ENVIRONMENTAL SETTLEMENT AGREEMENT

FOR

THE CONVENTION CENTER PHASE III EXPANSION
AND EXPANSION HOTEL PROJECT

BY

CITY OF SAN DIEGO;

SAN DIEGO COALITION FOR A BETTER
CONVENTION CENTER;

SAN DIEGO COUNTY BUILDING AND
CONSTRUCTION TRADES COUNCIL;

UNITE HERE LOCAL 30; AND

BILLIE JOHNSON
ENVIRONMENTAL SETTLEMENT AGREEMENT

This Environmental Settlement Agreement ("Agreement") is made effective as of this 14th day of November 2012 (the "Effective Date") by the following parties: the City of San Diego ("City"), the San Diego Coalition for a Better Convention Center ("Coalition"), the San Diego County Building and Construction Trades Council ("Council"), UNITE HERE Local 30 ("UNITE HERE"), and Billie Johnson ("Johnson"). The parties to this Agreement are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) (California Public Resources Code section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations Title 14, Chapter 3), the San Diego Unified Port District ("Port District"), as the lead agency for the San Diego Convention Center Phase III Expansion & Expansion Hotel & Port Master Plan Amendment (the "Project"), prepared an Environmental Impact Report (SCH No. 20101210074) which documents, describes, discloses, and analyzes the environmental impacts of the Project, including all components that pertain to the Phase III Expansion of the San Diego Convention Center ("Phase III Expansion");

WHEREAS, the City, as the Project Applicant with respect to the Phase III Expansion, is a responsible agency for the Project as provided in CEQA section 21069;

WHEREAS, on June 29, 2012, the Coalition submitted comments to the Port District on its preparation of a Draft Environmental Impact Report ("DEIR") for the Project ("DEIR Comments");

WHEREAS, the DEIR Comments allege various errors in the Port District's environmental analysis;

WHEREAS, on September 19, 2012, the Coalition submitted comments to the Port District on its preparation of a Final Environmental Impact Report ("FEIR") for the Project ("FEIR Comments");

WHEREAS, the Coalition, Council, UNITE HERE, and Johnson (collectively, the "SDCBCC") represent that the DEIR Comments and FEIR Comments allege various continuing errors in the Port District's environmental analysis, including but not limited to the failure to identify and mitigate impacts to: (1) water quality, species health, and public health from construction-related impacts on an adjacent underwater contamination "cap"; (2) water quality and public health from the discharge of construction-related dewatering water; and (3) public services from the unmitigated disposal of solid waste associated with Project construction;
WHEREAS, on September 19, 2012, the Port District duly certified the FEIR and adopted Findings of Fact and a Statement of Overriding Considerations as required by CEQA, together with a Mitigation Monitoring and Reporting Program, including revisions thereto, as provided in the Errata to the FEIR, Mitigation Monitoring and Reporting Program, and Findings of Fact, (collectively, the “Port’s CEQA Findings”);

WHEREAS, on October 1, 2012, prior to approving the Financing Plan for the Phase III Expansion activities, the City, as a responsible agency under CEQA, reviewed, considered, and adopted the Port District’s CEQA Findings for the FEIR for the Project as its own findings under CEQA to the extent they are relevant to the City’s approval of discretionary actions to implement the Phase III Expansion, and adopted the Statement of Overriding Considerations adopted by the Port District finding that the benefits of the Project outweigh the adverse environmental impacts not reduced to below a level of significance (collectively, the “City’s CEQA Findings”);

WHEREAS, on October 22, 2012, the Parties along with the Port District executed an agreement to toll the statute of limitations for filing a legal challenge to the Port District’s certification of the FEIR under CEQA until October 29, 2012, and on October 29, 2012, the Parties and the Port District extended that agreement until November 8, 2012;

WHEREAS, the Parties desire to resolve their disputes regarding the DEIR, the FEIR, and all actions taken or to be taken related to the Project (collectively, the “Approvals”), and desire to enter into this Agreement for the purpose and intent of fully and finally settling all disputes between the Parties relating to or arising out of the Project, whether known or unknown, so that the Parties can move forward in a cooperative manner in support of the Project, which will benefit all the Parties;

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions and promises contained herein, the Parties hereto fully settle, compromise and resolve all disputes and controversies between them related to the Project and the Approvals. Following negotiations between the Parties, a settlement of all claims between the Parties was agreed to, the terms of which are set forth below.

TERMS

I. ACTIONS BY THE CITY:

The City shall comply with the measures described in sections I.(A)-(C) of this Agreement. These measures are included as part of this settlement between the Parties, and are independent of the City’s obligations under CEQA, and are not intended to change the City’s CEQA determination or re-open any public review process under CEQA. The below measures are not part of, and not to be
incorporated into, the Mitigation Monitoring and Reporting Program. These measures are obligations of the City in addition to any obligations that may already be held by the Port District, and do not supplant or affect such Port District obligations, nor create any obligation on behalf of the Port District.

A. **Pile-Driving Impacts:**

Prior to the commencement of construction of the Phase III Expansion, the City, in cooperation with the Port District, will perform an assessment of whether vibration caused by pile-driving activities associated with Phase III Expansion construction will likely damage the structural integrity of the underwater remediation cap adjacent to the Project site. If such assessment concludes that the structural integrity of the underwater remediation cap will likely suffer material damage as a result of such pile-driving activities, the City, in cooperation with the Port District, will deliver a copy of the initial assessment to the San Diego Regional Water Quality Control Board ("SDRWQCB") and the City will exercise diligent and good faith efforts to obtain the SDRWQCB's approval of a monitoring program pursuant to which City will assess, or cause to be assessed, any damage to the underwater remediation cap occurring during and as a result of such pile-driving activities.

B. **Construction Dewatering:**

To adequately protect workers and the environment, construction-related groundwater ("dewatering water") shall be discharged in accordance with the SDRWQCB's existing terms, conditions, restrictions, and past cease and desist orders regarding dewatering discharges at the Convention Center, and not the SDRWQCB's general permit for construction-related groundwater extraction and discharge into San Diego Bay, unless after direct consultation with SDRWQCB staff, the SDRWQCB concludes that its general permit is adequate for the discharge of dewatering water from the Phase III Expansion site during construction.

C. **Management of Construction Solid Waste:**

Prior to commencement of construction of the Phase III Expansion, the City shall prepare a waste management plan for the solid waste expected to be generated during demolition and construction of the Phase III Expansion. The City shall provide, as part of the waste management plan, specific information about waste generation rates, the types of wastes to be generated, and the amount anticipated to be diverted from landfills. The waste management plan shall be reviewed and approved by the City's Environmental Services Department under the same standards used for waste management plans submitted by private developers.
II. ACTIONS BY THE SDCBCC

The SDCBCC will not participate in any meetings or hearings on behalf of themselves or through their officers, representatives, business managers, affiliated unions, agents or attorneys to challenge, oppose or contest the Approvals or the Project, and they will not challenge, oppose, contest, take adverse actions or bring suit, administratively or judicially, regarding the Approvals or the Project. The SDCBCC will cease and desist from supporting, and refrain from supporting in the future, financially or otherwise, directly or indirectly through the efforts of any person, firm or organization, any opposition or challenge to the Approvals or the Project in any (a) administrative action before any government agency, including the California Coastal Commission, related to any aspect of the Approvals or the Project, or (b) litigation currently filed or to be filed in the future with respect to the Approvals or the Project. The SDCBCC agree to dismiss any litigation related to the Project (if applicable) and refrain from filing future lawsuits related to the Project.

The SDCBCC will affirmatively support the Project, by timely submission of written acknowledgements of support and by personal appearance, in all legislative and administrative actions after the date of this agreement before the Port District, Board of Port Commissioners, the San Diego City Council, the California Coastal Commission and any other government agency identified as a “responsible agency” in the FEIR with respect to any aspect of the Project.

The SDCBCC shall not request supplemental CEQA documentation of any kind or form, nor provide any support or assistance to any third party’s efforts to obtain additional CEQA documentation for the Project.

The SDCBCC shall not sign or consent to any waiver of conflict or confidentiality from their legal counsel, consultants, agents, or any other individual who has handled any matter related to the Approvals or the Project in order to allow such legal counsel, consultant, or agent to support or assist any third party in opposing, obstructing, or delaying the Project. The SDCBCC shall use best efforts to prevent their agents and consultants from undermining the purpose and intent of this agreement. Due to the joint-representation of other parties by Labor Parties’ legal counsel in the administrative proceedings for the FEIR, the filing of a legal challenge against the Port District’s or City’s certification/approval of the FEIR by such legal counsel on behalf of any party will constitute a failure of this condition.

The SDCBCC acknowledge that their DEIR Comments and FEIR Comments have been satisfactorily addressed, and agree and acknowledge that the comments were not submitted on behalf of any organization other than the organizations that comprise the SDCBCC.
III. MUTUAL RELEASES

Except for the obligations provided herein, the City and each of its representatives, agents, attorneys, successors and assigns hereby unconditionally release, acquit and forever discharge the SDCBCC and each of their representatives, agents, attorneys, successors and assigns from any claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, known or unknown, which the City has against the SDCBCC arising out of the Project or the Approvals.

Except for the obligations provided herein, the SDCBCC hereby unconditionally release, acquit and forever discharge the City and each of its representatives, attorneys, agents, successors and assigns from any claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, known or unknown, which the SDCBCC has against the City arising out of the Project or the Approvals.

The Parties are aware that facts may be discovered later that are different from and/or in addition to those that the Parties now know or believe to be true. The Parties acknowledge that they have been informed by their attorneys regarding, and are familiar with, California Civil Code section 1542 which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Parties expressly waive all rights under Civil Code section 1542 and intend that the foregoing releases and discharges extend to all claims any Party has had or has up through the Effective Date regarding the Approvals.

IV. PROSPECTIVE CLAIMS

The releases in this Agreement are limited releases that apply only to claims relating to the Approvals and Project and shall not apply to any claims, demands, obligations, responsibilities, suits, actions or causes of action arising out of the failure of any Party to perform its obligations as set forth in this Agreement or relating to any other contractual arrangement between the Parties and/or their affiliates, including any contracts covering the provision of labor or services related to the Project.

V. NO PRIOR ASSIGNMENTS

The Parties hereto represent and warrant that they have not heretofore assigned or transferred, or purported to assign or transfer, to any other person,
entity, firm or corporation whatsoever, any claim, debt, liability, demand, obligation, expense, action or causes of action herein released.

VI. SETTLEMENT OF DISPUTED CLAIMS

The Parties hereto understand and agree that this Agreement is a final, binding settlement to resolve all issues related to the Project and Approvals, which the Parties dispute in whole or in part, and is not an admission of any wrongdoing or liability by the City or the SDCBCC.

VII. FACTUAL INVESTIGATION

Each Party has conducted its own factual investigation and is not relying on the other Parties.

VIII. UNDERSTANDING OF TERMS

The Parties hereto each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and on the advice of counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants as they may have desired prior to executing this Agreement.

IX. AGREEMENT MAY BE PLEADED AS A DEFENSE

This Agreement may be pleaded as a defense by the Parties hereto and may be used as the basis for a injunction against any action challenging the Approvals in violation of this Agreement.

X. ENFORCEMENT

This Agreement shall be interpreted under the laws of the State of California. The Parties agree that money damages would be an inadequate remedy for any breach (or threatened breach) of this Agreement, and agree that this Agreement may be enforced without the requirement of posting a bond by a preliminary or permanent, mandatory, or prohibitory injunction, by a decree of specific performance, or other such order or decree of a court of competent jurisdiction. The agreed remedies set forth herein shall not be construed to limit or derogate from any legal or equitable remedy authorized by applicable law.

XI. AUTHORITY TO EXECUTE AGREEMENT

Each person signing this Agreement warrants that he or she has authority to execute this Agreement and to thereby bind the Party on whose behalf he or she is signing to the terms of this Agreement.
XII. LEGAL FEES AND COSTS

Each Party shall bear its own legal fees and costs resulting from any threatened or actual litigation related to the Project and resulting from the preparation, negotiation and execution of this Agreement. This provision is not intended to negate or affect any agreement for the payment of costs or fees arising out of settlement of a related case executed concurrently with this Agreement.

XIII. ALTERNATIVE DISPUTE RESOLUTION

If a dispute arises out of, or relates to the Agreement, or the breach thereof, and if said dispute cannot be settled through negotiations, the parties agree to first endeavor to settle the dispute in good faith, using mandatory non-binding mediation administered by a neutral professional mediator affiliated with and under the rules of the National Dispute Resolution Center (“NDRC”) before having recourse in a court of law. Any such mediation shall be held in San Diego, California using a mediator selected by the parties from NDRC’s panel of approved neutrals. Each party shall bear its own expenses in participating in the mediation and the parties shall share equally in the cost of the mediation services.

XIV. MATERIALITY OF BREACH

Any breach of this Agreement, at the option of any Party, shall be treated as material and a complete failure of consideration.

XV. WAIVER

The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

XVI. AMENDMENTS

No provision of this Agreement may be modified, unless in writing and signed by the Party against whom the enforcement of such modification is sought.

XVII. PARAGRAPH HEADINGS

Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the Parties.

XVIII. SEVERABILITY

If any portion of this Agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same
shall in no way affect any other provision of this Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole.

XIX. INTEGRATION

The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein.

XX. TIME OF THE ESSENCE

Time is of the essence in this Agreement.

XXI. COUNTERPARTS

This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on the Parties.

[SIGNATURES TO FOLLOW]
IN WITNESS WHEREOF, the Parties have executed one or more copies of this Agreement as of the Effective Date.

City of San Diego
By: [Signature]
Its: [Title]
Date: 11/8/12

San Diego County Building and Construction Trades Council
By: [Signature]
Its: [Title]
Date: 11/8/12

San Diego Coalition for a Better Convention Center
By: [Signature]
Its: [Title]
Date: 11/8/12

UNITE HERE Local 30
By: [Signature]
Its: [Title]
Date: 11/8/12

Billie Johnson
Date: ______________________

[ADDITIONAL SIGNATURES TO FOLLOW]
IN WITNESS WHEREOF, the Parties have executed one or more copies of this Agreement as of the Effective Date.

City of San Diego

By: __________________________
Its: __________________________
Date: _________________________

San Diego County Building and Construction Trades Council

By: __________________________
Its: __________________________
Date: _________________________

San Diego Coalition for a Better Convention Center

By: __________________________
Its: __________________________
Date: _________________________

UNITE HERE Local 30

By: __________________________
Its: __________________________
Date: _________________________

Billie Johnson

Date: 11-7-12

[ADDITIONAL SIGNATURES TO FOLLOW]
APPROVED as to form and content:

San Diego City Attorney's Office

[Signature]
Glenn Spitzer
Travis Phelps

Date: 11/08/2012

Adams Broadwell Joseph & Cardozo

[Signature]
Tanya A. Gulessarian
Ellen L. Trescott

Date: 11/6/2012