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San Diego Unified Port District

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Office of the District Clerk

MEMORANDUM OF UNDERSTANDING

North Embarcadero Visionary Plan Phase 1, North Embarcadero Port Master Plan Amendment, and Lane Field Project

This Memorandum of Understanding (MOU) is entered into as of this 9 day of November, 2010, by and among the SAN DIEGO NAVY BROADWAY COMPLEX COALITION, a 501(c)(3) corporation (Coalition); LANE FIELD SAN DIEGO DEVELOPERS, LLC, a Delaware limited liability corporation (LFSDD); and the SAN DIEGO UNIFIED PORT DISTRICT, a municipal corporation (District) (in aggregate, the Parties).

RECITALS

- A. As of the execution of this MOU, the Coalition includes Ian Trowbridge as co-chair, Diane Coombs as co-chair, Don Wood as board member, and Unite HERE as a member, as well as other members including community groups and members of the public.
- B. On April 14, 2010, the California Coastal Commission (CCC) denied a Coastal Development Permit (CDP) for North Embarcadero Visionary Plan (NEVP) Phase 1. The CCC made several suggestions as to how the project could be modified to obtain CCC approval in the future, including, in general terms, additional public outreach and the provision of an additional 2.5 acres of public space (e.g., park/plaza) along the North Embarcadero.
- C. In response to the CCC and direction from the Board of Port Commissioners, the District worked closely with the public, the Coalition, and LFSDD to revise the NEVP Phase 1 project to satisfy CCC concerns and obtain CCC approval if necessary. The District provided nine additional opportunities for public comment and has arranged or will arrange to secure additional public space on the Lane Field site, including land currently leased to the Navy at 1220 Pacific Highway, within a 150-foot setback from North Harbor Drive. In addition, staff is recommending additions to NEVP Phase 2 and future phases of NEVP (collectively, "Future NEVP Phases") through the new North Embarcadero Port Master Plan Amendment and Environmental Impact Report (the "North Embarcadero PMPA") by amendments to the Notice of Preparation (NOP).
- D. This MOU sets forth the Parties' expectations and commitments in the event certain actions are considered or taken by the Board of Port Commissioners, the CCC, and the Redevelopment Agency of the City of San Diego.

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- E. In order to avoid any potential legal action, litigation or other action challenging the NEVP Phase 1 project, the District desires to obtain the Coalition's support for approval of the NEVP Phase 1 project and the Coalition desires to obtain commitments for public access and public space (e.g., park/plaza) as part of the NEVP Phase 1 project and to obtain additional commitments to study public access and public space (e.g., park/plaza) both east and west of existing Harbor Drive.
- F. This MOU is applicable only to the NEVP Phase 1 project, the North Embarcadero PMPA, Future NEVP Phases, acquisition of 1220 Pacific Highway, and the Lane Field project, and in no way affects (1) the Coalition's rights and claims in the civil proceeding known as *San Diego Navy Broadway Complex Coalition v. San Diego Unified Port District, et al.*, San Diego County Superior Court case no. 37-2009-00096726-CU-MC CTL or (2) the Coalition's rights and claims relating in any way to the USS Midway Museum, the Navy Pier, or the Broadway Pier.

AGREEMENT

NOW, THEREFORE, FOR VALUABLE CONSIDERATION THAT THE PARTIES ACKNOWLEDGE, THE PARTIES AGREE AS FOLLOWS:

1. **CONDITIONS:** As consideration for the commitments from the Coalition in Section 2 below, the conditions below must be satisfied.
 - A. **Labor Peace.** LFSDD must achieve labor peace on the Lane Field project, evidenced by a written agreement fully executed prior to issuance of a Coastal Development Permit for NEVP Phase 1. The Parties acknowledge this condition has been satisfied as of the execution of this MOU.
 - B. **Setback Park/Plaza.** The District and LFSDD must establish a 150-foot setback from North Harbor Drive for the entire distance between the prolongation of "B" Street to the north and West Broadway to the south. Within the setback, the District and LFSDD must design, permit, and construct public space (the "Setback Park/Plaza") as part of the NEVP Phase 1 project or as part of the Lane Field project, whichever comes earlier. Prior to the earlier of the substantial completion of the NEVP Phase 1 project or the opening of the first hotel to be constructed as part of the Lane Field project, the Setback Park/Plaza must be designed and constructed and the District must allocate funding sufficient to complete the remainder of the Setback Park/Plaza on 1220 Pacific Highway.
 - (1) The District must adopt an appropriate land use designation for the Setback Park/Plaza and, to the extent feasible, incorporate the Setback Park/Plaza into the Coastal Walk.

- (2) The eastern boundary of the Setback Park/Plaza may be curvilinear or otherwise articulated so long as the gross land area within the setback is the same as if the eastern boundary were drawn as a straight line.
- (3) LFSDD has the right to develop an area extending approximately 25 feet west from the eastern boundary of the setback for uses ancillary to the Lane Field project. The planning and design of this area must occur through a public process and public access must not be excluded in the area any more than is necessary to comply with laws governing the activities proposed for the area by LFSDD.
- (4) LFSDD has the right to develop underground structured parking beneath its project site which may extend under the Setback Park/Plaza to the extent required, if necessary, to accommodate all project parking requirements plus the 300 public parking spaces required by the North Embarcadero Visionary Plan Master EIR.
- (5) LFSDD must conduct various design studies for the Setback Park/Plaza with an emphasis on creating a viable program that will activate both the public and private spaces within and contiguous to it, and seek public input in the form of public outreach forums for the proposed designs.
- (6) The Coalition has the right to comment on any selected designs for the Setback Park/Plaza before they are finalized.
- (7) LFSDD has the right to occupy and use the Setback Park/Plaza for staging during construction of its Lane Field project. LFSDD's staging will be permitted through the District's standard right of entry agreement or such other agreement as the District and LFSDD determine.
- (8) LFSDD has the right to occupy and use the Setback Park/Plaza consistent with the District's permitting policies for public parks.

C. 1220 Pacific Highway. The District must make a good-faith effort to acquire that portion of property within the 150-foot setback on the Navy's leasehold at 1220 Pacific Highway to incorporate it into the Setback Park/Plaza.

- (1) The District must continue to explore private and public funding options for acquisition of the Navy leasehold interest at 1220 Pacific Highway.
- (2) Prior to commencement of construction of NEVP Phase 1, the District must request funding from the City of San Diego Redevelopment Agency for the acquisition of 1220 Pacific Highway.
- (3) Within thirty (30) days after the District acquires the 1220 Pacific Highway leasehold, and the Navy vacates 1220 Pacific Highway, and the

existing structures within the 150-foot setback are demolished, the District must commence construction to incorporate the vacated leasehold area within the 150-foot setback into the Setback Park/Plaza.

D. North Embarcadero PMPA. In the North Embarcadero PMPA, the District must study, at a minimum, (i) one alternative for an average 205-foot setback adjacent to North Harbor Drive as presently aligned, running from Hawthorn to the prolongation of "B" Street; and (ii) one alternative for the realignment of North Harbor Drive to the east of its present location, with the 205-foot-average setback to the immediate west of the realigned North Harbor Drive, to the immediate east of the promenade planned under the NEVP adjacent to San Diego Bay, and again running from Hawthorn to the prolongation of "B" Street. The purpose of the 205-foot setback under these two alternatives is the same as the Setback Park/Plaza. The project description and the NOP for the North Embarcadero PMPA must also be revised to include the study of these alternatives, which shall be studied on an equal footing with the primary project that is the subject of the NOP and not merely as two alternatives among the range of reasonable alternatives that must be studied under CEQA for any project. The study may include an economic analysis of the funding, feasibility, and impacts of the alternatives.

- (1) The eastern boundary of the setback may be curvilinear or otherwise articulated so long as the gross land area within the setback is the same as if the eastern boundary were drawn as a straight line.
- (2) The District must request from the City of San Diego Redevelopment Agency that funds be set aside for Future NEVP Phases identified through the North Embarcadero PMPA.
- (3) The District reserves the right to consider other alternatives in the North Embarcadero PMPA, including those without a 205-foot setback.
- (4) Except as expressly prohibited in this MOU, the Coalition has the right to fully participate in the public environmental review and public processes for the North Embarcadero PMPA.
- (5) Alternatives evaluated in the North Embarcadero PMPA must consider enhanced pedestrian connectivity within, to, and from the waterfront, and traffic circulation strategies that prioritize pedestrians over cars.

2. COMMITMENTS. As consideration for and subject to satisfaction of the conditions described in Section 1 above, the Coalition makes the commitments below.

A. The Coalition will support and actively advocate for, in writing, and where practicable in person or orally: (1) all approvals of NEVP Phase 1, (2) the acquisition of 1220 Pacific Highway, (3) funding for Future NEVP Phases, and

(4) all approvals of a revised Lane Field project. This includes support and advocacy before the Board of Port Commissioners, the Centre City Development Corporation, the City of San Diego Redevelopment Agency, and the California Coastal Commission. This applies to judicial, administrative, and legislative proceedings.

- B. The Coalition will take no action whatsoever, directly or indirectly, whether in writing, orally or otherwise, to oppose any governmental approval or funding request which is or may be required for: (1) all approvals of NEVP Phase 1; (2) the acquisition of 1220 Pacific Highway; (3) funding for Future NEVP Phases; (4) all approvals of a revised Lane Field project; and (5) subsequent studies associated with the North Embarcadero PMPA. This applies to judicial, administrative, and legislative proceedings.
- C. The Coalition will provide no assistance whatsoever, directly or indirectly, whether financial, legal or otherwise, to any person, organization or other entity to oppose any governmental approval for: (1) all approvals of NEVP Phase 1; (2) the acquisition of 1220 Pacific Highway; (3) funding for Future NEVP Phases; (4) all approvals of a revised Lane Field project; and (5) subsequent studies associated with the North Embarcadero PMPA. This applies to judicial, administrative, and legislative proceedings.
- D. Pursuant to its existing option agreements with the District, LFSDD intends to commence remediation of the currently defined Lane Field project site prior to January 7, 2011 in order to vest its existing Lane Field CDP for the Lane Field project as designed and entitled. The Coalition stipulates that it has no objection and will not object through administrative or legal proceedings to LFSDD proceeding in this manner.
- E. Subsequent to execution of an amended, restated, and combined Lane Field Option and Lease currently planned to occur by December 7, 2010, LFSDD will commence design of the revised Lane Field project and will diligently exert its efforts to result in the filing of an amendment to its Lane Field CDP no later than May 31, 2011. The Coalition stipulates that it has no objection and will not object through administrative or legal proceedings to LFSDD proceeding in this manner.

3. ACKNOWLEDGMENTS: The Parties acknowledge the following:

- A. The District has sought and received additional input from stakeholders concerned with the public space, community benefits, and the legal adequacy of NEVP Phase 1. The District, acting alone and in concert with LFSDD, anticipates incorporating significant and meaningful conditions into NEVP Phase 1, and through amendment to the Lane Field option agreements, and through agreement to study additional public space alternatives as part of the North Embarcadero PMPA. The parties further agree that the additional public outreach and this MOU have resulted in an improved NEVP Phase 1 and improved study of Future NEVP Phases.

- B. Nothing in this MOU will limit the District's sole and absolute discretion with respect to the environmental review required by CEQA for the North Embarcadero PMPA and the District retains its sole and absolute discretion to consider alternatives in the CEQA documents for the PMPA in addition to those enumerated above, and may select an alternative, and adopt mitigation measures and conditions and statements of overriding considerations which it determines necessary and appropriate.

The contents of this MOU notwithstanding, District reserves its sole and absolute discretion to approve or disapprove all actions which require by law the exercise of discretion and which District cannot lawfully be committed to by contract. Such reservation of discretion will apply to all contemplated legislative and quasi-judicial actions including, without limitation, approval of land use entitlements, CEQA compliance, the exercise of eminent domain, code enforcement and the making of findings and determinations required by law.

- C. This MOU may be used by District, Coalition or LFSDD as a full and complete defense to and may be used as the basis for an injunction against any action, suit, claim or other proceeding of any type which may be prosecuted, initiated or attempted in violation of the terms hereof.
- D. Each party signing this MOU represents and warrants that it has full authority to obligate the party or parties on whose behalf it is signing and that no further action or authorization is necessary to execute this MOU on behalf of such party.
- E. This MOU constitutes the entire agreement among the parties with respect to the subject matter of this MOU and may not be modified except by a written amendment executed by all parties. If any part of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, such decision will not affect the validity of any remaining portion of this MOU and the remainder will stand in full force and effect.
- F. This MOU will be construed and covered by the laws of the State of California.
- G. This MOU will be binding upon and will inure to the benefit of the parties hereto and to all members, beneficiaries, elected and appointed officials, officers, directors, employees, attorneys, agents, successors, affiliates, heirs and assigns of any party to the extent permitted by law.
- H. Where this MOU requires the advocacy of the Coalition, the Coalition will advocate in the manner it deems most likely to achieve its goals. The Coalition is not required to advocate in a manner that it deems in its sole discretion to run contrary to this MOU or to exceed its financial or other resources. Notwithstanding, the Coalition must, at a minimum, advocate in writing or other comparable means sufficient to evidence its support for the issue at hand and appear in-person at meetings held in San Diego County.

- I. In the event the NEVP Phase 1 project is approved, the Coalition reserves the right to object to any material failure to implement the NEVP Phase 1 project in compliance with this MOU or in accordance with the terms and conditions of the approval. In the event the NEVP Phase 1 project is not approved, this MOU automatically terminates.
- J. Except to the extent expressly provided otherwise in this MOU, each of the Parties retains all its respective rights and privileges under the United States Constitution, the California Constitution, and all other applicable legal authorities, including the right to participate in administrative, judicial, and legislative proceedings related to any matter that is a subject of this MOU.
- K. Nothing in this MOU is intended to limit the right of any member of the public, as permitted by law, to participate in or influence any administrative, judicial, or legislative proceeding that relates in any way to NEVP Phase 1, 1220 Pacific Highway, Future NEVP Phases, or the revised Lane Field project.

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- L. The Parties acknowledge that each condition to be satisfied by the District under Section 1 of this MOU other than Condition 1-A (regarding labor peace) in exchange for the Coalition's commitments as reflected in Section 2 of this MOU shall be included in any coastal development permit or other legally enforceable entitlement that is approved for NEVP Phase 1 to the extent that the condition is not fully satisfied prior to approval of such permit or other entitlement.

IN WITNESS WHEREOF, this MOU is executed on the date(s) set forth below.

Port Attorney

Cecilia Breen

SAN DIEGO UNIFIED PORT DISTRICT

By Wayne Darbeau 11/12/10
(signature) (date)

PRINT NAME: WAYNE DARBEAU
PRINT TITLE: Interim CEO

Attorney

Cy L. Briggs
BRIGGS LAW CORP.

SAN DIEGO NAVY BROADWAY
COMPLEX COALITION

By Ian Trowbridge Nov^S 17, 2010
(signature) (date)

Ian Trowbridge, Co-Chair

By Diane Coombs 11/5/10
(signature) (date)

Diane Coombs, Co-Chair

LANE FIELD SAN DIEGO
DEVELOPERS, LLC

By Craig W. Clark 11-5-10
(signature) (date)

Craig W. Clark, Corporate Secretary