

ORDINANCE NUMBER O- 20787 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 13 2017

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A MEMORANDUM OF AGREEMENT WITH THE COUNTY OF SAN DIEGO RELATED TO THE ANNEXATION OF PROPERTY LOCATED IN SOUTHEASTERN SAN DIEGO AND THE PARTIES' OBLIGATIONS REGARDING WATER QUALITY REGULATION COMPLIANCE.

WHEREAS, there is territory of approximately 121 acres located in Southeastern San Diego that is currently within the jurisdiction of the County of San Diego (County) but which is surrounded on all sides by City of San Diego (City) territory (the County Island); and

WHEREAS, the City may initiate proceedings to annex the County Island into the City's jurisdictional boundaries by submitting an application to the San Diego Local Agency Formation Commission; and

WHEREAS, the County Island is located in the watershed of Chollas Creek, a waterbody for which the California Regional Water Quality Control Board, San Diego Region, has promulgated regulations that are implemented pursuant to a Municipal Stormwater Permit (MS4 Permit); and

WHEREAS, the City has considered whether to accept specific responsibilities related to the MS4 Permit, and the County, at the October 19, 2016 meeting of the Board of Supervisors, agreed to compensate the City \$13,569,345 in exchange for that assumption of responsibility, a figure that City staff determined accounts for the storm water infrastructure commitments, including the operation and maintenance of storm water assets and compliance costs for known water quality regulations the City would assume within the affected area over the next 100 years; and

WHEREAS, under San Diego Charter section 99, a two-thirds vote of the City Council is required for passage of this ordinance; NOW, THEREFORE,

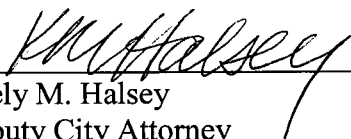
BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the City Council of the City of San Diego authorizes entering into a Memorandum of Agreement with the County that describes each party's responsibilities with respect to certain water quality regulation compliance related to the area proposed to be annexed into the City's jurisdictional boundaries, in substantially the form stated in the "Memorandum of Agreement Related to the Annexation of Southeastern San Diego County Island," attached hereto as Exhibit A.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Keely M. Halsey
Deputy City Attorney

KMH:als
11/21/2016
Or.Dept: Planning
Doc. No.: 1377930

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN 10 2017.

ELIZABETH S. MALAND
City Clerk

By *Dinda Irwin*
Deputy City Clerk

Approved: 1/13/17
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

EXHIBIT A

**MEMORANDUM OF AGREEMENT RELATED TO THE ANNEXATION OF SOUTHEASTERN SAN
DIEGO COUNTY ISLAND**

This Memorandum of Agreement related to the Annexation of Southeastern San Diego County Island (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and the County of San Diego, a political subdivision of the State of California (County), effective on _____, 2016, subject to the following terms and conditions:

RECITALS

WHEREAS, the jurisdictional boundaries of the County include an approximately 121 acre island of territory (Southeastern San Diego County Island, or Island) surrounded on all sides by the City between Interstates 15 and 805 just south of Highway 94 containing the privately operated Greenwood Memorial Cemetery and other land uses as more particularly shown on the Sphere of Influence map affirmed by the San Diego Local Agency Formation Commission (SDLAFCO) on March 3, 2008 and attached hereto as Exhibit A;

WHEREAS, the City intends to submit to SDLAFCO an application to annex the Island into the City, subject to certain terms and conditions;

WHEREAS, owners and operators of municipal separate storm sewer systems (MS4s) must comply with the requirements of a Municipal Stormwater Permit (MS4 Permit) issued by the California Regional Water Quality Control Board, San Diego Region (Regional Board), referred to as Order No. R9-2013-0001 as amended by Orders No. R9-2015-0001 and R9-2015-0100, and as may be subsequently amended or superseded;

WHEREAS, the Southeastern San Diego Island is located in the watershed of Chollas Creek, a 303(d) listed waterbody per 33 U.S.C § 1313, subject to Total Maximum Daily Loads (TMDLs) for bacteria, metals, and Diazinon by Regional Board Order Nos. R9-2010-0001, R9-2007-0043 and R9-2002-0123 and may be subject to additional TMDLs for, among other things, benthic community degradation and sediment toxicity; and

WHEREAS, the City is willing to accept specific responsibilities related to stormwater and non-stormwater discharges regulated by the MS4 Permit (MS4 Permit Compliance, as described below) from the Island in exchange for the payment of \$13,569,345 by the County to the City, as more fully set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the above-stated Recitals and subject to the terms and conditions set forth below, the City and County (each, a Party and, collectively, Parties) enter into the following Agreement:

SCOPE OF AGREEMENT: The Parties agree that the scope of this Agreement is limited to the Parties' responsibility for MS4 Permit Compliance as described herein and that this Agreement shall not be construed to affect either of the Parties' rights, obligations, or liability with respect to any other matter, including, but not limited to, that this Agreement does not require or effect a change in ownership of property and that it does not change each Party's responsibility or liability with respect to any hazardous substance contamination asserted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act.

COUNTY PAYMENT: Within sixty (60) days of SDLAFCO's execution of a certificate of completion regarding the change of organization to annex the Island into the City, County shall pay to City \$13,569,345 (County Payment). The County shall not owe the City any other sums pursuant to this Agreement.

CITY ASSUMPTION OF LIABILITY FOR MS4 PERMIT COMPLIANCE: Upon City's receipt of the County Payment or upon the effective date of the change of organization, whichever comes later, City shall assume all responsibility and liability, at City's sole cost and expense, for MS4 Permit Compliance, which may include the responsibility to investigate, monitor, report, remediate, and completely resolve any TMDLs, orders, or other regulatory actions now in existence or subsequently imposed in the Chollas Creek Watershed to ensure compliance with federal, State, and local clean water laws for which County may otherwise be responsible by virtue of County's former ownership or control of facilities or regulation of land and activities within the Island. Complete resolution of a TMDL, order, or regulatory action shall mean and include, without limitation, any and all action required of City to fully comply with the TMDL Effluent Limitations specified in the MS4 Permit and any implementation plan or other similar plan to eliminate or reduce point or non-point source discharges and to fully and finally resolve any enforcement action for alleged non-compliance with a TMDL, order, law, regulation, or administrative action. Nothing in this Agreement shall prohibit City from contesting a TMDL, order, or regulatory action.

MUTUAL WAIVER AND RELEASE: Each Party waives and releases any and all claims, demands, costs, or lawsuits of any kind or character, whether based in law or equity, resulting from the City's annexation of the Island and assumption of responsibility for MS4 Permit Compliance that either Party may have against the other or seek to assert against the other, except that each Party may seek to enforce the terms of this Agreement. Except as otherwise provided by this Agreement, each Party waives all rights that may exist under Civil Code § 1542 or any similar authority. Civil Code § 1542 provides that, **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

This provision shall become effective upon City assumption of liability for MS4 Permit Compliance in accordance with the terms of this Agreement.

MUTUAL DEFENSE AND INDEMNITY. City agrees to defend and indemnify County, and County's Board of Supervisors, officers, agents and employees (collectively County Party), against any and all claims, demands, costs, orders, administrative enforcement actions, judgments or lawsuits of any kind or character, whether based in law or equity (collectively Claims), asserted against County for a responsibility or liability assumed by City pursuant to this Agreement; provided, however, this obligation shall not extend to and include any Claims resulting from the sole negligence or willful misconduct of a County Party.

County agrees to defend and indemnify City, and its elected officials and its officers, agents, and employees (collectively City Party), against any and all claims, demands, costs, orders, administrative enforcement actions, judgments or lawsuits of any kind or character, whether based in law or equity (collectively Claims), asserted against City for a responsibility or liability assumed by County pursuant to this Agreement; provided, however, this obligation shall not extend to and include any Claims resulting from the sole negligence or willful misconduct of a City Party.

These provisions shall become effective upon City assumption of liability for MS4 Permit Compliance in accordance with the terms of this Agreement.

SUCCESSORS, ASSIGNS & DELEGATES: Each Party's obligations under this Agreement may only be assigned, assumed, or delegated upon the express written consent of the other Party. Each Party's assignees, successors, and delegates shall assume all obligations of the assigning Party under this Agreement.

COMMUNICATIONS and NOTICE: All written correspondence, information, or notices required to be exchanged between the parties pursuant to this Agreement shall be delivered in person or sent by first-class, United States mail, postage prepaid, to the addresses identified below:

If to: County of San Diego
Department of Public Works
5510 Overland Avenue, Suite 410
San Diego, CA 92123

Attention: Richard E. Crompton, Director of Public Works

If to: City of San Diego

Planning Department
1010 Second Avenue, Suite 1200
San Diego, CA 92101

Attention: Jeff Murphy, Planning Director

Such written correspondence, information, or notices may be sent in the manner specified herein to such other persons and addresses as either Party may from time to time designate by mail as provided in this section. A Party may change its address by giving notice in writing to the other Party and thereafter all written correspondence, information, or notices shall be delivered or sent to such new address.

ENTIRE AGREEMENT: This Agreement, including the Exhibit, represents the full and entire agreement between the Parties with respect to the matters covered herein. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda, or agreements are in conflict with this Agreement, are replaced by this Agreement. Neither Party is relying on any oral promises or representations outside this Agreement.

AMENDMENT: This Agreement may not be modified or amended in any respect except by written agreement duly approved and signed by the Parties.

GOVERNING LAW AND VENUE: This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement shall be deemed made and entered into in San Diego County, California which shall also be deemed to be the sole and proper venue for any action or proceeding relating to this Agreement.

WAIVER: No waiver by either Party of a breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same.

INTERPRETATION: This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting.

COUNTERPARTS: This Agreement may be executed in counterparts each of which shall be considered an original.

EXHIBIT: The Exhibit identified is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, City and County have executed this Agreement as of the day and year first above written.

CITY OF SAN DIEGO

By:

Name:

Title:

COUNTY OF SAN DIEGO

By:

Name:

Title:

APPROVED AS TO FORM:

By:

Name:

Title:

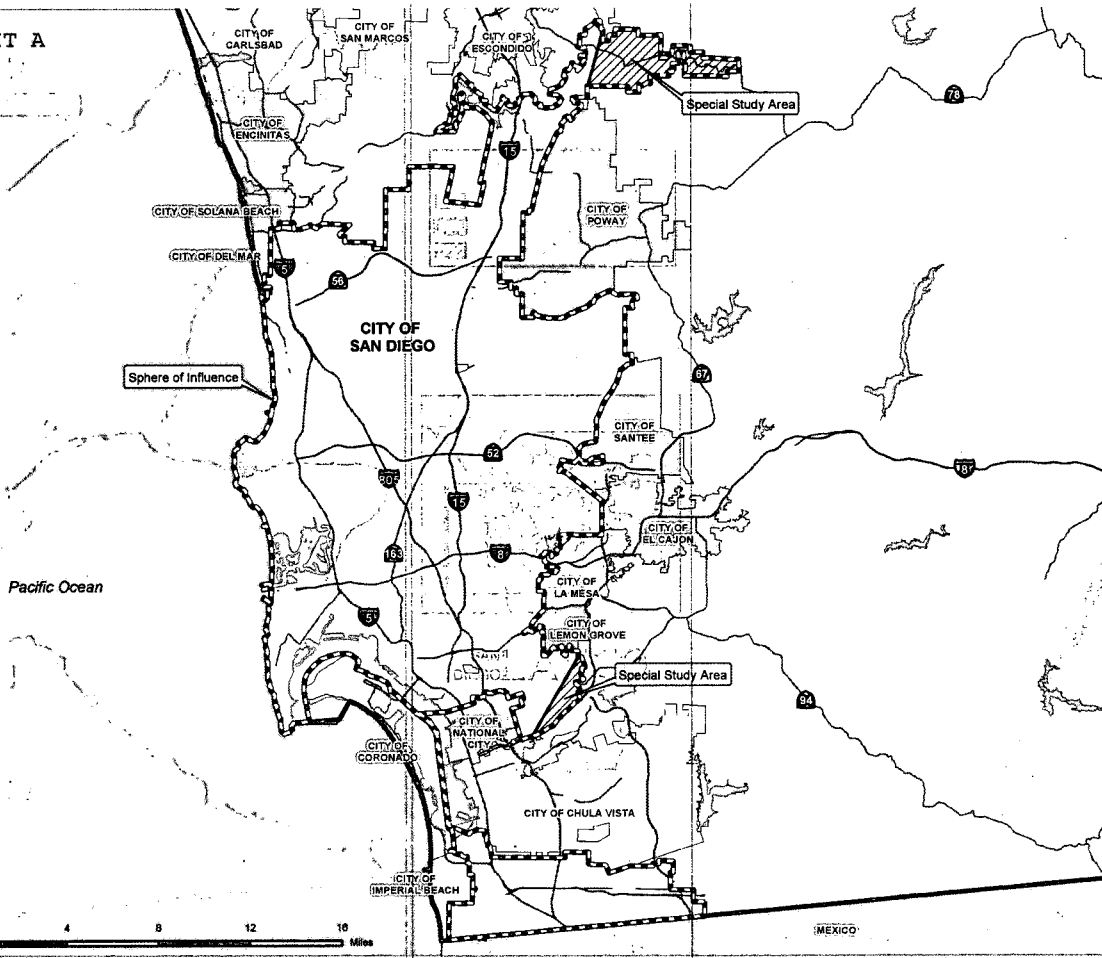
APPROVED AS TO FORM:

By:

Name:

Title:

EXHIBIT A

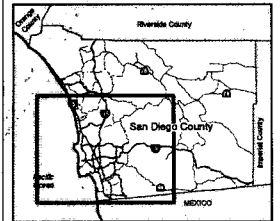


City of San Diego

LEGEND

	City of San Diego
	Sphere of Influence (SOI)
	Special Study Area

SOI Adopted: 2 / 4 / 85 - 11 / 2 / 87
 Partial SOI Affirmed: 8 / 2 / 04
 Partial SOI Affirmed: 5 / 2 / 05
 SOI Affirmed: 3 / 3 / 08



SAN DIEGO LAFCO



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This map has been prepared for descriptive purposes only and is considered accurate according to the GIS and LAFCO data.

File: O:\GIS\PROJECTS\Maps\11x17\SanGIS\City_San_Diego.mxd
 Printed October 2018.

Passed by the Council of The City of San Diego on JAN 10 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 13 2017

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Ginda Bruen, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

DEC 13 2016, and on JAN 13 2017.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Ginda Bruen, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>20787</u>