

**PROPERTY TAX EXCHANGE AGREEMENT BETWEEN
THE CITY OF CHULA VISTA AND THE CITY OF SAN DIEGO RELATING TO THE
NAKANO ANNEXATION**

This PROPERTY TAX EXCHANGE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 202_ made by and between the CITY OF CHULA VISTA, a municipal corporation and California charter city, (“Chula Vista”), and the CITY OF SAN DIEGO, a municipal corporation and California charter city, (“San Diego”). Chula Vista and San Diego are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

RECITALS

A. On June 6, 1978, the voters of the State of California amended the California Constitution by adding Article XIII A thereto which limited the total amount of property taxes which could be levied on property by local taxing agencies having such property within their territorial jurisdiction to one percent (1%) of full cash value.

B. Subsequently, the California Legislature added Section 99 to the California Revenue and Taxation Code, which requires a city seeking to annex property to its incorporated territory and another local agency affected by such annexation to agree upon an exchange of property taxes derived from such property and available to the local agencies following annexation of the property to the incorporated territory of the city.

C. San Diego will file an application with the San Diego Local Agency Formation Commission requesting its approval of the annexation of approximately 23.8 acres of real property to San Diego (the “Nakano Annexation”).

D. Chula Vista and San Diego wish to work together to develop a fair and equitable approach to the sharing of real property ad valorem taxes imposed and collected as authorized by the Revenue and Taxation Code in order to encourage sound urban development and economic growth.

E. The purpose of this Agreement is to serve as a Property Tax Transfer Agreement pursuant to the California Revenue and Taxation Code for the Nakano Annexation.

In consideration of the exchange of tax revenue, as provided for in this Agreement, and for other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, Chula Vista and San Diego agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

a. “Annexation Area” shall mean that portion of Chula Vista designated for annexation into San Diego known as the Nakano Annexation, as more fully described in Exhibit A and depicted in Exhibit B attached hereto and incorporated herein.

b. “Annexation Date” shall mean the date specified by the San Diego Local Agency Formation Commission consistent with the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 (California Government Code §§ 56000, *et seq.*) as the effective date of the Nakano Annexation.

c. “Nakano Annexation” shall mean the annexation to San Diego, as delineated in San Diego Local Agency Formation Commission Application Control Number “_____”, of which is subsequently approved and completed by the San Diego Local Agency Formation Commission as provided for in the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 (California Government Code § 56000 *et seq.*)

d. “Property Tax Revenue” shall mean revenue from “ad valorem real property taxes on real property”, as said term is used in Section 1 of Article XIII A of the California Constitution and more particularly defined in subsection (c) of Section 95 of the California Revenue and Taxation Code, that is collected from within the Annexation Area, is available for allocation to Chula Vista and San Diego.

2. GENERAL PURPOSE OF AGREEMENT. The general purpose of this Agreement is to devise an equitable exchange of Property Tax Revenue between Chula Vista and San Diego as required by Section 99 of the California Revenue and Taxation.

3. EXCHANGE OF TAX REVENUES. Chula Vista and San Diego shall exchange Property Tax Revenue:

a. On and after the Annexation Date, Chula Vista shall receive none of the Property Tax Revenue from the Annexation Area when and as such revenues are apportioned to jurisdictions in the tax rate area by the County of San Diego Auditor (“County Auditor”) pursuant to Article 2 of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, including Revenue and Taxation Code section 96.1.

b. Before the Annexation Date, San Diego does not receive and shall receive none of the annual tax increment from the Annexation Area when and as such revenues are apportioned to jurisdictions in the tax rate area by the County Auditor pursuant to Article 2 of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, including Revenue and Taxation Code section 96.5.

4. EXCHANGE BY COUNTY AUDITOR. Chula Vista and San Diego agree that all of the exchanges of Property Tax Revenue required by this Agreement shall be made by the County Auditor.

5. DISPUTE RESOLUTION. In the event of any dispute arising out of or relating to this Agreement, the Parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved within thirty (30) calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the Parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California.

6. MUTUAL DEFENSE OF AGREEMENT. If the validity of this Agreement is challenged in any legal action by a party other than Chula Vista or San Diego, then Chula Vista and San Diego agree to defend jointly against the legal challenge.

7. WAIVER OF RETROACTIVE RECOVERY. If the validity of this Agreement is challenged in any legal action brought by either Party or any third party, the Parties hereby waive any right to the retroactive recovery of any Property Tax Revenues, exchanged pursuant to this Agreement prior to the date on which such legal action is filed in a court of competent jurisdiction. The remedy available in any such legal action shall be limited to a prospective invalidation of the Agreement.

8. MODIFICATION. The provision of this Agreement and all of the covenants and conditions set forth herein may be modified or amended only by a writing duly authorized and executed by both Chula Vista and San Diego.

9. REFORMATION. Chula Vista and San Diego understand and agree that this Agreement is based upon existing law, and that such law may be substantially amended in the future. In the event of an amendment of state law which renders this Agreement invalid or inoperable or which denies any party thereto the full benefit of this Agreement as set forth herein, in whole or in part, then Chula Vista and San Diego agree to renegotiate the Agreement in good faith.

10. EFFECT OF TAX EXCHANGE AGREEMENT. This Agreement shall be applicable solely to the Nakano Annexation and does not constitute either a master tax sharing agreement between the Parties or an agreement on property tax exchanges which may be required for any other annexation to San Diego.

11. ENTIRE AGREEMENT. With respect to the subject matter hereof only, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever between Chula Vista and San Diego except as otherwise provided herein and in that certain Annexation Agreement entered into by the Parties dated _____.

12. NOTICES. All notices, requests, certifications or other correspondence required to be provided by the Parties to this Agreement shall be in writing and shall be personally delivered or delivered by first class mail and electronic mail to the respective Parties at the following addresses:

If to Chula Vista:

City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attn: City Manager

With a Copy to:

Office of the City Attorney
City of Chula Vista
276 4th Avenue
Chula Vista, California 91910
Attn: City Attorney
Email: mverdugo@chulavistaca.gov

If to City of San Diego:

Development Services Department
City of San Diego
1222 1st Avenue
San Diego, California 92101
Attn: Elyse Lowe, Director

With a Copy to:

Planning Department
City of San Diego
202 C Street, M.S. 413
San Diego, California 92101
Attn: Tait Galloway, Deputy Director – Community Planning & Housing

With a Copy to:

Office of the City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, California 92101
Attn: Corrine Neuffer, Esq.

Notice by personal delivery and electronic mail shall be effective immediately upon delivery. Notice by mail shall be effective upon receipt or three days after mailing, whichever is earlier.

13. APPROVAL, CONSENT, AND AGREEMENT. Wherever this Agreement requires a Party's approval, consent, or agreement, the Party shall make its decision to give or withhold such approval, consent or agreement in good faith, and shall not withhold such approval, consent or agreement unreasonably or without good cause.

14. CONSTRUCTION OF CAPTIONS. Captions of the sections of this Agreement are for convenience and reference only. The words in the captions in no way explain, modify, amplify, or interpret this Agreement.

15. INCORPORATION BY REFERENCE. Exhibit A and Exhibit B, attached hereto, are incorporated into this Agreement by this reference.

16. EFFECTIVE DATE. The Parties acknowledge that this Agreement shall not become effective unless the ordinance or resolution approving the contract is approved by a two-thirds (2/3) vote of both the Chula Vista City Council and the San Diego City Council.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in the County of San Diego , State of California, on the date set forth above.

CITY OF SAN DIEGO,
a California municipal corporation

CITY OF CHULA VISTA,
a California municipal corporation

By: _____
Mayor

By: _____
City Manager

Attest:

Attest:

By: _____
Clerk of San Diego
City of San Diego

By: _____
Clerk of the
City of Chula Vista

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

San Diego City Attorney

Marco Verdugo, City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF ANNEXATION AREA

EXHIBIT B
DEPICTION OF ANNEXATION AREA