AGREEMENT BETWEEN CITY OF CORONADO AND THE CITY OF IMPERIAL BEACH CONCERNING THE PROVISION OF EXTRATERRITORIAL MUNICIPAL SERVICES

THIS AGREEMENT (this "Agreement"), by and between the City of Coronado ("Coronado") and the City of Imperial Beach ("Imperial Beach") is entered into this 20th of April 2016 (the "Effective Date"). Coronado and Imperial Beach are referred to collectively as the "Parties" and each as a "Party"

RECITALS

A. The Navy is pursuing the development of the Naval Base Coronado, Coastal Campus project, an academic campus to support operational readiness of Naval Special Warfare Command personnel at Coronado, California (the "Coastal Campus"). The Coastal Campus is proposed on a 548-acre property the Navy owns within the territorial boundaries of the City of Coronado.

B. The City of Imperial Beach has provided sewer service to the site pursuant to an agreement with the Navy from October 3, 1967 or earlier (the "Existing Agreement"), in which Imperial Beach agreed to serve the Naval Radio Station, Imperial Beach.

C. The Navy asserts that the Existing Agreement requires Imperial Beach to serve the Coastal Campus, despite it being outside of Imperial Beach's territorial boundaries and within Coronado's territorial boundaries.

D. Coronado disputes the position of the Navy and believes that Imperial Beach is not authorized to serve the Coastal Campus site because the Existing Agreement is limited to the original development contemplated in 1967; because the Existing Agreement is invalid; and because Imperial Beach needs the approval of the San Diego Local Agency Formation Commission ("LAFCO") in order to provide services outside its boundaries under California Government Code section 56133.

E. Notwithstanding Recital D above, the City of Imperial Beach has determined that the Existing Agreement is in effect and binding, and is willing to provide sewer service consistent with the agreement unless the Navy chooses to terminate the agreement.

F. Coronado has filed litigation against LAFCO and Imperial Beach in San Diego County Superior Court entitled *City of Coronado v. San Diego LAFCO, et al,* Case No. 37-2016-00000183-CU-WM-CTL, which may or may not be amended in the future to include additional parties and/or claims, seeking a judicial determination that LAFCO approval is required before Imperial Beach can serve territory within Coronado's boundaries ("the Litigation").

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G. Imperial Beach and Coronado respect one another's boundaries and their respective rights to decide how municipal services are provided within their boundaries, and Imperial Beach is prepared to provide service within Coronado only because it believes it is obligated to do so under the Existing Agreement. Imperial Beach, in furtherance of this stance, takes no position on whether LAFCO approval is required before it serves the Coastal Campus.

H. This Agreement serves to resolve the parties' differences to the extent possible under the circumstances and to state a future policy regarding the provision of extraterritorial services.

AGREEMENT

1. **Dismissal from Litigation; Imperial Beach Neutrality in Litigation if Renamed.** Coronado agrees to dismiss Imperial Beach from the Litigation without prejudice. Should another party file a motion that asserts that Imperial Beach is a necessary party in the Litigation, as now pending or may be pending in some other court in the future, Coronado may amend the petition and complaint to include Imperial Beach as a party. If it becomes a party to the Litigation, Imperial Beach intends, but is not necessarily obligated, to take a neutral position in the Litigation, which stance reflects its respect for Coronado's boundaries and the Navy's position on its obligations under the Existing Agreement, and will provide reasonable notice to Coronado of the content of any documents before filing with the Court.

2. **Agreement Regarding Extraterritorial Municipal Service.** To the extent consistent with their presently existing contractual obligations to third parties, Coronado and Imperial Beach agree not to provide extraterritorial municipal services within the territory of the other city without the express written consent of the other city.

3. **Possible Service to Coastal Campus.** Notwithstanding anything to the contrary in section 2, should Imperial Beach provide sewer service to the Coastal Campus pursuant to the Existing Agreement, despite Coronado's efforts to stop it through the Litigation or otherwise, Imperial Beach agrees to the following terms.

3.1 *No Assignment.* Imperial Beach agrees not to authorize the assignment of the Existing Agreement or the rights under it to any other party, without consultation and written consent from the City of Coronado.

3.2 *Process on Navy's Change in Use or Geographical Extent of Sewer Service.* Imperial Beach agrees that, should the Navy propose to, or actually does, use Imperial Beach sewer service to the Coastal Campus site for a use other than Navy operations and training or on a portion of the Coastal Campus site outside the "Boundary of Developable Area" depicted on Exhibit A, it will promptly meet and confer in good faith with Coronado prior to committing to provide such service. Nothing in this paragraph is

intended to supersede any obligations Imperial Beach may have under the Existing Agreement.

3.2.1 The following are expressly excluded from the definition of "Navy operations and training" as used in this paragraph:

(a) housing or lodging, whether temporary or transient;

(b) exchanges and commissaries, except "mini-marts";

(c) transfers to and use by other federal, state, and local agencies; and

(d) transfers to and use by private parties.

3.3 *Coronado Retains Value of Wastewater.* The parties agree that wastewater has value as a commodity and that, as between Coronado and Imperial Beach, Coronado should have a right to any value derived from the wastewater discharged to the Imperial Beach system from the Coastal Campus. In particular, Imperial Beach agrees that, should Imperial Beach sell its wastewater collection system, or the rights to wastewater flow, to a private entity or public entity, the portion of sales price attributable to the value of wastewater stream from the Coastal Campus shall be paid to Coronado. Should Imperial Beach and Coronado be unable to agree upon the amount of such payment, they will jointly retain an valuation expert to offer an opinion of the value of the wastewater stream. The amount identified by the expert shall be placed in an escrow account and shall not be released until the Imperial Beach and Coronado have agreed upon a sales price, upon which the Coronado and Imperial Beach shall negotiate in good faith.

3.4 *Indemnity*

3.4.1 *Compliance with Wastewater Regulations.* Imperial Beach agrees to comply with all aspects of federal and state law governing the handling of wastewater, including complying with all applicable permit requirements, including, but not limited to Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (State Water Resources Control Board Order No. 2006-0003-DWQ). Imperial Beach agrees to cooperate with Coronado's efforts to obtain regulatory agency acknowledgment of Coronado's non-responsibility for the sewer system that would serve the Coastal Campus site. The obligation to cooperate under this section includes executing and delivering documents that acknowledge responsibility for the operation and maintenance of the sewer system that serves the Coastal Campus.

3.4.2 *Coronado Held Harmless.* To the extent permitted by law, Imperial Beach shall, at its sole expense, and with counsel reasonably acceptable to Coronado, indemnify, defend, and hold harmless Coronado and its elected and appointed

officers, officials, employees, contractors, agents and representatives from and against any and all Claims arising out of or relating directly to Imperial Beach's maintenance, operation, and use of the sewer system on the Coastal Campus site.

(a) "Claims" as used in this section means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorney fees actually incurred) associated with Imperial Beach's maintenance, operation, and use of the sewer system on the Coastal Campus site. Without limiting the foregoing, "Claims" expressly includes liability and costs of any kind arising from sewer system overflows, whether in the form of regulatory enforcement, a "citizen suit" under 33 U.S.C. §1365(a), or claims from those directly harmed by the overflow due to Imperial Beach's maintenance, operation, and use of the sewer system on the Coastal Campus site.

4. General Provisions

4.1 *Notices.* All notices, including requests, demands, approvals and other communications, under this Agreement must be in writing. Communications shall be deemed to be effective upon the first to occur of: (i) actual receipt by a Party's authorized representative; (ii) actual receipt at the address designated below; and (iii) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The parties may modify their respective contact information identified in this section by providing notice to the other parties. The place for delivery of all notices given under this Agreement will be as follows:

Coronado: City of Coronado
1825 Strand Way
Coronado, CA 92118
Attention: City Manager

Imperial Beach: City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932
Attention: City Manager

4.2 *Counterparts.* The Parties recognize and agree that separate counterpart signature pages may be used but that all such pages constitute one and the same Agreement.

4.3 *Construction.* The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the Parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties,

but rather as if both Parties have prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. Accordingly, neither Party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of this Agreement. The recitals to this Agreement are, and shall be enforceable as, a part of this Agreement.

4.4 *Waiver.* A waiver or breach of any covenant or provision in this Agreement will not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver will be valid unless in writing and executed by the waiving Party.

4.5 *No Third Party Beneficiaries.* Nothing in this Agreement is intended, nor shall it be construed, to create rights inuring to the benefit of third parties.

4.6 *Severability.* If any term or provision of this Agreement is, to any extent, held invalid or unenforceable by a court of competent jurisdiction, this Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this section shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.

4.7 *Applicable Law; Venue.* The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Diego.

4.8 *Entire Agreement.* This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the subject matter described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral.

4.9 *Assignment and Delegation.* This Agreement, and any portion hereof, shall not be assigned or transferred, nor shall all or any part of a Party's duties be delegated, without the written consent of the other Party. Any attempt to assign or delegate this Agreement or any part hereof without the prior written consent of the other Party shall be void and of no force or effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment.

4.10 *Amendment; Waiver.* This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties. Waiver of a breach or Default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.11 *Signatures*. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of their respective legal entities. This Agreement shall inure to the benefit of and is binding upon the Parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

CITY OF CORONADO

By: _____
Blair King, City Manager

ATTEST:

_____
City Clerk

CITY OF IMPERIAL BEACH

By: _____
Andy Hall, City Manager

ATTEST:

_____
City Clerk

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Developable Area Plan

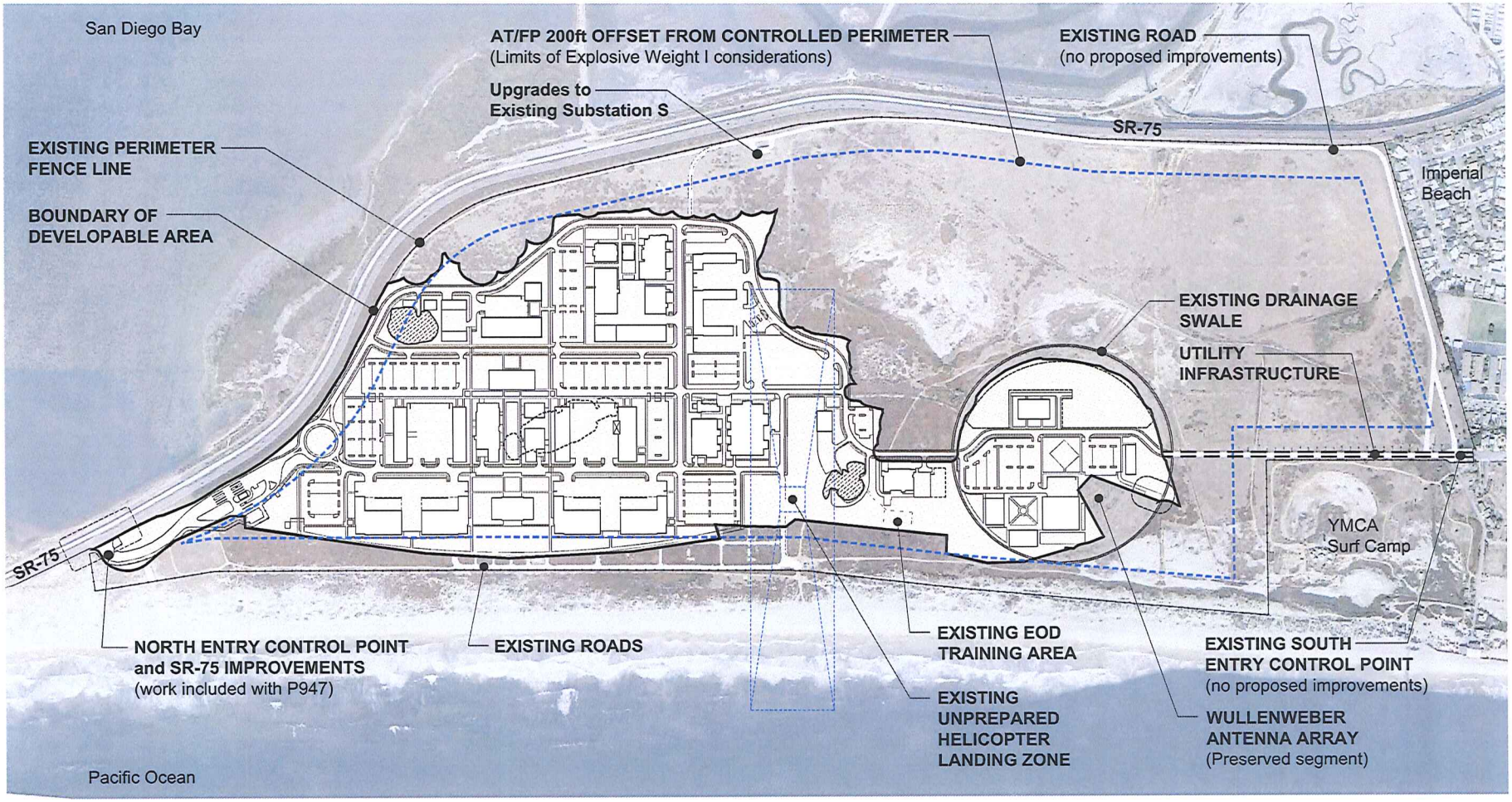

Exhibit A