

INSURANCE NOT REQUIRED  
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CLERK OF COUNCIL  
DATE: SEP 05 2019

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(M-30/T11)

A-2019-156  
Attachment A

## COOPERATIVE AGREEMENT

### BETWEEN THE CITY OF SANTA ANA AND THE COUNTY OF ORANGE FOR THE REORGANIZATION OF THE 17TH AND TUSTIN UNINCORPORATED ISLAND TO THE CITY OF SANTA ANA AND MUNICIPAL WATER DISTRICT OF ORANGE COUNTY (RO19-07)

THIS COOPERATIVE AGREEMENT ("Agreement"), dated September 3, 2019, between the CITY OF SANTA ANA ("CITY"), a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California, and the COUNTY OF ORANGE ("COUNTY"), a political subdivision of the State of California, (collectively referred to as the "PARTIES" herein) is based on the following:

## RECITALS

A. The City is in the process of annexing an unincorporated County island consisting of approximately 25 acres and referred to as the 17<sup>th</sup> and Tustin Unincorporated Island ("Annexation Area") and detachment of the Annexation Area from the Municipal Water District of Orange County. The Annexation Area is described in **Exhibit 1** and depicted in **Exhibit 2**.

B. The Annexation Area more specifically includes 57 parcels in the COUNTY bearing Assessor's Parcel Numbers ("APNs") 396-303-01 to 396-303-28, 396-304-01 to 396-304-11, 396-312-13 to 396-312-15, 396-313-01 to 396-313-03, 396-313-06 to 396-313-11, and 396-314-01 to 396-314-06, as depicted on **Exhibit 3**.

C. Among the individual parcels in the Annexation Area, the John C. Hall Trust UAD is the fee title holder of three parcels with APN Nos. 396-312-13 to 396-312-15, which parcels are currently under COUNTY review, application number PA160055, for discretionary permits for development. There may be additional ministerial permit applications to be submitted to the County, and County shall continue to retain all planning, building, safety, and inspection authority until the point of occupancy (collectively the discretionary and ministerial permits are the "Development Project").

## EXHIBIT 2

D. The CITY and COUNTY are public entities possessing the common power to conduct and evaluate applications for discretionary and ministerial permits for development, including, but not limited to, subdivision maps, conditional use permits, grading permits and building permits, and approvals related to the implementation, planning, and development of real property ("Development Approvals").

E. The CITY intends, by way of this Agreement and pursuant to California Government Code section 51300 et seq. to contract with the COUNTY for the performance of all Development Approvals for the Development Project. Subject to this Agreement, and as limited to the Development Project alone, the COUNTY will assume the authority for the Development Approvals.

F. In the event of a "jurisdictional change" as defined in California Revenue and Taxation Code section 99, prior to the effective date of any jurisdictional change, the affected agencies of such change shall negotiate the amount of property tax revenues to be exchanged.

G. The Parties have met and negotiated both a property tax exchange and other consideration, all of which is conditional upon the CITY'S annexation of the Annexation Area becoming final and effective.

## **AGREEMENT**

NOW, THEREFORE, based on the foregoing and in consideration of the Parties' mutual agreements and promises hereinafter set forth, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. CITY'S ANNEXATION APPLICATION**

Within 90 days of the execution of this Agreement, the CITY will file an application for and diligently pursue annexation of the Annexation Area with the Orange County Local Agency Formation Commission (OCLAFCO).

## **2. PROPERTY TAX EXCHANGE**

Upon annexation of the Annexation Area and assumption of services by the CITY becoming final and complete, the COUNTY and CITY agree to an exchange of property taxes generated within the Annexation Area as follows:

a. The COUNTY shall receive 41.4715 percent and the CITY shall receive 58.5285 percent of the COUNTY's share of the 1 percent basic levy of property tax from the annexation, with the re-allocation taking effect after OCLAFCO approval of the annexation. These proportional shares shall remain as the allocation of tax revenues between the CITY and the COUNTY for the annexations for all future years unless the CITY and COUNTY agree by written Resolution to adjust the allocation proportions.

b. The CITY shall receive a one-time compensation of \$711,814 to construct betterments in the Annexation Area, including Street Improvements (\$397,314), Storm Drain Improvements (\$187,500), and General Construction Costs (\$127,000).

c. As the CITY contracts with the Orange County Fire Authority, the Structural Fire Fund shall remain unchanged.

## **3. PERFORMANCE OF DEVELOPMENT APPROVALS**

For the Development Project alone, the CITY hereby conveys to the COUNTY authority and responsibility for the Development Approvals, as defined above and pursuant to Government Code section 51300, et seq. County shall have such authority and responsibility for the Development Project through issuance of the Certificates of Occupancy. The County shall exercise the Development Approvals in substantial compliance with: (I) conditions imposed by any State or local agency; and (II) legally enforceable restrictions and limitations on development of the Property.

## **4. DISSOLUTION OF ANNEXATION AREA**

Except with respect to matters addressed in Sections 5 and 6 herein, the COUNTY shall dissolve the Annexation Area, with the CITY to assume the services for the area, and the CITY to receive a transfer of the one-time compensation amount specified in paragraph 2.b herein at the time of dissolution.

## **5. OPEN CODE ENFORCEMENT CASES**

The COUNTY commits to making its best effort to close open code enforcement and building safety/planning cases prior to the date of annexation, with the understanding that CITY agrees that COUNTY shall be entitled to charge, receive and retain all code enforcement fine amounts, which shall be the COUNTY's sole consideration for all services performed in closing the open cases. For code enforcement cases that still remain open on the date of annexation, the COUNTY will administer the cases to completion, using COUNTY ordinances and code enforcement procedures.

## **6. PERMITS AND PLAN CHECKS**

CITY agrees that COUNTY shall be entitled to charge, receive and retain all customary fees for the Development Project through issuance of the Certificates of Occupancy, including planning application, building permit fees, grading fees, and inspection fees. The fees shall be the COUNTY's sole consideration for all services performed in closing the Development Project.

## **7. ANNEXATION FEES**

CITY shall request that OCLAFCO allow the annexation to be processed under the "Small Island Annexation Program" so that OCLAFCO fees and map and legal fees are waived for the CITY.

## **8. DEEDS**

COUNTY and CITY agree to execute, in recordable form, such documents as may be required to complete the annexation. In addition, if any transfer of ownership of real property that would not automatically result from the annexation is necessary to carry out the objectives of this Agreement, the COUNTY will execute, in recordable form, such deeds or other documents as may be required to accomplish those objectives.

## **9. TERM OF AGREEMENT**

This Agreement shall commence upon the execution of all necessary signatures, and except for the authority granted to COUNTY for the Development Approvals, this Agreement shall continue in full force and effect with respect to the Property until annexation of the Property by the City has been completed to the satisfaction of both parties.

## **10. ENTIRE AGREEMENT**

This Agreement sets forth and contains the entire understanding and agreement of the Parties, and all oral or written representations, understandings or agreements are expressly stated in this Agreement. No testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceeding or any kind or nature to interpret or determine the terms or conditions of this Agreement.

## **11. SEVERABILITY**

If any term, provision, covenant, or condition of this Agreement is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this Agreement shall nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions.

## **12. INTERPRETATION AND GOVERNING LAW**

This Agreement and any related dispute shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed according to its plain language and fair and common meaning to achieve the objectives and purposes of the Parties.

## **13. INDEMNIFICATION**

Each party agrees to indemnify, defend with counsel approved in writing by the other party, and hold the other party, and their officials, officers, employees and agents free and harmless from any claim, loss, damage, or injury to property or persons, including wrongful death, in any manner arising out of or incident to any negligent act, omission or willful misconduct of the agreeing party, their respective officers, employees

or agents, arising out of or in connection with the execution or performance of this Agreement, including without limitation the payment of attorney fees.

#### **14. SECTION HEADINGS**

All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

#### **15. WAIVER**

The failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure of a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of that Party's right to demand and require, at any time, the other Party's strict compliance with the terms of this Agreement

#### **16. NO THIRD PARTY BENEFICIARIES**

The Parties expressly acknowledge and agree that they do not intend, by their execution of this Agreement, to benefit any person or entities not signatory to this Agreement. No person or entity not a signatory to this Agreement will have any rights or causes of action against the CITY or COUNTY, or any combination thereof, arising out of or due to CITY'S or COUNTY'S entry into this Agreement.

#### **17. SUCCESSORS IN INTEREST**

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

#### **18. COUNTERPARTS**

This Agreement may be executed by the parties and counterparts, which counterparts shall be construed together and have the same effect as if all the parties had executed the same instrument.

**19. JURISDICTION AND VENUE**

Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California. The Parties waive all provisions of law providing for the filing, removal or change of venue to any other court.

**20. FURTHER ACTIONS AND INSTRUMENTS**

Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated by this Agreement to achieve the objectives of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record instruments and writing. The Parties shall also take any action that may be reasonably necessary under the terms of this Agreement to carry out the intent and to achieve the objectives of this Agreement.

**21. AMENDMENTS**

This Agreement may be amended only by written consent of the parties specifically approving the amendment. The Parties shall cooperate in good faith with respect to any amendment proposed in order to clarify that intent and application of this Agreement.

**22. AUTHORITY TO EXECUTE**

Any person or persons executing this Agreement on behalf of the City and County warrants and represents that he or she has the authority to execute this Agreement on behalf of his or her agency and to bind that Agency to the performance of its obligations pursuant to this Agreement.

**23. NOTICE**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and shall be deemed served when delivered personally or on

the third business day after deposit in the United States mail, postage prepaid, first class mail, addressed as follows.

All notices, demands, requests or approvals to CITY shall be addressed to:


City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 90702  
Attn: Clerk of the Council

All notices, demands, requests or approvals to COUNTY shall be addressed to:

Robin Stieler, Clerk of the Board  
County of Orange  
333 W. Santa Ana Blvd  
Santa Ana, CA 92701

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below:


CITY OF SANTA ANA

By:   
Kristine Ridge  
City Manager  
Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
Sonia R. Carvalho, City Attorney

By:    
City Clerk

By:   
John M. Funk  
Assistant City Attorney

**Return ORIGINAL  
Executed Copy to COTC  
(M-30/T11)**

COUNTY OF ORANGE

By: \_\_\_\_\_

LISA A. BARTLETT

Chairwoman of the Board of Supervisors

County of Orange, California

Date: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS  
AGREEMENT HAS BEEN DELIVERED TO THE CHAIR  
OF THE BOARD PER G.C. SEC. 25103, RESO 79-1535  
ATTEST:

\_\_\_\_\_  
Robin Stieler

Clerk of the Board

Orange County, California

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By: \_\_\_\_\_

Date: \_\_\_\_\_

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COOPERATIVE AGREEMENT  
BETWEEN THE CITY OF SANTA ANA AND THE COUNTY OF ORANGE  
FOR THE REORGANIZATION OF THE 17TH AND TUSTIN  
UNINCORPORATED ISLAND TO THE CITY OF SANTA ANA

The 17<sup>th</sup> and Tustin Island annexation area is described as approximately 25 acres of unincorporated territory generally located near where the SR-55 Costa Mesa Freeway intersects 17<sup>th</sup> street, lying to the north of 17<sup>th</sup> Street, to the east of Tustin Avenue, to the south of Catalina Avenue, and west of SR-55 Costa Mesa Freeway.

Included in the annexation is unincorporated public right of way as follows:

- 17<sup>th</sup> Street from Tustin Avenue to SR-55 Costa Mesa Freeway
- Tustin Avenue from 17<sup>th</sup> Street to the north line produced of APN 396-312-15
- Ponderosa Street from 17<sup>th</sup> Street to the north line produced of APN 396-303-12
- Deodar Street from 17<sup>th</sup> Street to the north line produced of APN 396-303-12
- Medford Street from Deodar Street to Pasadena Street
- Pasadena Street from Medford Street to the north end of the cul-de-sac

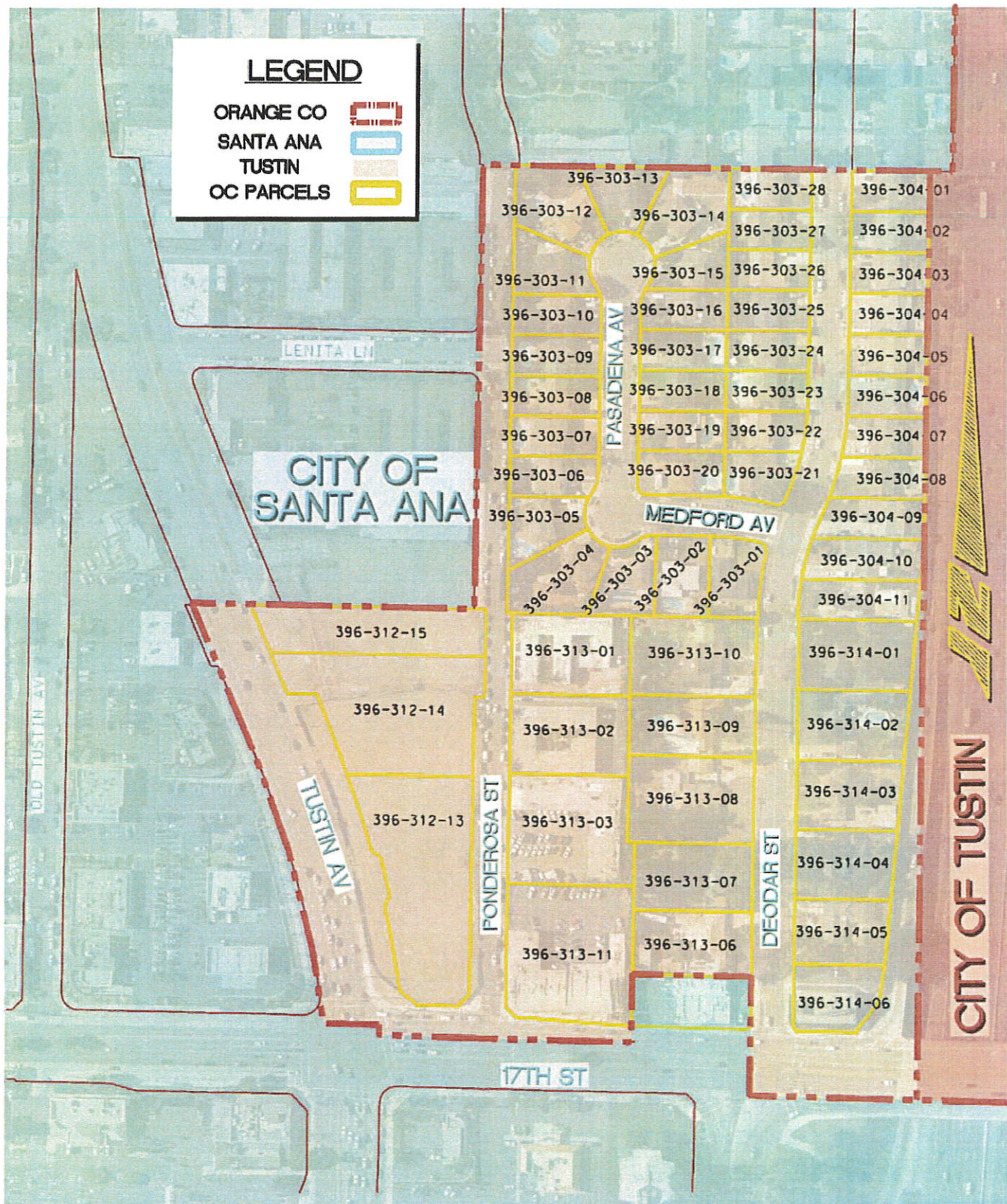
The above described annexation area is depicted in Exhibit 2.

The area includes the private property parcels with Assessor's Parcel Numbers ("APNs") as shown in Exhibit 3.

**EXHIBIT 1**



**EXHIBIT 2**  
CITY OF SANTA ANA 17TH STREET ISLAND - VICINITY MAP



**EXHIBIT 3**  
**ASSESSOR'S PARCEL NUMBER MAP**