:
 - Grant Agreement
 - Notice of Completion
- The Applicant and/or the Program Administrator solicit bids.
- The Applicant schedules and coordinates the construction. All work is to be done by a licensed, insured construction contractor with a valid City of Imperial Beach business license.
- The Applicant facilitates the inspection of all work.
- The Program Administrator verifies the progress of the work.
- The Program Administrator will seek to recover any rebate or matching funds provided by any government entity and/or utility.
- The Program Administrator prepares the Notice of Completion. (Upon completion, the necessary documents are sent to the appropriate recording entity).
- The Program Administrator will deliver a Notice of Completion to the owner and contractor.

PROGRAM ADMINISTRATION

The Executive Director or designee will administer the Program and be the Program Administrator.

In the event of any disputes arising under the program, the Homeowner, contractor and any other party will submit a written letter detailing the nature of the complaint to the Executive Director for resolution of this dispute.

PROGRAM APPLICATION – Attachment A