

Jim Anderson

From: Jim Anderson [jra@andersonpacificllc.com]
Sent: Thursday, December 16, 2010 5:05 PM
To: 'Ed Balico'; john@johndelgado.com; johndelgado@yahoo.com; myrnaldevera@aol.com; joanne@joanneward.com; Don Kuehne; Joanne M. Ward
Cc: 'Ethan Sischo'; 'Ryan Altoon'; Steven C. Crooke Esq.; Edgar Pankey; Lila Pankey Ray; 'Nelson Oliva'; 'Mick Cabral'
Subject: Hercules Bayfront - Proposed Resolutions for Adoption on December 21, 2010.
Follow Up Flag: Follow up
Due By: Friday, December 17, 2010 12:00 AM
Flag Status: Red
Attachments: HER 2010-12-16 - CC Eminent Domain Resolution.DOC; HER 2010-12-16 - RDA Eminent Domain Resolution.DOC; Principles for MOU (63.3 KB); MOU for December 14, 2010 City Council Meeting (83.4 KB); HER 2010-12-16 - CC Eminent Domain Resolution.pdf; HER 2010-12-16 - RDA Eminent Domain Resolution.pdf

December 16, 2010

Mayor Balico and Honorable Councilmembers:

To further my comments to you last Tuesday evening, Hercules Bayfront, LLC (“HBL”), is at a critical crossroads in determining how it will proceed with the Waterfront Project. Years have passed without resolution to significant matters involving land transactions, financial structures, schedules, and other related items. 2010 has been a tumultuous year in Hercules culminating in an especially volatile environment which has heightened our concerns and need for resolution.

HBL will no longer tolerate the ongoing threat of the City/Agency pursuing eminent domain over any portion of our property. HBL is willing to pursue the Waterfront Project as planned for both the private development and public uses, such as the Intermodal Transit Center, however only on a cooperative and negotiated basis. The City/Agency pursuing eminent domain is not cooperative and it is not negotiating. Pursuing eminent domain is offensive, time consuming and counter-productive given our good faith attempts to negotiate with the City/Agency.

As such, while we would like to execute a Memorandum of Understanding similar to the draft submitted to the City Manager last week, we must now substitute the attached resolutions for the intended language in Item 16 for consideration at the forthcoming Council/Agency meeting on December 21, 2010. The sole purpose of the resolutions is to effectively take eminent domain “off the table” so we can focus our efforts on solving project challenges in a cooperative basis.

We are also enclosing the two emails enclosing the “Bayfront Public Private Cooperation Principles” and the Memorandum of Understanding and Agreement between the City of Hercules, The Redevelopment Agency of Hercules, and Hercules Bayfront, LLC” which had been intended to be approved on December 14, 2010.

I look forward to hearing any comments you may have and I will be present at the next Council/Agency meeting on December 21, 2010.

Respectfully yours,

Hercules Bayfront, LLC
a Delaware limited liability company

by: APL-Hercules, LLC
a Delaware limited liability company, Manager

12/16/2010

by: Anderson Pacific, LLC
a Delaware limited liability company, Manager

by: James R. Anderson
Managing Member

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES,
CALIFORNIA PROHIBITING THE USE OF EMINENT DOMAIN TO
ACQUIRE FEE, EASEMENT, OR OTHER INTERESTS IN REAL PROPERTY
IN THAT CERTAIN DEFINED REAL PROPERTY COMMONLY KNOWN AS
THE HERCULES BAYFRONT PROPERTY**

WHEREAS, the City of Hercules is a municipal corporation and general law city of the State of California (“City”); and

WHEREAS, the City has certain powers including the power to acquire interests in real property through the use of the power of eminent domain subject to procedures required by law; and

WHEREAS, the City also has the power to restrict its authority to acquire interests in real property by the exercise of the power of eminent domain, including prohibiting altogether the use of eminent domain with respect to specifically identified real property; and

WHEREAS, a large and important tract of real property, known as the Hercules Bayfront property, exists in the City and is owned by a private party or parties; and

WHEREAS, the City Council, by adoption of this Resolution, has determined that in order for public improvements to be installed on, abutting, or adjacent to the Hercules Bayfront property in an effective manner, it is necessary for the City to work cooperatively with the property owner to define and determine real property required for such public improvements and to do so without a threat by the City to acquire portions of the Hercules Bayfront property through the exercise of City’s power of eminent domain or condemnation;

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

Section 1. The foregoing Recitals are true and correct and are incorporated herein.

Section 2. The City Council hereby finds, determines, and declares that the City and all City-affiliated entities are prohibited from acquiring fee, easement, or other interests in the real property legally defined in Exhibit “A” attached hereto and by this reference made a part hereof, through the exercise of the City’s power of eminent domain. If any portion of the real property legally defined in Exhibit “A” is conveyed or otherwise transferred by the owner of such portion to a governmental entity, the portion so conveyed or transferred shall not be included in the prohibition set forth in this Section 2. As used herein, the term “City-affiliated entities” means any entity possessing the power of eminent domain the governing board of which is composed solely of the members of City Council of the City or which is composed solely of members appointed by the City Council of the City. The owner of a parcel within the real property legally defined in Exhibit “A” may, in its sole and absolute discretion, waive in writing the prohibition set forth in this Section 2 so as to consent to the City’s acquisition of such parcel or portion of such parcel through the exercise of the City’s power of eminent domain. Nothing

in this Section 2 shall affect the rights of the City and any property owner to convey or transfer any real property through a negotiated conveyance or transfer.

Section 3. No repeal or modification or amendment to this Resolution shall be made unless there has been a hearing before the City Council on such repeal, modification, or amendment, with all property owners of the property defined in Exhibit "A" having been given not less than thirty (30) days prior written notice of such hearing.

PASSED, APPROVED, AND ADOPTED this 21st day of December, 2010.

Ed Balico, Mayor

CITY OF HERCULES }
STATE OF CALIFORNIA } .ss

I, Doreen Mathews, City Clerk of the City of Hercules, do hereby certify that the foregoing Resolution was adopted by the City Council of the City of Hercules at a _____ meeting of the City Council of the City of Hercules held on December 21, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Doreen Mathews, City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

[SEE FOLLOWING PAGES]

EXHIBIT "A"

HERCULES BAYFRONT, LLC

LEGAL DESCRIPTION

Real property in the City of Hercules, County of Contra Costa, State of California, described as follows:

TRACT ONE:

PARCELS A, B, C AND D, AS SHOWN ON THE PARCEL MAP MS 491-03, FILED MARCH 10, 2004 IN BOOK 189 OF PARCEL MAPS, AT PAGE 40, OFFICIAL RECORDS.

TRACT TWO:

PARCEL D AND LOT 200, AS SHOWN ON THE MAP OF SUBDIVISION 8407, FILED DECEMBER 19, 2001, IN BOOK 437 OF MAPS, PAGE 31, AND AS AMENDED BY AMENDED SUBDIVISION MAP 8407, FILED JANUARY 27, 2003, IN BOOK 451 OF MAPS, PAGE 14, AND AS CORRECTED BY CERTIFICATES OF CORRECTION RECORDED DECEMBER 11, 2002 AS INSTRUMENT NO. 2002-471412, AND RECORDED DECEMBER 9, 2003 AS INSTRUMENT NO. 2003-594591, AND RECORDED APRIL 06, 2007 AS INSTRUMENT NO. 2007-100623, CONTRA COSTA COUNTY RECORDS.

EXCEPTING FROM A PORTION OF SAID LAND:

"ALL OIL, GAS, CASINGHEAD GASOLINE AND HYDROCARBONS AND MINERAL SUBSTANCES BELOW A POINT 500 FEET BELOW THE SURFACE OF ALL THAT PROPERTY AS SHOWN ON PARCEL MAP NO. 1012, RECORDED JANUARY 17, 1978 IN BOOK 61 OF PARCEL MAPS, PAGES 50, 51 AND 52, CONTRA COSTA COUNTY RECORDS, TOGETHER WITH THE RIGHT TO TAKE, REMOVE, MINE AND DISPOSE OF ALL SAID OIL, GAS, CASINGHEAD GASOLINE AND OTHER HYDROCARBONS AND MINERALS BUT WITHOUT ANY RIGHT WHATSOEVER TO ENTER UPON THE SURFACE OF SAID LAND OR UPON ANY PART OF SAID LAND WITHIN 500 FEET OF THE SURFACE", AS GRANTED IN THE DEED TO TAURUS BUILDING COMPANY, A CALIFORNIA CORPORATION, RECORDED OCTOBER 3, 1979, BOOK 9555, PAGE 583, OFFICIAL RECORDS.

TRACT THREE:

LOT 16, AND PARCELS .A. & .B., AS SHOWN ON THE MAP OF SUBDIVISION 8644 FILED FEBRUARY 25, 2004, IN BOOK 461 OF MAPS, PAGE 24, CONTRA COSTA COUNTY RECORDS.

TRACT FOUR:

PARCEL ONE:

PARCEL D, AS SHOWN ON M.S. 476-00, FILED OCTOBER 12, 2000, BOOK 179 OF PARCEL MAPS, AT PAGE 38, CONTRA COSTA COUNTY RECORDS.

PARCEL TWO:

PARCELS SEVEN AND EIGHT, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.

PARCEL THREE:

A RIGHT-OF-WAY 25 FEET WIDE IN THE DEED FROM HERCULES POWER COMPANY, A

CORPORATION, RECORDED MAY 19, 1965, BOOK 4871, PAGE 223, OFFICIAL RECORDS, "FOR PIPE LINE OR PIPE LINES AND ACCESSORY FACILITIES, ON, OVER AND UNDER THE LAND DESCRIBED ABOVE TO GRANTOR'S FORMER NORTHEASTERLY BOUNDARY LINE ALONG AND ACROSS A ROUTE ADJACENT TO AN PARALLEL WITH THE EASTERLY BOUNDARY OF THE SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY."

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT, GRANTED IN THE DEED TO VALLEY NITROGEN PRODUCERS, INC., A CALIFORNIA CORPORATION, RECORDED OCTOBER 1, 1976, BOOK 8038, PAGE 797, OFFICIAL RECORDS, FOR INGRESS AND EGRESS FOR PEDESTRIAN AND VEHICULAR TRAFFIC OVER A STRIP OF LAND 50 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

"COMMENCING AT A POINT ON THE GENERAL NORTHWESTERLY LINE OF SAN PABLO AVENUE AS SHOWN ON SAID POINT BEING THE EASTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 5 OF SAID RECORD OF SURVEY AS N 72° 14' 02" E., 524.16 FEET; THENCE, FROM SAID POINT OF COMMENCEMENT, EASTERLY ALONG SAID NORTHERLY LINE OF SAN PABLO AVENUE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 949.57 FEET, FROM A TANGENT BEARING OF N. 53° 42' 48" E., THROUGH A CENTRAL ANGLE OF 3° 57' 46" AN ARC DISTANCE OF 65.67 FEET TO THE TRUE POINT OF BEGINNING OF THE CENTER LINE HEREIN DESCRIBED; THENCE N. 49° 03' 02" W., 3089.49 FEET TO A POINT IN THE GENERAL EASTERLY LINE OF PARCEL ONE AS SHOWN ON SHEET 2 OF THE MAP ENTITLED "PARCEL MAP 1006", FILED SEPTEMBER 15, 1976, IN BOOK 48 OF PARCEL MAPS, AT PAGES 6 THROUGH 8 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, FROM WHICH THE SOUTHWESTERLY TERMINUS OF THE COURSE AS SHOWN ON THE SAID PARCEL MAP AS N. 49° 30' 00" E., 1500.00 FEET, BEARS S. 49° 30' 00" W., 100.00 FEET, BEING A PORTION OF THAT CERTAIN 436.48 ACRE PARCEL OF LAND, AS SHOWN ON SHEETS 3 THROUGH 6 OF THAT CERTAIN RECORD OF SURVEY FILED AUGUST 15, 1974, IN BOOK 57 OF L.S.M., AT PAGE 23, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY."

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT, GRANTED IN THE DEED TO VALLEY NITROGEN PRODUCERS, INC., A CALIFORNIA CORPORATION, RECORDED OCTOBER 1, 1976, BOOK 8038, PAGE 797, OFFICIAL RECORDS, FOR INGRESS AND EGRESS, FOR PEDESTRIAN AND VEHICULAR TRAFFIC, OVER A STRIP OF LAND 50 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

"BEGINNING A POINT IN THE GENERAL NORTHERLY LINE OF SAN PABLO AVENUE, FROM WHICH THE SOUTHWESTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 6 OF SAID RECORD OF SURVEY AS N. 53° 26' 00" E., 300.62 FEET, BEARS S. 53° 26' 00" W., 25.09 FEET; THENCE FROM SAID POINT OF BEGINNING, N. 31° 45' 00" W., 516.72 FEET TO A POINT ON THE GENERAL SOUTHEASTERLY LINE OF PARCEL ONE OF SAID PARCEL MAP 1006, FROM WHICH THE NORTHEASTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 3 OF SAID PARCEL MAP AS N. 58° 15' 00" E., 956.07 FEET, BEARS S. 58° 15' 00" W., 274.47 FEET, BEING A PORTION OF THAT CERTAIN 436.48 ACRE PARCEL OF LAND, AS SHOWN ON SHEETS 3 THROUGH 6 OF THAT CERTAIN RECORD OF SURVEY, FILED AUGUST 15, 1974, IN BOOK 57 OF L.S.M., AT PAGE 23, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY."

PARCEL SIX:

PARCEL FIVE, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.
EXCEPTING THEREFROM:

1. "UNDIVIDED TWENTY-FIVE PERCENT (25%) OF ALL OIL, GAS AND OTHER HYDROCARBONS AND ANY OTHER MINERALS OR MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED, UNDERLYING THAT PORTION OF THE LAND DESCRIBED SITUATED BELOW THE SURFACE THEREOF, SPECIFICALLY INCLUDING THE RIGHT TO EXPLORE, DRILL FOR, PRODUCE, EXTRACT, TREAT, REMOVE AND MARKET OIL, GAS AND OTHER HYDROCARBONS AND MINERALS THEREFROM BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF THE LAND DESCRIBED ABOVE FOR ANY SUCH PURPOSES", AS RESERVED IN THE DEED FROM HERCULES POWER COMPANY, RECORDED JUNE 2, 1965, BOOK 4880, PAGE 541, OFFICIAL RECORDS.

2. "THE REMAINING 75% OF 100% OF THE OIL, GAS AND OTHER HYDROCARBONS TOGETHER WITH THE RIGHT TO EXPLORE, DRILL FOR, USING SLANT DRILLING METHODS, PASS IN, UNDER OR THROUGH SAID LAND, PRODUCE, EXTRACT, TREAT, REMOVE, MARKET OIL, GAS AND OTHER HYDROCARBONS, BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF SAID LAND DESCRIBED FOR ANY SUCH PURPOSE," AS RESERVED IN THE DEED FROM AMINOIL HOLDINGS, INC., A CORPORATION, RECORDED AUGUST 15, 1979, BOOK 9487, PAGE 496, OFFICIAL RECORDS.

PARCEL SEVEN:

PARCELS FOUR AND SIX AS SHOWN ON PARCEL MAP MSH-1 FILED APRIL 22, 1974, IN BOOK 33 OF PARCEL MAPS AT PAGE 16, AND MORE PARTICULARLY DESCRIBED AS ADJUSTED PARCEL 4, PARCEL MAP MSH-1 33 PM 16, IN THAT CERTAIN CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT RECORDED JANUARY 31, 2000 AS INSTRUMENT NO. 2000-19349 OF OFFICIAL RECORDS, CONTRA COSTA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF SAID PARCEL 4 (33 PM 16): THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINES OF SAID PARCEL 4, THE FOLLOWING COURSES:

SOUTH 37° 46' 59" EAST 317.38 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1,710.68 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 49° 34' 15" EAST; THENCE FROM SAID POINT OF BEGINNING SOUTHWESTERLY 328.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 00' 04"; THENCE SOUTH 51° 25' 49" WEST 341.51 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1,190.19 FEET; THENCE SOUTHWESTERLY 77.35 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03° 43' 25" THENCE NORTH 49° 30' 00" WEST 27.37 FEET; THENCE NORTH 17° 28' 00" WEST 56.60 FEET; THENCE NORTH 73° 18' 00" WEST 20.90 FEET; THENCE SOUTH 15° 04' 00" WEST 26.90 FEET; THENCE SOUTH 51° 20' 00" WEST 12.80 FEET; THENCE SOUTH 15° 57' 00" WEST 58.20 FEET; THENCE SOUTH 58° 24' 00" WEST 15.30 FEET; THENCE SOUTH 19° 32' 00" EAST 32.90 FEET; THENCE SOUTH 01° 22' 40" WEST 44.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 1,190.19 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS NORTH 48° 44' 56" WEST; THENCE SOUTHWESTERLY 411.81 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19° 49' 29"; THENCE SOUTH 21° 25' 35" WEST 369.99 FEET TO THE BEGINNING A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 3,393.16 FEET, THENCE SOUTHWESTERLY 429.44 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 15' 05" TO THE EXTERIOR LINE OF SAID PARCEL SIX BEING THE BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 3,393.16 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 61° 19' 20" EAST; THENCE LEAVING SAID EXTERIOR LINE OF PARCEL 4 ALONG SAID EXTERIOR LINE OF PARCEL SIX, THE FOLLOWING COURSES:

SOUTHWESTERLY 439.57 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 25' 21" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1,101.50 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 53° 53' 59" EAST; THENCE SOUTHWESTERLY 673.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35° 02' 23"; THENCE SOUTH 71° 08' 24" WEST 558.13 FEET; THENCE NORTH 47° 01' 00" WEST 10.32 FEET; THENCE NORTH 76° 06' 00" WEST 108.21 FEET; THENCE SOUTH 87° 00' 00" WEST 114.21 FEET; THENCE SOUTH 81° 00' 00" WEST 160.01 FEET; THENCE NORTH 77° 24' 00" WEST 87.11 FEET; THENCE NORTH 49° 11' 00" WEST 87.21 FEET; THENCE NORTH 56° 59' 00" WEST 47.70 FEET; THENCE NORTH 43° 31' 00" WEST 164.11 FEET; THENCE NORTH 67° 10' 00" WEST 103.11 FEET; THENCE NORTH 26° 34' 00" WEST 80.51 FEET; THENCE NORTH 61° 05' 00" WEST 76.51 FEET; THENCE SOUTH 82° 37' 00" WEST 108.91 FEET; THENCE NORTH 66° 48' 00" WEST 38.10 FEET; THENCE NORTH 85° 11' 00" WEST 95.31 FEET; THENCE NORTH 48° 16' 00" WEST 49.60 FEET; THENCE NORTH 63° 20' 00" EAST 76.01 FEET; THENCE NORTH 86° 45' 00" EAST 89.01 FEET; THENCE SOUTH 83° 55' 00" EAST 85.01 FEET; THENCE SOUTH 67° 10' 00" EAST 152.01 FEET; THENCE SOUTH 78° 00' 00" EAST 116.01 FEET; THENCE SOUTH 87° 35' 00" EAST 71.00 FEET; THENCE NORTH 73° 35' 00" EAST 329.02 FEET; THENCE NORTH 70° 20' 00" EAST 149.01 FEET; THENCE NORTH 59° 35' 00" EAST 516.04 FEET; THENCE NORTH 55° 10' 00" EAST 436.03 FEET; THENCE NORTH 51° 15' 00" EAST 291.02 FEET; THENCE NORTH 41° 55' 10" EAST 172.25 FEET TO SAID EXTERIOR LINE OF SAID PARCEL FOUR; THENCE LEAVING SAID EXTERIOR LINE OF SAID PARCEL SIX ALONG THE EXTERIOR LINES OF SAID PARCEL FOUR THE FOLLOWING COURSES:

NORTH 35° 49' 50" EAST 127.73 FEET; THENCE NORTH 28° 40' 00" EAST 231.02 FEET; THENCE NORTH 37° 15' 00" EAST 58.00 FEET; THENCE NORTH 43° 10' 00" EAST 221.02 FEET; THENCE NORTH 33° 40' 00" EAST 119.01 FEET; THENCE NORTH 22° 40' 00" EAST 86.01 FEET; THENCE NORTH 30° 45' 00" EAST 158.01 FEET; THENCE NORTH 27° 40' 00" EAST 136.01 FEET; THENCE NORTH 35° 35' 00" EAST 91.01 FEET; THENCE NORTH 52° 10' 00" EAST 62.00 FEET; THENCE NORTH 56° 55' 00" EAST 345.02 FEET; THENCE NORTH 48° 42' 00" EAST 142.01 FEET; THENCE NORTH 37° 55' 00" EAST 182.01 FEET; THENCE NORTH 45° 35' 00" EAST 82.39 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

1. "UNDIVIDED TWENTY-FIVE PERCENT (25%) OF ALL OIL, GAS AND OTHER HYDROCARBONS AND ANY OTHER MINERALS OR MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED, UNDERLYING THAT PORTION OF THE LAND DESCRIBED SITUATED BELOW THE SURFACE THEREOF, SPECIFICALLY INCLUDING THE RIGHT TO EXPLORE, DRILL FOR, PRODUCE, EXTRACT, TREAT, REMOVE AND MARKET OIL, GAS AND OTHER HYDROCARBONS AND MINERALS THEREFROM BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF THE LAND DESCRIBED ABOVE FOR ANY SUCH PURPOSES", AS RESERVED IN THE DEED FROM HERCULES POWER COMPANY, RECORDED JUNE 2, 1965, BOOK 4880, PAGE 541, OFFICIAL RECORDS.

2. "THE REMAINING 75% OF 100% OF THE OIL, GAS AND OTHER HYDROCARBONS TOGETHER WITH THE RIGHT TO EXPLORE, DRILL FOR, USING SLANT DRILLING METHODS, PASS IN, UNDER OR THROUGH SAID LAND, PRODUCE, EXTRACT, TREAT, REMOVE, MARKET OIL, GAS AND OTHER HYDROCARBONS, BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF SAID LAND DESCRIBED FOR ANY SUCH PURPOSE," AS RESERVED IN THE DEED FROM AMINOIL HOLDINGS, INC., A CORPORATION, RECORDED AUGUST 15, 1979, BOOK 9487, PAGE 496, OFFICIAL RECORDS.

APN: 404-020-083, 404-020-084, 085 and 086 (Affects Tract One) 404-490-080 and 100 (Affects Tract Two) 404-670-016, 017, and 018 (Affects Tract Three) 404-010-004, 005 and 006, 404-020-065, and 404-030-019 and 022 (Affects Tract Four)

RESOLUTION NO. _____

A RESOLUTION OF THE HERCULES REDEVELOPMENT AGENCY PROHIBITING THE USE OF EMINENT DOMAIN TO ACQUIRE FEE, EASEMENT, OR OTHER INTERESTS IN REAL PROPERTY IN THAT CERTAIN DEFINED REAL PROPERTY COMMONLY KNOWN AS THE HERCULES BAYFRONT PROPERTY

WHEREAS, the Hercules Redevelopment Agency is a public body, corporate and politic (“Agency”), organized and existing under the Community Redevelopment Law of the State of California (Health & Safety Code §33000 *et seq.*) (“CRL”); and

WHEREAS, the Agency has, to the extent authorized by the CRL, other law, and the applicable redevelopment plan, certain powers including the power to acquire interests in real property through the use of the power of eminent domain subject to procedures required by law; and

WHEREAS, the Agency also has the power to restrict its authority to acquire interests in real property by the exercise of the power of eminent domain, including prohibiting altogether the use of eminent domain with respect to specifically identified real property; and

WHEREAS, a large and important tract of real property, known as the Hercules Bayfront property, exists in the City and within a redevelopment project area of the Agency and is owned by a private party or parties; and

WHEREAS, the Agency Board, by adoption of this Resolution, has determined that in order for public improvements to be installed on, abutting, or adjacent to the Hercules Bayfront property in an effective manner, it is necessary for the Agency to work cooperatively with the property owner to define and determine real property required for such public improvements and to do so without a threat by the Agency to acquire portions of the Hercules Bayfront property through the exercise of Agency power of eminent domain or condemnation;

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

Section 1. The foregoing Recitals are true and correct and are incorporated herein.

Section 2. The Agency finds, determines, and declares that the Agency and all Agency-affiliated entities are prohibited from acquiring fee, easement, or other interests in the real property legally defined in Exhibit “A” attached hereto and by this reference made a part hereof, through the exercise of the Agency’s power of eminent domain. If any portion of the real property legally defined in Exhibit “A” is conveyed or otherwise transferred by the owner of such portion to a governmental entity, the portion so conveyed or transferred shall not be included in the prohibition set forth in this Section 2. As used herein, the term “Agency-affiliated entities” means any entity possessing the power of eminent domain the governing board of which is composed solely of the members of Agency Board or which is composed solely of members appointed by the Agency Board. The owner of a parcel within the real property legally defined in Exhibit “A” may, in its sole and absolute discretion, waive in writing

the prohibition set forth in this Section 2 so as to consent to the Agency's acquisition of such parcel or portion of such parcel through the exercise of the Agency's power of eminent domain. Nothing in this Section 2 shall affect the rights of the Agency and any property owner to convey or transfer any real property through a negotiated conveyance or transfer.

Section 3. No repeal or modification or amendment to this Resolution shall be made unless there has been a hearing before the Agency Board on such repeal, modification, or amendment, with all property owners of the property defined in Exhibit "A" having been given not less than thirty (30) days prior written notice of such hearing.

PASSED, APPROVED, AND ADOPTED this 21st day of December, 2010.

Ed Balico, Chair

CITY OF HERCULES }
STATE OF CALIFORNIA } .ss

I, Doreen Mathews, Secretary of the Hercules Redevelopment Agency, do hereby certify that the foregoing Resolution was adopted by the Hercules Redevelopment Agency at a _____ meeting of the Hercules Redevelopment Agency held on December 21, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Doreen Mathews, Agency Secretary

EXHIBIT "A"

LEGAL DESCRIPTION

[SEE FOLLOWING PAGES]

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EXCEPTING FROM A PORTION OF SAID LAND:

"ALL OIL, GAS, CASINGHEAD GASOLINE AND HYDROCARBONS AND MINERAL SUBSTANCES BELOW A POINT 500 FEET BELOW THE SURFACE OF ALL THAT PROPERTY AS SHOWN ON PARCEL MAP NO. 1012, RECORDED JANUARY 17, 1978 IN BOOK 61 OF PARCEL MAPS, PAGES 50, 51 AND 52, CONTRA COSTA COUNTY RECORDS, TOGETHER WITH THE RIGHT TO TAKE, REMOVE, MINE AND DISPOSE OF ALL SAID OIL, GAS, CASINGHEAD GASOLINE AND OTHER HYDROCARBONS AND MINERALS BUT WITHOUT ANY RIGHT WHATSOEVER TO ENTER UPON THE SURFACE OF SAID LAND OR UPON ANY PART OF SAID LAND WITHIN 500 FEET OF THE SURFACE", AS GRANTED IN THE DEED TO TAURUS BUILDING COMPANY, A CALIFORNIA CORPORATION, RECORDED OCTOBER 3, 1979, BOOK 9555, PAGE 583, OFFICIAL RECORDS.

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PARCELS SEVEN AND EIGHT, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.

PARCEL THREE:

A RIGHT-OF-WAY 25 FEET WIDE IN THE DEED FROM HERCULES POWER COMPANY, A

CORPORATION, RECORDED MAY 19, 1965, BOOK 4871, PAGE 223, OFFICIAL RECORDS, "FOR PIPE LINE OR PIPE LINES AND ACCESSORY FACILITIES, ON, OVER AND UNDER THE LAND DESCRIBED ABOVE TO GRANTOR'S FORMER NORTHEASTERLY BOUNDARY LINE ALONG AND ACROSS A ROUTE ADJACENT TO AN PARALLEL WITH THE EASTERLY BOUNDARY OF THE SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY."

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT, GRANTED IN THE DEED TO VALLEY NITROGEN PRODUCERS, INC., A CALIFORNIA CORPORATION, RECORDED OCTOBER 1, 1976, BOOK 8038, PAGE 797, OFFICIAL RECORDS, FOR INGRESS AND EGRESS FOR PEDESTRIAN AND VEHICULAR TRAFFIC OVER A STRIP OF LAND 50 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

"COMMENCING AT A POINT ON THE GENERAL NORTHWESTERLY LINE OF SAN PABLO AVENUE AS SHOWN ON SAID POINT BEING THE EASTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 5 OF SAID RECORD OF SURVEY AS N 72° 14 02" E., 524.16 FEET; THENCE, FROM SAID POINT OF COMMENCEMENT, EASTERLY ALONG SAID NORTHERLY LINE OF SAN PABLO AVENUE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 949.57 FEET, FROM A TANGENT BEARING OF N. 53° 42' 48" E., THROUGH A CENTRAL ANGLE OF 3° 57' 46" AN ARC DISTANCE OF 65.67 FEET TO THE TRUE POINT OF BEGINNING OF THE CENTER LINE HEREIN DESCRIBED; THENCE N. 49° 03' 02" W., 3089.49 FEET TO A POINT IN THE GENERAL EASTERLY LINE OF PARCEL ONE AS SHOWN ON SHEET 2 OF THE MAP ENTITLED "PARCEL MAP 1006", FILED SEPTEMBER 15, 1976, IN BOOK 48 OF PARCEL MAPS, AT PAGES 6 THROUGH 8 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, FROM WHICH THE SOUTHWESTERLY TERMINUS OF THE COURSE AS SHOWN ON THE SAID PARCEL MAP AS N. 49° 30' 00" E., 1500.00 FEET, BEARS S. 49° 30' 00" W., 100.00 FEET, BEING A PORTION OF THAT CERTAIN 436.48 ACRE PARCEL OF LAND, AS SHOWN ON SHEETS 3 THROUGH 6 OF THAT CERTAIN RECORD OF SURVEY FILED AUGUST 15, 1974, IN BOOK 57 OF L.S.M., AT PAGE 23, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY."

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT, GRANTED IN THE DEED TO VALLEY NITROGEN PRODUCERS, INC., A CALIFORNIA CORPORATION, RECORDED OCTOBER 1, 1976, BOOK 8038, PAGE 797, OFFICIAL RECORDS, FOR INGRESS AND EGRESS, FOR PEDESTRIAN AND VEHICULAR TRAFFIC, OVER A STRIP OF LAND 50 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

"BEGINNING A POINT IN THE GENERAL NORTHERLY LINE OF SAN PABLO AVENUE, FROM WHICH THE SOUTHWESTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 6 OF SAID RECORD OF SURVEY AS N. 53° 26' 00" E., 300.62 FEET, BEARS S. 53° 26' 00" W., 25.09 FEET; THENCE FROM SAID POINT OF BEGINNING, N. 31° 45' 00" W., 516.72 FEET TO A POINT ON THE GENERAL SOUTHEASTERLY LINE OF PARCEL ONE OF SAID PARCEL MAP 1006, FROM WHICH THE NORTHEASTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 3 OF SAID PARCEL MAP AS N. 58° 15' 00" E., 956.07 FEET, BEARS S. 58° 15' 00" W., 274.47 FEET, BEING A PORTION OF THAT CERTAIN 436.48 ACRE PARCEL OF LAND, AS SHOWN ON SHEETS 3 THROUGH 6 OF THAT CERTAIN RECORD OF SURVEY, FILED AUGUST 15, 1974, IN BOOK 57 OF L.S.M., AT PAGE 23, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY."

PARCEL SIX:

PARCEL FIVE, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.
EXCEPTING THEREFROM:

1. "UNDIVIDED TWENTY-FIVE PERCENT (25%) OF ALL OIL, GAS AND OTHER HYDROCARBONS AND ANY OTHER MINERALS OR MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED, UNDERLYING THAT PORTION OF THE LAND DESCRIBED SITUATED BELOW THE SURFACE THEREOF, SPECIFICALLY INCLUDING THE RIGHT TO EXPLORE, DRILL FOR, PRODUCE, EXTRACT, TREAT, REMOVE AND MARKET OIL, GAS AND OTHER HYDROCARBONS AND MINERALS THEREFROM BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF THE LAND DESCRIBED ABOVE FOR ANY SUCH PURPOSES", AS RESERVED IN THE DEED FROM HERCULES POWER COMPANY, RECORDED JUNE 2, 1965, BOOK 4880, PAGE 541, OFFICIAL RECORDS.

2. "THE REMAINING 75% OF 100% OF THE OIL, GAS AND OTHER HYDROCARBONS TOGETHER WITH THE RIGHT TO EXPLORE, DRILL FOR, USING SLANT DRILLING METHODS, PASS IN, UNDER OR THROUGH SAID LAND, PRODUCE, EXTRACT, TREAT, REMOVE, MARKET OIL, GAS AND OTHER HYDROCARBONS, BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF SAID LAND DESCRIBED FOR ANY SUCH PURPOSE," AS RESERVED IN THE DEED FROM AMINOIL HOLDINGS, INC., A CORPORATION, RECORDED AUGUST 15, 1979, BOOK 9487, PAGE 496, OFFICIAL RECORDS.

PARCEL SEVEN:

PARCELS FOUR AND SIX AS SHOWN ON PARCEL MAP MSH-1 FILED APRIL 22, 1974, IN BOOK 33 OF PARCEL MAPS AT PAGE 16, AND MORE PARTICULARLY DESCRIBED AS ADJUSTED PARCEL 4, PARCEL MAP MSH-1 33 PM 16, IN THAT CERTAIN CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT RECORDED JANUARY 31, 2000 AS INSTRUMENT NO. 2000-19349 OF OFFICIAL RECORDS, CONTRA COSTA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF SAID PARCEL 4 (33 PM 16): THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINES OF SAID PARCEL 4, THE FOLLOWING COURSES:

SOUTH 37° 46' 59" EAST 317.38 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1,710.68 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 49° 34' 15" EAST; THENCE FROM SAID POINT OF BEGINNING SOUTHWESTERLY 328.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 00' 04"; THENCE SOUTH 51° 25' 49" WEST 341.51 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1,190.19 FEET; THENCE SOUTHWESTERLY 77.35 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03° 43' 25" THENCE NORTH 49° 30' 00" WEST 27.37 FEET; THENCE NORTH 17° 28' 00" WEST 56.60 FEET; THENCE NORTH 73° 18' 00" WEST 20.90 FEET; THENCE SOUTH 15° 04' 00" WEST 26.90 FEET; THENCE SOUTH 51° 20' 00" WEST 12.80 FEET; THENCE SOUTH 15° 57' 00" WEST 58.20 FEET; THENCE SOUTH 58° 24' 00" WEST 15.30 FEET; THENCE SOUTH 19° 32' 00" EAST 32.90 FEET; THENCE SOUTH 01° 22' 40" WEST 44.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 1,190.19 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS NORTH 48° 44' 56" WEST; THENCE SOUTHWESTERLY 411.81 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19° 49' 29"; THENCE SOUTH 21° 25' 35" WEST 369.99 FEET TO THE BEGINNING A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 3,393.16 FEET, THENCE SOUTHWESTERLY 429.44 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 15' 05" TO THE EXTERIOR LINE OF SAID PARCEL SIX BEING THE BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 3,393.16 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 61° 19' 20" EAST; THENCE LEAVING SAID EXTERIOR LINE OF PARCEL 4 ALONG SAID EXTERIOR LINE OF PARCEL SIX, THE FOLLOWING COURSES:

SOUTHWESTERLY 439.57 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 25' 21" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1,101.50 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 53° 53' 59" EAST; THENCE SOUTHWESTERLY 673.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35° 02' 23"; THENCE SOUTH 71° 08' 24" WEST 558.13 FEET; THENCE NORTH 47° 01' 00" WEST 10.32 FEET; THENCE NORTH 76° 06' 00" WEST 108.21 FEET; THENCE SOUTH 87° 00' 00" WEST 114.21 FEET; THENCE SOUTH 81° 00' 00" WEST 160.01 FEET; THENCE NORTH 77° 24' 00" WEST 87.11 FEET; THENCE NORTH 49° 11' 00" WEST 87.21 FEET; THENCE NORTH 56° 59' 00" WEST 47.70 FEET; THENCE NORTH 43° 31' 00" WEST 164.11 FEET; THENCE NORTH 67° 10' 00" WEST 103.11 FEET; THENCE NORTH 26° 34' 00" WEST 80.51 FEET; THENCE NORTH 61° 05' 00" WEST 76.51 FEET; THENCE SOUTH 82° 37' 00" WEST 108.91 FEET; THENCE NORTH 66° 48' 00" WEST 38.10 FEET; THENCE NORTH 85° 11' 00" WEST 95.31 FEET; THENCE NORTH 48° 16' 00" WEST 49.60 FEET; THENCE NORTH 63° 20' 00" EAST 76.01 FEET; THENCE NORTH 86° 45' 00" EAST 89.01 FEET; THENCE SOUTH 83° 55' 00" EAST 85.01 FEET; THENCE SOUTH 67° 10' 00" EAST 152.01 FEET; THENCE SOUTH 78° 00' 00" EAST 116.01 FEET; THENCE SOUTH 87° 35' 00" EAST 71.00 FEET; THENCE NORTH 73° 35' 00" EAST 329.02 FEET; THENCE NORTH 70° 20' 00" EAST 149.01 FEET; THENCE NORTH 59° 35' 00" EAST 516.04 FEET; THENCE NORTH 55° 10' 00" EAST 436.03 FEET; THENCE NORTH 51° 15' 00" EAST 291.02 FEET; THENCE NORTH 41° 55' 10" EAST 172.25 FEET TO SAID EXTERIOR LINE OF SAID PARCEL FOUR; THENCE LEAVING SAID EXTERIOR LINE OF SAID PARCEL SIX ALONG THE EXTERIOR LINES OF SAID PARCEL FOUR THE FOLLOWING COURSES:

NORTH 35° 49' 50" EAST 127.73 FEET; THENCE NORTH 28° 40' 00" EAST 231.02 FEET; THENCE NORTH 37° 15' 00" EAST 58.00 FEET; THENCE NORTH 43° 10' 00" EAST 221.02 FEET; THENCE NORTH 33° 40' 00" EAST 119.01 FEET; THENCE NORTH 22° 40' 00" EAST 86.01 FEET; THENCE NORTH 30° 45' 00" EAST 158.01 FEET; THENCE NORTH 27° 40' 00" EAST 136.01 FEET; THENCE NORTH 35° 35' 00" EAST 91.01 FEET; THENCE NORTH 52° 10' 00" EAST 62.00 FEET; THENCE NORTH 56° 55' 00" EAST 345.02 FEET; THENCE NORTH 48° 42' 00" EAST 142.01 FEET; THENCE NORTH 37° 55' 00" EAST 182.01 FEET; THENCE NORTH 45° 35' 00" EAST 82.39 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

1. "UNDIVIDED TWENTY-FIVE PERCENT (25%) OF ALL OIL, GAS AND OTHER HYDROCARBONS AND ANY OTHER MINERALS OR MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED, UNDERLYING THAT PORTION OF THE LAND DESCRIBED SITUATED BELOW THE SURFACE THEREOF, SPECIFICALLY INCLUDING THE RIGHT TO EXPLORE, DRILL FOR, PRODUCE, EXTRACT, TREAT, REMOVE AND MARKET OIL, GAS AND OTHER HYDROCARBONS AND MINERALS THEREFROM BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF THE LAND DESCRIBED ABOVE FOR ANY SUCH PURPOSES", AS RESERVED IN THE DEED FROM HERCULES POWER COMPANY, RECORDED JUNE 2, 1965, BOOK 4880, PAGE 541, OFFICIAL RECORDS.

2. "THE REMAINING 75% OF 100% OF THE OIL, GAS AND OTHER HYDROCARBONS TOGETHER WITH THE RIGHT TO EXPLORE, DRILL FOR, USING SLANT DRILLING METHODS, PASS IN, UNDER OR THROUGH SAID LAND, PRODUCE, EXTRACT, TREAT, REMOVE, MARKET OIL, GAS AND OTHER HYDROCARBONS, BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF SAID LAND DESCRIBED FOR ANY SUCH PURPOSE," AS RESERVED IN THE DEED FROM AMINOIL HOLDINGS, INC., A CORPORATION, RECORDED AUGUST 15, 1979, BOOK 9487, PAGE 496, OFFICIAL RECORDS.

APN: 404-020-083, 404-020-084, 085 and 086 (Affects Tract One) 404-490-080 and 100 (Affects Tract Two) 404-670-016, 017, and 018 (Affects Tract Three) 404-010-004, 005 and 006, 404-020-065, and 404-030-019 and 022 (Affects Tract Four)

Jim Anderson

From: Jim Anderson [jra@andersonpacificllc.com]
Sent: Wednesday, December 08, 2010 3:59 PM
To: 'Nelson Oliva'
Cc: 'Cecily Talbert Barclay'; 'Eguzki Olano'
Subject: Principles for MOU
Attachments: #73561564v10_ACTIVE_ - Bayfront Public Private Cooperation Principles (12_8).DOC

Nelson:

I am enclosing the principles that we intend to incorporate into an MOY for approval by the Council on December 18.

I hope your first day back has been productive.

Please give me a call when you have a chance.

Thanks.

Jim



James R. Anderson
President & CEO

6701 Center Drive West, Suite 710
Los Angeles, California 90045

Tel (310) 689-2300
Fax (310) 689-2305
www.andersonpacificllc.com

Bayfront Public Private Cooperation Principles

(To be Incorporated into a Memorandum of Understanding and Submitted to the City Council for Approval on December 14, 2010)

Draft of December 8, 2010

- 1) **ITC Funding:** The City of Hercules/Hercules Redevelopment Agency (“City/Agency”) is committed to obtaining financing for the entire Intermodal Transit Center (“ITC”), for which the preliminary scope, costs and committed funding is summarized in the attached Exhibit A. The City/Agency and Hercules Bayfront, LLC (“Bayfront”) agree costs associated with the ITC, not limited to those included in Exhibit A, will be borne by the City/Agency, and will not be borne by the Bayfront project.
- 2) **Public private joint-venture:** The City/Agency and Bayfront are committed to crafting agreements such as an Owner Participation Agreement, Development Agreement, Cooperation Agreement and Purchase and Sale Agreement (the “Implementing Agreements”) recognizing that both public and private investment and development components are vital to achieving the goal of creating a great and special place. City/Agency and Bayfront acknowledge that while either project will be entitled to proceed independently of the other, each project will be enhanced if the other is also successfully funded and developed.
- 3) **Funding gaps:** Both the ITC and Bayfront projects have funding gaps that need to be overcome by generating resources through the joint-venture, including funding from state, federal, regional and redevelopment sources. The City/Agency and Bayfront will identify the funding gaps for both the ITC and the Bayfront projects and will commit both parties to strategies that address how to close these gaps. The parties shall split any costs of outside consultants to validate the market value and costs of development to quantify the funding gaps. The analysis shall include a mutually agreed upon minimum land residual amount and shall suggest methods of insuring that the property owners’ interest in long term value is respected. This analysis shall specifically address the financial viability of early phases of development and identify what assistance may be needed to achieve financial viability. The analysis shall also address the strategies that will contribute to financial viability for the entire development plan. The analysis shall be considered in arriving at business terms in the Implementing Agreements to assist the private development and in suggesting additional approaches to achieving financial viability.

It is unlikely that the “gap analysis” and the subsequent Implementing Agreements will identify all the funding for the financial gaps before the start construction; however, the Implementing Agreements will commit the parties to strategies for cooperatively pursuing outside funding for both the ITC and private project components, including funding from state, federal and regional sources.

- 4) In negotiating the Implementing Agreements, the parties shall consider the applicability and availability of the following tools as possible approaches to addressing funding gaps:
 - a) Deferring or providing land secured financing for City Development Impact Fees.
 - b) The application of tax increment redevelopment revenues generated by the project as gap funding provided to the developer or as the basis of Redevelopment Agency issuing bonds to assist with the funding gap.
 - c) The application of tax increment redevelopment revenues from other parts of the redevelopment project areas.

- d) The use of lease-lease back financing for private development parcels as a means of increasing the financing leverage for private development.
 - e) The use of land secured financing for parking and other public improvements that would be the responsibility of the private development.
- 5) **Completion of entitlement:** The ability to secure funding from outside sources depends on project momentum. Completing the environmental analysis, design and entitlement for both the public and private projects is key to maintaining momentum.
 - 6) **Development phasing:** Initial private development may include lower cost product types in combination with strategic catalyst components in response to market conditions that may not support more expensive product types during the early phases of development, according to the current approved zoning and form-based code.
 - 7) **Catalytic development strategy:** The City/Agency and Bayfront will address cooperative efforts to secure catalytic development in the early stages, including securing unique uses and value-added development approaches. Such development catalysts might include the sale or lease of land to the City for fee-development of a Community Center/City Hall, a master leasing program for the Administration Building/Clubhouse, or the immediate development of Bayfront Boulevard properties. The City/Agency and Bayfront will seek out and respond to other catalytic development opportunities for the projects as they arise.
 - 8) **Conveyance/Temporary Uses of Land for ITC:** Terms for conveying and permitting temporary use of the land needed for the ITC must be fair to both parties and must be just one part of the overall public private joint-venture agreement addressing how the private and public investments synergize to create a great place. The land to be conveyed includes 13 acres of "landward" property, 26.52 acres of submerged land for dredging, 10.96 acres of Hercules Point (shown in 17 parcels on pending tentative map application), for a total of just over 50 acres. The land to be temporarily used for the ITC for disturbance, staging areas and temporary parking is approximately 13.9 acres. Bayfront will provide preliminary title reports and will negotiate the Implementing Agreements in good faith, in an effort to approve and execute the Implementing Agreements as soon as reasonably possible, consistent with the public private cooperation principles described herein. The request by the City/Agency for additional license agreements will be negotiated as needed.
 - 9) **Hercules Point:** Hercules Point provides the only opportunity within the City for direct access and interaction with the Bay, a vital element for both the City and region. The City/Agency's development and use of Hercules Point as an important regional open space and recreation asset will require the cooperation of various regulatory agencies with jurisdiction over the land, including the USFWS, NOAA, NMFS, USACE, DTSC, BCDC, CDFG, RWQCB, and CCCFC. The City/Agency and Bayfront will engage consultants and work together to develop the necessary information to identify the applicable regulations and use requirements so that the vision for Hercules Point as a City and regional open space and recreational asset can be realized.
 - 10) **Open space and recreation requirements:** The Bayfront project, as configured in the initiative land use plan, will not be responsible for meeting additional open space, parks or recreation requirements beyond paying the City's development impact fees, which as a cost of development will be considered as part of the financial gap analysis in crafting the Implementing Agreements.

- 11) **Parking:** The current joint development program involves the development of parking spaces to serve the needs of both the ITC, recreational users of Hercules Point and of commercial development at Bayfront. These spaces will be financed and built as development occurs. The Implementing Agreements will address the phasing and financing plan for this parking, which will include the sharing of land and construction costs between the public and private sectors.

The parties have designated Block N of the private development plan for temporary use as a surface parking lot for the users of the ITC until permanent parking structures can be financed and built as parts of Blocks K, D, E and G. The Implementing Agreements shall provide that the City/Agency shall lease Block N at a market rate and may provide that the property owner share in parking fees as generated by parking and other uses at this site.

- 12) **Affordable Housing.** The Bayfront project is subject to the City's inclusionary housing requirement that it develop 15% of its residential units as affordable to families of moderate and very low income, with 40% of these units provided to families of very low income. The Implementing Agreements will identify means for applying the Redevelopment Agency Housing Set Aside tax increment generated by the project to assist with innovative means for the private development to meet its affordable housing requirement, which may include alternative means of compliance consistent with the City's Inclusionary Housing Regulations.
- 13) **Project Labor.** Bayfront will endeavor to identify components of the Bayfront project that are private and not subject to prevailing wage and to ensure that public funds or subsidy are not used to support that private development. Components of the Bayfront project that receive public subsidy will be subject to prevailing wage.
- 14) **Agreement Not to Condemn Bayfront Property For Specified Period.** In consideration of Bayfront's agreement to negotiate the Implementing Agreements in good faith, to encourage and facilitate the public private cooperation principles described above and to encourage and facilitate the approval and execution of the Implementing Agreements by all parties as soon as reasonably possible, the City and Agency agree not to take any further steps to pursue condemnation of the Property for 180 days, and the City/Agency will provide 30 days' written notice to Bayfront of the last public hearing concerning certification of the ITC EIS/EIR, during such 180 day period.
- 15) **Project Management.** City Manager Nelson Oliva and Bayfront Managing Member Jim Anderson will be the lead negotiators and project managers to implement the public private joint-venture until the parties agree otherwise. They each will be assisted by staff and consultants as needed at their own expense.
- 16) **Schedule/Milestones.** The City/Agency and Bayfront to work cooperatively and in good faith to diligently pursue the milestones and timing described on the attached Exhibit B.

Exhibit A

¹ITC Costs and Funding

Costs

ITC Component	Estimated Cost (000)
1 Lift station removal*	\$1,500
2 Bayfront Bridge	\$2,125
3 John Muir Parkway/Refugio Creek	\$2,900
4 Bay Trail/Retaining Walls	\$14,000
5 Utility Relocation	\$5,100
6 Railroad Bridge (north section)	\$1,000
7 Track/Platform/RR Bridge	\$19,000
8 UP Signal	\$1,000
9 Station Structure	\$19,400
10 Transit Loop	\$6,900
11 Café/Civic Plaza	\$2,700
12 <u>Soft costs</u>	
a Design*	\$1,900
b Environmental/Permitting*	\$400
c Project management*	\$285
d Construction management	\$2,500
e Legal*	\$200
f Other	
Total City/Agency Costs	\$80,910
*Incurred	

Funding

Committed Funding		
1	<u>State</u>	
a	TCRP construction	\$700
b	STIP-RIP	\$8,000
c	STIP-TE	\$775
d	STIP-TE	\$1,097
e	STIP-TE	\$862
2	<u>Federal</u>	
a	HPP Authorization design/envir	\$913
b	HPP Authorization construction	\$339
3	<u>Regional</u>	
a	Measure J Sales Tax	\$5,891
b	Measure WW bond issue	\$900
c	Measure AA bond issue	\$1,400
d	Measure WW bond issue	\$367
e	ABAG Grant	\$198
f	STMP	\$1,000
4	<u>Local</u>	
a	Wastewater utility	\$1,500
b	Agency funding through November 2010	\$1,872
	Total Secured funding	\$25,814
	Additional funding to be obtained by City/Agency	\$55,096
	Pending additional funding applications	\$27,000

¹ **COSTS** do not include the purchase price for the land to be conveyed or the rental/license fees for the land to be temporarily used for construction disturbance, staging or parking for the ITC.

Exhibit B - Milestone Schedule

- | | |
|----------------------------------------------------------------------------------|---------------|
| 1. Public Private Cooperation Principles endorsed by City Council through an MOU | December 2010 |
| 2. Bayfront DEIR Circulated | December 2010 |
| 3. HBL Grants Due Diligence License to City/Agency | December 2011 |
| 4. HBL Gives Preliminary Title Reports to City/Agency | December 2011 |
| 5. First Drafts DA/OPA/PSA Exchanged | January 2011 |
| 6. Public Hearing/Comments Due on DEIR | March 2011 |
| 7. FEIR Complete | March 2011 |
| 8. Nelson Oliva/Jim Anderson endorse final DA/OPA/PSA | March 2011 |
| 9. Planning Commission Hearing on FEIR, DA/OPA/PSA | March 2011 |
| 10. City Council/Agency Hearing on FEIR, DA/OPA/PSA | April 2011 |
| 11. D/OPA Effective | May 2011 |
| 12. Final Map for ITC Parcels | May 2011 |
| 13. Closing of ITC Property | May 2011 |

Jim Anderson

From: Jim Anderson [jra@andersonpacificllc.com]
Sent: Thursday, December 09, 2010 4:17 PM
To: 'Nelson Oliva'
Cc: 'Eguzki Olano'; 'Lisa Hammon'; 'Mick Cabral'; 'Patricia Curtin'; 'Barclay, Cecily Talbert'; 'Steven C. Crooke Esq.'; 'Edgar Pankey'; 'Ethan Sischo'; 'Ryan Altoon'; 'Liz Warmerdam'
Subject: MOU for December 14, 2010 City Council Meeting
Attachments: 2010-12-09 73568510_es.DOC

Nelson:

As I wrote yesterday, Charlie Long along with City staff and I were working intensely on a set of principles that could be inserted into an MOU by the last Council meeting in December. The purpose was to agree on the framework to move forward with the Bayfront project agreements in time to keep critical components of the ITC project moving forward. Further and very importantly, the MOU would set aside our worry of the City/Agency pursuing eminent domain during the negotiation of implementing agreements.

December is important for the many reasons you and I discussed in the past, especially noting that unless we have an agreement on or about 12/14, Hercules Bayfront and its investors and lenders will be compelled to begin a vigorous defense of our property from the pursuit of eminent domain.

I look forward to gaining agreement by the Council on the attached MOU during the next City Council meeting.

Jim



James R. Anderson
President & CEO

6701 Center Drive West, Suite 710
Los Angeles, California 90045

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Fax (310) 689-2305
www.andersonpacificllc.com

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT
BETWEEN THE CITY OF HERCULES,
THE REDEVELOPMENT AGENCY OF HERCULES,
AND HERCULES BAYFRONT LLC**

THIS MEMORANDUM OF UNDERSTANDING AND AGREEMENT ("MOU") is entered into this ____ day of December, 2010 by and between the City of Hercules, a municipal corporation of the State of California ("City"), the Redevelopment Agency of Hercules, the ("Agency") and Hercules Bayfront, LLC, a Delaware limited liability company ("Bayfront"). The parties intend that paragraphs 1 through 15 are non-binding statements of their understanding and intent to cooperate and negotiate with each other in the manner described in such paragraphs. The parties further intend that paragraph 16 does constitute a present agreement between the parties, and that the following paragraphs 17 through 25 may be used to enforce that agreement in paragraph 16.

- 1) **ITC Funding:** The City of Hercules/Hercules Redevelopment Agency ("City/Agency") is committed to obtaining financing for an Intermodal Transit Center ("ITC"), for which the preliminary scope, costs and committed funding is summarized in the attached Exhibit A. The City/Agency and Bayfront agree costs associated with the ITC, not limited to those included in Exhibit A, will be borne by the City/Agency, and will not be borne by the Bayfront project.
- 2) **Public private joint-venture:** The City/Agency and Bayfront are committed to crafting agreements such as an Owner Participation Agreement, Development Agreement, Cooperation Agreement and Purchase and Sale Agreement (the "Implementing Agreements") recognizing that both public and private investment and development components are vital to achieving the goal of creating a great and special place. City/Agency and Bayfront acknowledge that while either project will be entitled to proceed independently of the other, each project will be enhanced if the other is also successfully funded and developed.
- 3) **Funding gaps:** Both the ITC and Bayfront projects have funding gaps that need to be overcome by generating resources through the joint-venture, including funding from state, federal, regional and redevelopment sources. The City/Agency and Bayfront will identify the funding gaps for both the ITC and the Bayfront projects and will commit both parties to strategies that address how to close these gaps. The parties shall split any costs of outside consultants to validate the market value and costs of development to quantify the funding gaps. The analysis shall include a mutually agreed upon minimum land residual amount and shall suggest methods of insuring that the property owners' interest in long term value is respected. This analysis shall specifically address the financial viability of early phases of development and identify what assistance may be needed to achieve financial viability. The analysis shall also address the strategies that will contribute to financial viability for the entire development plan. The analysis shall be considered in arriving at business terms in the Implementing Agreements to assist the private development and in suggesting additional approaches to achieving financial viability. It is unlikely that the "gap analysis" and the subsequent Implementing Agreements will identify all the funding for the financial gaps before the start construction; however, the Implementing Agreements will commit the parties to strategies for cooperatively pursuing outside funding for both the ITC and private project components, including funding from state, federal and regional sources.

In negotiating the Implementing Agreements, the parties shall consider the applicability and availability of the following tools as possible approaches to addressing funding gaps:

- a) Deferring or providing land secured financing for City Development Impact Fees.
 - b) The application of tax increment redevelopment revenues generated by the project as gap funding provided to the developer or as the basis of Redevelopment Agency issuing bonds to assist with the funding gap.
 - c) The application of tax increment redevelopment revenues from other parts of the redevelopment project areas.
 - d) The use of lease-lease back financing for private development parcels as a means of increasing the financing leverage for private development.
 - e) The use of land secured financing for parking and other public improvements that would be the responsibility of the private development.
- 4) **Completion of entitlement:** The ability to secure funding from outside sources depends on project momentum. Completing the environmental analysis, design and entitlement for both the public and private projects is key to maintaining momentum.
- 5) **Development phasing:** Initial private development may include lower cost product types in combination with strategic catalyst components in response to market conditions that may not support more expensive product types during the early phases of development, according to the current approved zoning and form-based code.
- 6) **Catalytic development strategy:** The City/Agency and Bayfront will address cooperative efforts to secure catalytic development in the early stages, including securing unique uses and value-added development approaches. Such development catalysts might include the sale or lease of land to the City for fee-development of a Community Center/City Hall, a master leasing program for the Administration Building/Clubhouse, or the immediate development of Bayfront Boulevard properties. The City/Agency and Bayfront will seek out and respond to other catalytic development opportunities for the projects as they arise.
- 7) **Conveyance/Temporary Uses of Land for ITC:** Terms for conveying and permitting temporary use of the land needed for the ITC must be fair to both parties and must be just one part of the overall public private joint-venture agreement addressing how the private and public investments synergize to create a great place. The land to be conveyed includes 13 acres of "landward" property, 26.52 acres of submerged land for dredging, 10.96 acres of Hercules Point (shown in 17 parcels on pending tentative map application), for a total of just over 50 acres. The land to be temporarily used for the ITC for disturbance, staging areas and temporary parking is approximately 13.9 acres. Bayfront will provide preliminary title reports and will negotiate the Implementing Agreements in good faith, in an effort to approve and execute the Implementing Agreements as soon as reasonably possible, consistent with the public private cooperation principles described herein. The request by the City/Agency for additional license agreements will be negotiated as needed.
- 8) **Hercules Point:** Hercules Point provides the only opportunity within the City for direct access and interaction with the Bay, a vital element for both the City and region. The City/Agency's development and use of Hercules Point as an important regional open space and recreation asset will require the cooperation of various regulatory agencies with

jurisdiction over the land, including the USFWS, NOAA, NMFS, USACE, DTSC, BCDC, CDFG, RWQCB, and CCCFC. The City/Agency and Bayfront will engage consultants and work together to develop the necessary information to identify the applicable regulations and use requirements so that the vision for Hercules Point as a City and regional open space and recreational asset can be realized.

- 9) **Open space and recreation requirements:** The Bayfront project, as configured in the initiative land use plan, will not be responsible for meeting additional open space, parks or recreation requirements beyond paying the City's development impact fees, which as a cost of development will be considered as part of the financial gap analysis in crafting the Implementing Agreements.
- 10) **Parking:** The current joint development program involves the development of parking spaces to serve the needs of both the ITC, recreational users of Hercules Point and of commercial development at Bayfront. These spaces will be financed and built as development occurs. The Implementing Agreements will address the phasing and financing plan for this parking, which will include the sharing of land and construction costs between the public and private sectors.

The parties have designated Block N of the private development plan for temporary use as a surface parking lot for the users of the ITC until permanent parking structures can be financed and built as parts of Blocks K, D, E and G. The Implementing Agreements shall provide that the City/Agency shall lease Block N at a market rate and may provide that the property owner share in parking fees at generated by parking and other uses at this site.

- 11) **Affordable Housing.** The Bayfront project is subject to the City's inclusionary housing requirement that it develop 15% of its residential units as affordable to families of moderate and very low income, with 40% of these units provided to families of very low income. The Implementing Agreements will identify means for applying the Redevelopment Agency Housing Set Aside tax increment generated by the project to assist with innovative means for the private development to meet its affordable housing requirement, which may include alternative means of compliance consistent with the City's Inclusionary Housing Regulations.
- 12) **Project Labor.** Bayfront will endeavor to identify components of the Bayfront project that are private and not subject to prevailing wage and to ensure that public funds or subsidy are not used to support that private development. Components of the Bayfront project that receive public subsidy will be subject to prevailing wage.
- 13) **Project Management.** City Manager Nelson Oliva and Bayfront Managing Member Jim Anderson will be the lead negotiators and project managers to implement the public private joint-venture until the parties agree otherwise. They each will be assisted by staff and consultants as needed at their own expense.
- 14) **Schedule/Milestones.** The City/Agency and Bayfront to work cooperatively and in good faith to diligently pursue the milestones and timing described on the attached Exhibit B.
- 15) **No Approvals.** This MOU shall not be construed as any preliminary or final approval of any land use decision and/or other discretionary process or approval not yet given by the City Council.

- 16) **Agreement Not to Condemn Bayfront Property For Specified Period.** In consideration of Bayfront's agreement to negotiate the Implementing Agreements in good faith, to encourage and facilitate the public private cooperation principles described above and to encourage and facilitate the approval and execution of the Implementing Agreements by all parties as soon as reasonably possible, the City and Agency agree not to take any further steps to pursue condemnation of the Property for 180 days, and the City/Agency will provide 30 days' written notice to Bayfront of the last public hearing concerning certification of the ITC EIS/EIR, during such 180 day period, even in the event this MOU is terminated.
- 17) **Attorneys' Fees.** In the event any legal action is commenced to enforce this MOU, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 18) **Termination.** At any time prior to execution of the Implementing Agreements, as provided herein, any party may terminate the MOU and avoid all obligations provided herein, on written notice to the other parties. Upon such termination, the obligations in paragraph 16 shall survive.
- 19) **Modifications.** This MOU may not be modified orally or in any manner other than by an agreement in writing signed by all parties.
- 20) **Severability.** In the event any term of this MOU is held invalid by a court of competent jurisdiction, the MOU shall be construed as not containing that term, and the remainder of this MOU shall remain in full force and effect.
- 21) **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the MOU shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this MOU shall be filed and heard in a court of competent jurisdiction in the County of Contra Costa.
- 22) **Entire Agreement.** This MOU comprises the entire understanding between the parties concerning the subject matter of this MOU. This MOU supersedes all prior negotiations, representations, or agreements concerning the subject matter of this MOU.
- 23) **Notices.** All notices to be given hereunder shall be in writing and may be served, either personally or by certified or registered mail, return receipt requested, postage prepaid, to the persons and addresses set forth below or to any other address provided by one to the others from time to time in writing:

City: City of Hercules
 Attn: City Manager
 111 Civic Drive
 Hercules, CA 94547

Agency: Redevelopment Agency of Hercules
 Attn: Agency Executive Director
 111 Civic Drive
 Hercules, CA 94547

With a copy to: City of Hercules
 Attn: City Attorney
 111 Civic Drive
 Hercules, CA 94547

Bayfront: James R. Anderson
Hercules Bayfront, LLC
c/o Anderson Pacific, LLC
6701 Center Drive West, Suite 710
Los Angeles, CA 90045

With a copy to: Cecily Talbert Barclay
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111

24) **Term of MOU.** The term of this MOU shall commence on execution by City and shall continue until terminated, or modified, as provided herein.

25) **Signatures.** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of Bayfront, City, and Agency. This MOU shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

Hercules Bayfront, LLC
a Delaware limited liability Company

City of Hercules
Redevelopment Agency

By: APL-Hercules, LLC,
a Delaware limited liability company
Its Manager

By: _____
Nelson Oliva
Executive Director

By: Anderson Pacific, LLC
a Delaware limited liability Company
Its: Managing Member

City of Hercules

By: _____
James R. Anderson
Managing Member

By: _____
Nelson Oliva
City Manager

Exhibit A - ITC Costs and Funding¹

Costs

ITC Component	Estimated Cost (000)
1 Lift station removal*	\$1,500
2 Bayfront Bridge	\$2,125
3 John Muir Parkway/Refugio Creek	\$2,900
4 Bay Trail/Retaining Walls	\$14,000
5 Utility Relocation	\$5,100
6 Railroad Bridge (north section)	\$1,000
7 Track/Platform/RR Bridge	\$19,000
8 UP Signal	\$1,000
9 Station Structure	\$19,400
10 Transit Loop	\$6,900
11 Café/Civic Plaza	\$2,700
12 <u>Soft costs</u>	
a Design*	\$1,900
b Environmental/Permitting*	\$400
c Project management*	\$285
d Construction management	\$2,500
e Legal*	\$200
f Other	
Total City/Agency Costs	\$80,910
*Incurred	

Funding

Committed Funding		
1	<u>State</u>	
a	TCRP construction	\$700
b	STIP-RIP	\$8,000
c	STIP-TE	\$775
d	STIP-TE	\$1,097
e	STIP-TE	\$862
2	<u>Federal</u>	
a	HPP Authorization design/envir	\$913
b	HPP Authorization construction	\$339
3	<u>Regional</u>	
a	Measure J Sales Tax	\$5,891
b	Measure WW bond issue	\$900
c	Measure AA bond issue	\$1,400
d	Measure WW bond issue	\$367
e	ABAG Grant	\$198
f	STMP	\$1,000
4	<u>Local</u>	
a	Wastewater utility	\$1,500
b	Agency funding through November 2010	\$1,872
	Total Secured funding	\$25,814
	Additional funding to be obtained by City/Agency	\$55,096
	Pending additional funding applications	\$27,000

¹ "Costs" do not include the purchase price for the land to be conveyed or the rental/license fees for the land to be temporarily used for construction disturbance, staging or parking for the ITC.

Exhibit B - Milestone Schedule

- | | |
|----------------------------------------------------------------------------------|---------------|
| 1. Public Private Cooperation Principles endorsed by City Council through an MOU | December 2010 |
| 2. Bayfront DEIR Circulated | December 2010 |
| 3. Bayfront Grants Due Diligence License to City/Agency | December 2011 |
| 4. Bayfront Gives Preliminary Title Reports to City/Agency | December 2011 |
| 5. First Drafts DA/OPA/PSA Exchanged | January 2011 |
| 6. Public Hearing/Comments Due on DEIR | March 2011 |
| 7. FEIR Complete | March 2011 |
| 8. Nelson Oliva/Jim Anderson endorse final DA/OPA/PSA | March 2011 |
| 9. Planning Commission Hearing on FEIR, DA/OPA/PSA | March 2011 |
| 10. City Council/Agency Hearing on FEIR, DA/OPA/PSA | April 2011 |
| 11. DA/OPA Effective | May 2011 |
| 12. Final Map for ITC Parcels | May 2011 |
| 13. Closing of ITC Property | May 2011 |