

**CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT**

THIS RIGHT OF ENTRY PERMIT ("Permit") is executed by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and San Diego County Regional Airport Authority, or its designated agents ("Permittee").

1. Right to Enter. City hereby grants permission to Permittee to enter upon City-owned property located at the intersection of McCain Road and North Harbor Drive, consisting of approximately 44,250 square feet, and as specifically set forth on the attached Exhibit "A" ("Permit Area"), incorporated by this reference. Permission to enter the Permit Area is conditioned upon the terms set forth below.
2. Use of Permit Area. Permittee shall have exclusive use of the Permit Area for construction of a signalized traffic intersection, including widening the existing street to construct a left turn lane, and associated street improvements such as curb, gutter, sidewalk and storm drain to City street design standards, associated laydown and storage areas, and for no other purpose whatsoever. The days and hours of operation and use of the Permit Area will be unrestricted. Permittee shall be responsible for obtaining all permits and security for the maintenance and use of the Permit Area and shall fence and screen the Permit Area.
3. Permit Fee. Consideration to City for granting this Permit shall be the construction of the intersection for the City at no cost to the City. Fees and rent are hereby waived.
4. Effective Date. This Permit shall be in effect upon execution by City and Permittee and as of the approval date of the City Attorney ("Effective Date") and shall expire on February 1, 2009, or upon completion of Permittee's project and acceptance by City, whichever occurs first.
5. Insurance. Permittee certifies that it is self-insured for public liability and property damage claims in compliance with California Government Code Section 11007.4.
6. Hold Harmless. Permittee agrees to defend, indemnify, protect, and hold City, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Permittee's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the grant of this Permit to the Permittee, the development or operation of the Permit Area or the work and operations to be performed under this Permit, and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of City, its elected officials, officers, representatives, agents and employees.

7. No Discrimination. Permittee shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
8. Permittee's Risk. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
9. Nuisance. Permittee shall not use the Permit Area in any manner which, in the opinion of the Mayor or designee, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
10. Revocable Permit. This Permit is not a lease. It is a license to use City property, revocable at any time by City. It is mutually agreed that City shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this Permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this Permit. City shall have and maintain the right at all times to enter upon the Permit Area in City's sole discretion.
11. Possessory Interest Tax. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Such tax payment shall not reduce any fee paid City under this Permit. Permittee shall pay any tax or assessment before it becomes delinquent.
12. Compliance with Laws. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area.
13. Deposit. Deposit requirement is hereby waived.
14. No Assignment. Permittee shall not assign any rights granted by this Permit or any interest therein without the prior written approval of the Mayor or designee. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the Mayor or designee. Any assignment by operation of law shall automatically terminate this Permit.
15. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the Mayor or designee.

16. Encumbrances. Permittee shall keep the Permit Area free from all encumbrances and liens of any nature during the term of this Permit. Permittee shall defend, hold harmless and indemnify City from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense (including all costs and attorneys' fees), which may be filed or instituted against the Permit Area (including without limitation Permittee's failure or the failure of any contractor or subcontractor hired by Permittee) to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections.
17. Maintenance of the Permit Area. Permittee shall be solely responsible for maintaining the Permit Area in a decent, safe, healthy and sanitary condition at all times during the entire term of this Permit to the satisfaction of the Mayor or designee.
18. Waiver. The failure of City to insist upon strict performance by Permittee of any condition of this Permit, in one or more instances, shall not be construed as a waiver of any such condition, and the same shall remain in full force and effect.
19. Oral Representations. This Permit contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions hereof cannot be changed in any respect except by written agreement between the parties.
20. Grading. Grading and compaction operation shall be done in such a manner that will not disrupt the existing surface drainage pattern and the final grades will not interfere with the existing flow pattern.
21. Irrigation. Irrigation of the Permit Area shall be the sole responsibility of Permittee during the entire term of this Permit.
22. Inspection. City may enter and inspect the operations permitted under this Permit at any time.
23. Hazardous Substances.
 - a. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or other disposing of hazardous substances. "Hazardous Substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

b. If any release of a hazardous substance occurs, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.

c. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental assessments, costs of remediation and removal, and necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

d. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Permit area, PERMITTEE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substances on the Permit Area without CITY'S prior written consent.

24. Legal Proceedings. Should it become necessary for City to commence legal proceedings to collect any payment due hereunder or to enforce any other condition of this Permit, Permittee agrees to pay all legal costs in connection therewith, including reasonable attorneys' fees.

25. Notices.

Notices to City shall be mailed to:

City of San Diego
Real Estate Assets Department
Attention: Deputy Director, Asset Management and Marketing Division
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

Notices to Permittee shall be mailed to:

San Diego Regional Airport Authority
ATTN: Iraj Ghaemi
P.O. Box 82776
San Diego CA 92138-2776

or notices may be delivered to Permittee.

26. Governmental Approvals. By the granting of this Permit, neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Permit Area. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Permit Area.

(REMAINDER OF PAGE LEFT BLANK)

IN WITNESS WHEREOF, this Right of Entry Permit is executed by City, acting by and through its Mayor, and by Permittee, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date: 1/25/08

By: David Sandoval
David Sandoval, Deputy Director

Date: January 2008
APPROVED AS TO FORM:

San Diego County Regional Airport Authority
By: Thella Bowens
Name: Thella Bowens
Title: President/CEO

Date: JAN 09 2008
Edward A. Cahill, Assistant General Counsel

By: E.A. Cahill
Legal Counsel, San Diego County Airport Authority

ENVIRONMENTAL CLEARANCE:

This activity (Right of Entry) is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15304(e). This activity for which this Right of Entry is to be used is covered under Project No. 99-1076, NTC Precise Plan and Local Coastal Plan & Related Entitlements/MWWD Environmental Monitoring and Technical Services Laboratory, MND dated September 14, 2000. The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Therefore, the activity is not a separate project for purposes of CEQA review pursuant to State CEQA Guidelines Section §15060(c)(3) and 15378(c).

City of San Diego Development Services Department
Environmental Analysis Section

BY: Myra Herrmann 3/25/08
Name and Title: Myra Herrmann, Senior Planner

APPROVED AS TO FORM AND LEGALITY:

Date: 3-26-08

MICHAEL J. AGUIRRE, City Attorney

BY: [Signature]
Name and Title: Deputy City Attorney

EXHIBIT "A" - PERMIT AREA

San Diego International Airport

LEGEND:

- PROJECT LIMITS
- TRAFFIC CONTROL WORK CONES
- PROJECT AREA

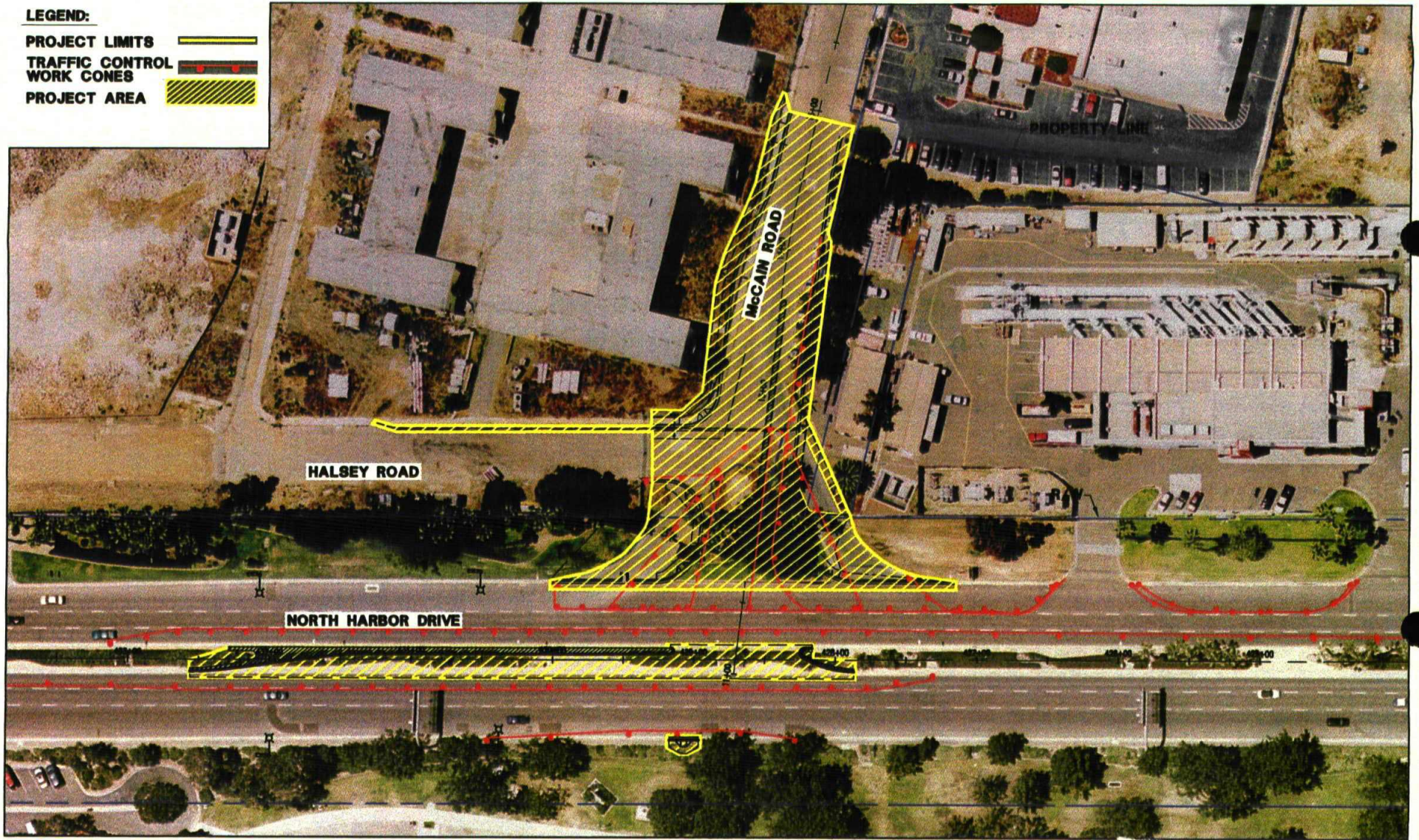


EXHIBIT A

Figure 1
McCain Road Project Limits

**AGREEMENT CONCERNING
REUSE RECOMMENDATIONS FOR CAMP NIMITZ**

THIS AGREEMENT ("Agreement"), dated for purposes of reference only as of November 1, 1996, is made by and between THE CITY OF SAN DIEGO (the "City") and the SAN DIEGO UNIFIED PORT DISTRICT (the "District") based on the following facts:

A. In 1993, the Base Realignment and Closure Commission recommended and Congress and the President approved the closure of a substantial portion of the Naval Training Center military installation ("NTC") located in the City of San Diego, including the area known as Camp Nimitz.

B. The United States Department of Defense selected the City Council of the City (the "City Council") as the Local Redevelopment Authority ("LRA") for the closure of the NTC. The LRA is required to focus primarily on developing a comprehensive redevelopment plan based on local needs. It is required to submit a Preliminary NTC Reuse Plan to the Secretary of the Navy. The LRA is also required to submit a Final NTC Reuse Plan to the Secretary of the Navy after it has prepared an Environmental Impact Report and an Environmental Impact Statement concerning the uses proposed in the Preliminary NTC Reuse Plan.

C. The LRA formed the Naval Training Center Reuse Committee (the "Reuse Planning Committee"), a 26-member citizen advisory group chaired by San Diego Mayor Susan Golding, to study various aspects of the closure of the NTC.

D. The Reuse Planning Committee established a structure of subcommittees to focus and conduct outreach on various aspects of the closure and reuse process, including a subcommittee to study the reuse of Camp Nimitz. The Reuse Planning Committee made recommendations to the LRA.

E. After reviewing the Reuse Planning Committee's recommendations and listening to public testimony, the LRA recommended that (i) the Camp Nimitz site be used to develop a Public Training Safety Institute including a tactical village and an emergency vehicle operations course ("EVOC"); (ii) approximately 19 acres of Camp Nimitz be used to expand Lindbergh Field; and (iii) an area within Camp Nimitz which the U. S. Fish and Wildlife Service ("USFWS") has identified as a least tern nesting site (the "Nesting Site") remain in place as a nesting site, except for minor adjustments to the location of the Nesting Site necessary for the airport expansion.

F. The District objected to the LRA's recommendations on the grounds that airport expansion represents a vital local need and that the acreage designated by the Reuse Planning Committee for airport expansion was insufficient to meet the local needs. The District prepared, but has not yet submitted to the United States Department of Defense and United States Navy, a Public Benefit Conveyance Application in which it requests the United States Navy to convey all of the Camp Nimitz property to the District for the expansion of Lindbergh Field.

G. After further study, the City determined that the Nesting Site and a former landfill on the Camp Nimitz property would pose problems for the construction of the EVOC on Camp Nimitz. The City further determined an alternative location for the EVOC would better meet the local needs for an EVOC.

H. The District and the City have engaged in extensive negotiations to resolve their differences concerning the reuse of Camp Nimitz. These negotiations have resulted in a compromise agreement which will allow for the development on Camp Nimitz of a Public Safety Institute without the EVOC and greater expansion of Lindbergh Field. A map which divides Camp Nimitz into the various use areas agreed to by the parties (the "Compromise Plan") is attached as Exhibit A and incorporated into this Agreement.

I. The City Council approved on October 21, 1996, Resolution No. R-287949, which authorizes the City Manager to sign this Agreement on behalf of the City. The District approved on October 29, 1996, ~~Resolution No.~~ action, which authorizes the Executive Director of the District, Lawrence M. Killeen, to sign this Agreement on behalf of the District.

J. The District and the City have determined that a portion of the design and construction of improvements upon the portion of Camp Nimitz which will be transferred to the City under the NTC Reuse Plan proposed in this Agreement will also benefit the airport.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Compromise Plan. The parties agree that the Compromise Plan represents the best plan for the reuse of Camp Nimitz, taking into account all competing local interests and benefits.

2. Reuse Plan. The City Council, in its capacity as the LRA for the closure of the NTC, shall prepare and submit a preliminary NTC Reuse Plan to the Secretary of the Navy which designates for airport expansion the property identified as airport expansion on Exhibit A.

3. Nesting Site. The City Council, in its capacity as LRA, shall provide in the Preliminary NTC Reuse Plan two (2) land use designations for the Nesting Site. The primary land use designation for the site shall be as a least tern nesting site; the alternative land use designation shall be for further airport expansion. The City and the District shall cooperate in negotiations with the USFWS to make the airport expansion the primary land use designation for the Nesting Site. The District shall be solely responsible for eliminating or relocating the Nesting Site to the satisfaction of the USFWS to implement airport expansion.

4. Airport Expansion. The District shall revise its Public Benefit Conveyance Application to reflect the boundaries designated for airport expansion on Exhibit A. If at any time in the future, land conveyed to the District for airport expansion under its Public Benefit Conveyance Application is no longer used for airport purposes and reverts to the federal government as required by the Public Benefit Conveyance Restrictions, the District shall cooperate with the City concerning any application by the City to gain title to any such surplus property.

5. Tidelands Issues. The District shall cooperate with the City concerning any future negotiations between the City and the California State Lands Commission regarding tidelands trust issues related to the use of the property to be conveyed to the City under the Compromise Plan. The District shall affirmatively state that at this time it has identified a need for only those portions of Camp Nimitz identified on Exhibit A and the Nesting Site for use by the District for airport expansion.

6. Airport-Related Improvements. The District shall appropriate and spend a minimum of Two Million Dollars (\$2,000,000) for the design and construction of improvements related to airport needs on those portions of Camp Nimitz conveyed to the City. The City and the District shall agree upon how the funds shall be used, consistent with the terms of this paragraph. The District's obligations under this paragraph are contingent upon the conveyance to the District of both (a) those portions of Camp Nimitz identified on Exhibit A and (b) the Nesting Site for use by the District for airport expansion. Any expenditures by the District for design and construction of improvements at Camp Nimitz on the land conveyed to the City which occur prior to the conveyance of the Nesting Site shall be credited against the District's obligations under this paragraph.

7. McCain Road. McCain Road shall remain open for use by both the City and the District. McCain Road may realigned upon written agreement of the City and the District.

8. Lindbergh Field Master Plan. The City shall provide assistance to the District in the preparation of the Lindbergh Field Master Plan. The District shall reimburse up to Three Hundred Thousand Dollars (\$300,000) of the costs incurred by the City assisting in the Lindbergh Field Master Plan process. The City's assistance in the preparation of the Lindbergh Field Master Plan may include, at the District's discretion, the following:

(a) Technical review and assistance working with the District's Airport Master Planning Team;

(b) Planning studies and analyses (land use, transportation, urban design) to address the impacts of the airport master plan in adjacent City neighborhoods: Uptown, Old San Diego, Midway-Pacific Highway Corridor, Peninsula, as well as NTC and the northern part of Centre City;

(c) Liaison, at the request of the District, with concerned Community Planning groups and organizations, including arranging meetings, facilitating workshops and interpreting community impacts; and

(d) Planning, zoning, and regulatory actions that may be required as the result of the Lindbergh Field Master Plan recommendations on adjacent city areas. This could include Community and General Plan amendments, rezonings, and similar actions.

8. General Provisions.

(a) California Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of California. This Agreement was entered into in San Diego, California.

(b) Successors and Assigns. The City and the District each binds itself, its successors and assigns to the other party and to the successors and assigns of the other party with respect to all covenants, agreements and obligations contained in this Agreement.

(c) Third Parties. This Agreement shall not create any rights in third parties and no provisions of this Agreement shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the parties to this Agreement.

(d) Interpretation. No provision of this Agreement shall be interpreted against any party because that party or its legal representative drafted that provision.

(e) Invalidity. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms, conditions or provisions of this Agreement shall continue to be valid and binding on the parties.

(f) Attorneys' Fees. If either party to this Agreement shall bring any action, suit, counterclaim, appeal, arbitration or mediation for any relief against the other, declaratory or otherwise, to enforce the Agreement (collectively, "Action"), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award.

(g) Notices. All notices, requests, demands and other communications required to or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given (a) when hand delivered to the other party addressed as set forth below; or (b) when received when sent by facsimile at the address and number set forth below (provided, however, that notices given by facsimile shall not be effective unless either (i) a duplicate copy of such facsimile notice is promptly given by depositing same in a United States post office with first-class postage prepaid and addressed to the parties as set forth below, or (ii) the receiving party delivers a written confirmation of receipt for such notice either by facsimile or any other method permitted under this section; additionally, any notice given by facsimile shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a non-business day; or (c) three business days after the same have been deposited in a United States post office with first-class or certified mail return receipt requested postage prepaid and addressed to the parties as set forth below; or (d) the next business day after same have been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express and DHL WorldWide Express being deemed approved by the parties), postage prepaid, addressed to the

representations or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.

(j) Amendments. No amendment, modification or supplement to this Agreement shall be binding on any of the parties unless it is in writing and signed by the parties in interest at the time of the modification.

(k) Further Assurances. The parties shall at their own cost and expense execute and deliver further documents and instruments and shall take other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

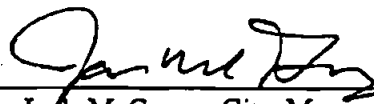
(l) Counterparts. This Agreement may be executed in two or more counter-parts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of the completely executed counterparts shall be sufficient proof of this Agreement.

(m) Advice of Counsel. The undersigned each acknowledge and represent that they are executing this Agreement after having received full legal advice as to their rights from legal counsel of their choice. Each of the undersigned further represent that they have each read this Agreement in its entirety, understand all of its terms and provisions, and sign this Agreement voluntarily and of their own free will.

"CITY"

THE CITY OF SAN DIEGO

Date: 12-20-96

By: 
Jack McGrory, City Manager

"DISTRICT"

SAN DIEGO UNIFIED PORT DISTRICT

Date: December 2, 1996

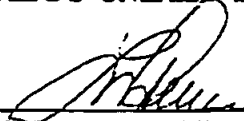
By: 
Lawrence M. Killeen, Executive Director

EXHIBIT A

