

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (“Agreement”) by and between the County of Orange (“County”), the Orange County Development Agency (“OCDA”) and the City of Newport Beach (“City”) is dated the 1st day of November, 2006 (“Effective Date”) and is made with reference to the following:

RECITALS

- A. The City and County share the goals of: (i) fostering local government cooperation as a way to enhance service to the public without increasing costs; (ii) ensuring that services are provided by the local government with available resources and jurisdiction over the area to be served; (iii) protecting, preserving and enhancing the habitat value of natural resources as well as the recreational and educational opportunities those resources provide; and (iv) ensuring that plans and studies provide public officials with the information necessary to make informed decisions on the nature and extent of municipal services to be provided as well as the most cost effective way to provide those services.
- B. The Parties, through this Agreement, commit to work in good faith to ensure that their cooperation will: (i) ensure the public continues to receive high quality and cost effective services; (ii)

maintain or enhance their constituents quality of life; (iii) preserve and enhance the wildlife and habitat, educational and recreational value of natural resources; and (iv) provide a means for continued cooperation to benefit the public and the taxpayer.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. GOALS AND OBJECTIVES

A. Enhance Services and Protect Resources. The Parties, through the actions and studies contemplated by this Agreement and possible future agreements, intend to evaluate and implement, when appropriate, opportunities to maintain or enhance the quality of governmental services while minimizing expenditures.

B. Santa Ana Heights Redevelopment Area Projects. The City and County intend, through this Agreement, to continue the cooperation started within a July 8, 2003 Memorandum of Agreement between the City, the County, and OCDA by accomplishing a specific project in the Santa Ana Heights Project Area (the planning and construction of "Mesa-Birch Park") and by addressing a Multi-Use Trail along the southerly side of Mesa Drive.

C. Airport Area Compatibility. The City and County intend, through this Agreement and any subsidiary agreement that the Parties determine is necessary or appropriate to implement this Agreement, to expand their longstanding efforts to promote compatibility between operations at John Wayne Airport ("JWA" – See Exhibit A) and land uses within and in proximity to the City. The Parties intend to promote compatibility by, among other things, committing to preserve certain

longstanding land use plans, such as the Santa Ana Heights Specific Area Plan (“SAHSAP”), that were designed to harmonize land uses in Santa Ana Heights with air carrier operations at JWA. The Parties also intend this Agreement to prohibit City annexation of JWA and other JWA-owned or County-owned property without County approval. The Parties also intend, through this Agreement and any subsidiary agreement that the Parties determine is necessary or appropriate to implement this Agreement, to require County compliance with a process that includes City consideration and approval prior to County acquiring property for the purpose of extending the existing commercial air carrier runway to the south or constructing an additional commercial air carrier runway, and to require the City to become a consistent agency with respect to land uses and related planning in the airport area as specified in the Airport Environs Land Use Plan (“AELUP”).

II -- SANTA ANA HEIGHTS REDEVELOPMENT AREA PROJECT – MESA-BIRCH PARK AND PROPOSED MESA DRIVE TRAIL CONNECTION

A. The County and OCDA authorize the City to plan and construct a park on approximately 0.669-acres of OCDA-owned land (approximately contained within the APNs 439-381-01, 439-381-02 and small remnants of APN 439-381-03 and APN 439-382-02 as shown in green on the map in Exhibit B) at the corner of Mesa Drive and Birch Street in Santa Ana Heights (“Park Property”). OCDA shall retain title to the Park Property until such time as OCDA may determine it to be beneficial to transfer title to the City. The park shall be a public park open to all. The City shall fully indemnify and defend the County and OCDA from any and all claims for

damages to person or property arising from the use or occupancy of the Park Property by any person or entity or from the City's activities on or related to the Park Property and for any of City's acts or omissions related to the Park Property. The City shall maintain the Park Property as a public park in perpetuity, at the City's sole expense. The County or OCDA shall not declare the Park Property surplus or otherwise offer the Park Property for sale for any other use.

B. The City shall construct the park using the City's traditional bidding practices, including a bid request, formal bid opening, and the selection by the City of the lowest responsive bidder. The County and OCDA shall review the bids and shall agree to transfer an amount of Santa Ana Heights Redevelopment Project Area Bond Proceeds Funds or at the discretion of the County and OCDA, other available OCDA funds, to the City to fund the park's design and construction costs upon invoice by the City, in an amount not to exceed \$500,000. The County and OCDA reserve the right to retain up to thirty percent (30%) of the park's construction cost until the County and OCDA are satisfied that the Park is complete and that the City has met the terms of this Section of the Agreement.

C. The County and OCDA do not object to any action by the City to delete that certain local trail connection that is identified on the Santa Ana Heights Specific Plan as running on the south side of Mesa Drive, if in its discretion, the City decides to take such action. This trail connection is not identified on the County's Master Plan of Riding and Hiking Trails (General Plan/Recreation Element) and the area in question was annexed to the City in 2003. Therefore, the City, rather than the County, has jurisdiction over the proposed trail connection.

III. AIRPORT AREA COMPATIBILITY

A. Summary. The Parties commit, through this Agreement, and any subsidiary agreement that the Parties determine is necessary or appropriate to implement this Agreement, to take actions with respect to existing plans and policies that promote compatibility between Santa Ana Heights (SAH) land uses and JWA air carrier operations. This Agreement also confirms exclusive County jurisdiction over, and precludes City annexations of, JWA and/or areas essential to aircraft operations while requiring City consent to certain acquisitions of property. This Agreement also enables, but does not require in any way, the City and County to jointly plan, design, fund and/or construct public improvements.

B. Implementation. The Parties will, for the term of this Agreement, act in a manner consistent with the following:

(1) The City will not initiate proceedings to annex, JWA or any portions of JWA or other County-owned land without the written consent of the County.

(2) Prior to any County (or successor agency) acquisition of land or any interest therein, including tide and submerged lands or other lands subject to the public trust for commerce, navigation, or fisheries, for the purpose of constructing a second commercial air carrier runway at John Wayne Airport or extending the existing commercial air carrier runway to the south, the County will submit a plan for the construction of the facility to the City Council of the City of Newport Beach as if Public Utilities Code §21661.6 were applicable. The plan shall show in detail any proposed new/extended runway uses proposed for the property to be acquired. The Newport Beach City Council shall conduct a noticed public hearing on the plan, and

shall thereafter approve or disapprove the plan as if Public Utilities Code section 21661.6 were applicable. The County may, subject to compliance with other legal requirements, proceed with the proposed acquisition only in the event of City Council approval.

(3) The City will become a "consistent agency" for purposes of the AELUP and the City shall take the actions necessary to become a consistent agency within 12 months after the Effective Date. The City will retain this consistent agency status through the term of this Agreement provided that the AELUP 65 CNEL contour is not expanded in comparison to that which is in the AELUP as of the Effective Date.

(4) The City will not repeal/modify the SAHSAP without County consent.

(5) City consent is not a precondition to County action necessary to comply with State and Federal laws.

(6) Both Parties agree that this Agreement has no impact on the JWA Settlement Agreement or the duties/rights of a party to the JWA Settlement Agreement.

(7) The Parties agree that, where appropriate, they may, but are not obligated to, cooperate in the planning, design, funding and construction of circulation or other improvements in or immediately adjacent to the City that are intended to mitigate traffic impacts or promote compatibility between JWA and land uses in the vicinity of JWA.

IV. TWO NEWPORT BAY STUDIES.

A. Summary. The Parties agree to cooperatively develop a Comprehensive Resource Management Plan (“CRMP”) for the educational, public access, and habitat of the Upper Newport Bay, including the Upper Newport Bay Nature Preserve (“Nature Preserve”) and adjacent properties, the Upper Newport Bay Ecological Reserve and City-owned properties adjacent to the Bay. The Parties also agree to conduct a study of Lower Newport Bay services (“Lower Bay Services Study”).

B. Funding. Funding for the two studies will come from the County and the City in direct proportion to the amount of land (including tidelands) that each entity administers. For example, the County owns approximately twenty percent (20%) of the CRMP study area. Therefore, the County agrees to fund twenty percent (20%) of the CRMP, with the City or other partners funding the remaining eighty percent (80%).

C. Implementation of the Studies. The CRMP and Lower Bay Services Study would begin after the time that the County Executive Officer notifies the City that a current Strategic Plan for its Harbors, Beaches, and Parks Division countywide is complete.

D. Implementation of the Studies’ Recommendations. The Parties agree that, subsequent to completion of each study, they will engage in good faith discussions relative to implementing any study recommendations but final implementation shall be upon the mutual consent of both parties.

Adopted this _____ day of _____, 2006, by and between the County of Orange, the Orange County Development Agency, and the City of Newport Beach.

Supervisor Bill Campbell, Chairman
Orange County Board of Supervisors

Date

Don Webb, Mayor
City of Newport Beach

Date

Darlene J. Bloom
Clerk of the Board

Date

LaVonne M. Harkless, City Clerk
City of Newport Beach

Date

Exhibit A
JWA & Environs



1 Inch = 1250 Feet

- JWA & Environs
- County of Orange
 - JWA Limits (Existing)
 - JWA (Runway Protection Zone)
 - City Boundary

Exhibit B
Mesa/Birch Park

