

ORDINANCE NO. NS-2806

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA ANA AND ONE BROADWAY PLAZA, LLC, 1200 N. MAIN, LLC, AND 845 BROADWAY, LLC

THE CITY COUNCIL OF THE CITY OF SANTA ANA ORDAINS AS FOLLOWS:

SECTION 1: The City Council hereby finds, determines and declares as follows:

A. The City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certainty for both City and owner in the development process.

B. By Ordinance No. NS-2656, the City Council approved a development agreement (the "Development Agreement") between the City and One Broadway Plaza, LLC, 1200 N. Main, LL, and 845 Broadway, LLC (the "Developer").

C. The Developer has sought an amendment to the Development Agreement to modify certain terms, a true and correct copy is attached hereto as Exhibit 1(the "Amendment").

D. The City enters into this Amendment pursuant to the provisions of the Government Code and applicable City policies.

C. The Planning Commission has, following a duly noticed public hearing, on June 14, 2010 recommended approval of this Amendment.

E. Entering into this Amendment would provide the City with extraordinary and significant benefits that are of regional significance, relate to existing deficiencies in public facilities, require the owner of One Broadway Plaza to contribute a greater percentage of benefits than would otherwise be required, and represent benefits which would not otherwise be required as part of the development process.

F. The City Council has held a noticed public hearing on this Ordinance, and has considered all testimony presented thereto.

G. The City Council, on July 19, 2004, approved a Environmental Impact Report (EIR) in conjunction with this Project and adopted a mitigation monitoring plan, written findings and a statement of overriding considerations and the Council adopts this ordinance based upon said EIR, plan, findings and statement of overriding considerations.

SECTION 2: The Amendment is hereby approved, and the City Manager and Clerk of the Council are authorized to execute it on behalf of the City. The Clerk of the City is hereby authorized and directed to cause this Development Agreement to be recorded with the County Recorder's Office.

SECTION 3: If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

ADOPTED this 2nd day of August, 2010.

Miguel A. Pulido
Mayor

APPROVED AS TO FORM:

Joseph W. Fletcher, City Attorney

AYES:	Councilmembers:	<u>Alvarez, Pulido, Sarmiento, Tinajero (4)</u>
NOES:	Councilmembers:	<u>None (0)</u>
ABSTAIN:	Councilmembers:	<u>Benavides, Bustamante, Martinez (3)</u>
ABSENT:	Councilmembers:	<u>None (0)</u>

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2806 to be the original ordinance adopted by the City Council of the City of Santa Ana on August 2, 2010 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

Clerk of the Council
City of Santa Ana

EXHIBIT 1

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA ANA; and ONE BROADWAY PLAZA, LLC, 1200 N. MAIN, LLC, and 845 BROADWAY, LLC

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("Amendment") is entered into between THE CITY OF SANTA ANA, a charter city and municipal corporation duly authorized under the Constitution and laws of the State of California ("City") on the one hand, and ONE BROADWAY PLAZA, LLC, 1200 N. MAIN LLC, and 845 BROADWAY LLC, each of which is a California Limited Liability Company (collectively referred to herein as "Owner" or "Property Owner"), on the other hand.

1. This Amendment is entered into with reference to the following facts:

1.1 **Original Agreement.** On or about July 19, 2004, the City and Owner entered into a written Development Agreement, referenced as City Agreement No. A-2004-153 and recorded as Document No. 2005000414753 of the Official Records of the County of Orange ("Original Agreement").

1.2 **Purpose of Original Agreement and Amendment.** The purpose of the Original Agreement and this Amendment is to facilitate the development of the 37 story, 518,000 square foot, Class A office building and associated parking structure and ancillary commercial development contemplated by the City's Specific Design Zoning Designation SD-75, Environmental Impact Report No. 99-01, General Plan Amendment No. 2004-01 and Zoning Ordinance Amendment No. 2004-02 (the "Pre-Existing Approval Entitlements").

1.3 **Statutory Authorization.** City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into Development Amendments and amendments to Development Agreements, such as the Original Agreement and this Amendment, with persons having legal or equitable interests in real property for the purpose of establishing certainty for both City and Owner in the development process. City enters into the Amendment pursuant to the provisions of the Government Code and applicable City policies. The parties acknowledge:

(1) This Amendment is intended to assure adequate public facilities at the time of development.

(2) This Amendment is intended to assure development in accordance with City's General Plan, applicable Specific Plans and Specific Development District No. 75.

(3) This Amendment will permit achievement of goals and objectives as reflected in the City's General Plan, all applicable Specific Plans and Specific Development District No. 75.

(4) Owner is required by existing City regulations to provide mitigation for certain impacts and pay certain regulatory fees as conditions of approvals through the regulatory process.

(5) This Amendment will allow City to realize extraordinary and significant public infrastructure facilities and other supplemental benefits in addition to those available through the existing regulatory process.

(6) Many of the extraordinary and significant benefits identified as consideration to City for entering into this Amendment are of regional significance, relate to existing deficiencies in public facilities, require Owner to contribute a greater percentage of benefits than would otherwise be required and/or pay such benefits sooner, and represent benefits which would not otherwise be required as part of the development process.

1.6 Planning Commission - Council Hearings. On June 14, 2010, the Planning Commission of the City ("Planning Commission"), after giving notice pursuant to Government Code Sections 65090 and 65091, held a public hearing to consider the Owner's application for this Amendment. The Planning Commission recommended to the City Council of City that it execute this Amendment. On July 19, 2010, the City Council of the City of Santa Ana ("Council"), after providing notice as required by law, held a public hearing to consider the Owner's application for this Amendment.

1.5 Council Findings. The Council finds that this Amendment is consistent with the General Plan, applicable Specific Plan(s) as well as all other applicable ordinances, plans, policies and regulations of the City.

1.6 City Ordinance. On August 2, 2010, the Council adopted Ordinance No. NS-2806 approving this Amendment. The ordinance and this Amendment becomes effective thirty (30) days thereafter.

2. Section 4.3 shall be deleted in its entirety.

3. Section 5.1.1 shall be amended to read as follows, and Exhibit C-1, attached hereto shall be made a part of the Original Agreement by this reference:

5.1.1 Offsite Mitigation Measures. The offsite mitigation measures which must be constructed by Owner or City are as set forth in Exhibit C-1 to this Agreement. The design of all offsite mitigation measures constructed by Owner shall be subject to approval by the City's Public Works Agency prior to issuance of an

encroachment permit. The Public Works Agency shall provide to the Owner an update to the 2004 estimate of the costs such offsite mitigations measures contained in said Exhibit C-1 prior to issuance of final map and building permit. Owner shall have one year from the effective date of this Agreement pursuant to section 1.6, above, to acquire the real property referenced in paragraph 5.a. and 8 of Exhibit C-1 and transfer title to the City, except as to the roundabout, for which Owner shall secure and transfer to City an easement (or other right to construct, maintain and use the property as a roundabout). City shall accept transfer of this title and easement. Owner shall deposit an amount equal to the estimate in cash for such offsite mitigation measures (including traffic studies) at the time called for in paragraphs 5.a., 8 and 9 of Exhibit C-1. For all other items specified in Exhibit C-1, security in the form of bonds (*i.e.*, a payment, a performance and a material bond) or other proof of ability to perform acceptable to the City's Executive Director of Public Works Agency shall be provided, together with an offsite subdivision improvement agreement, prior to recordation of final map. For those offsite mitigation measures identified in paragraphs 1-4, 5.b.-8 and 10 which have not been accepted by the City as complete prior to issuance of a building permit, no building permit shall issue until Owner deposits with the City cash; a direct draw, irrevocable letter of credit; or establishes an irrevocable, escrowed cash account or escrowed construction loan or funding proceeds in a form reasonably acceptable to the City Attorney of City, in an amount specified by the City's Public Works Agency to guarantee performance of said offsite mitigation measures; provided, however, that City Executive Director of Public Works Agency shall release or partially release the bonds previously provided at this point to the extent that they are duplicative of this new security. Any deposit shall be applied to such costs and shall be, within thirty (30) days written request to Owner, supplemented to cover the actual costs incurred. Except as to paragraph 9 of Exhibit C-1, City shall return any funds not spent on the offsite mitigation measures referenced in Exhibit C-1 to owner within thirty (30) days, subject to City accounting practices, after completion of all items referenced in Exhibit C-1 and issuance of a Certificate of Occupancy for the Project.

4. Sections 5.8 shall be deleted its entirety.

5. Section 5.8.1 shall be amended to read as follows

5.8.1. Payment Of Prevailing Wage.

a. For the provision of the payment of "Prevailing" and/or "Area Standard Wages" as appropriate, the Owner shall submit evidence that it has entered into a labor agreement with the Los Angeles and Orange Counties Building and Construction Trades Council. Said agreement shall also include provisions that encourage the referral and utilization, to the extent permitted by law, of qualified residents of Santa Ana and surrounding communities as journeymen, apprentices and trainees. An executed copy of the agreement shall be submitted to the City prior to the issuance of building permits.

b. Owner and/or its contractors must (1) post all available job openings with the Santa Ana Work Center and Cal JOBS (or equivalent job posting

system designated by Santa Ana Work Center) within 24 hours of posting of jobs and agree to consider qualified referrals from Santa Ana Work Center for job openings.

c. Owner shall include in its lease agreements with private building tenants the need to post any job openings with the Santa Ana Works Center within 24 hours of posting of jobs and agree to consider referrals from Santa Ana Work Center for qualified candidates for job openings. Further, tenant shall be required to attend , within 30 days of lease signing, an orientation with the Santa Ana Work Center to learn about the services available to each business who locates in the building. Owner shall submit its form lease to City within 180 days of execution of the Amendment (or such other time as required by the Executive Director) as evidence that this language is included in said leases.

6. Sections 5.9 shall be amended to read as follows:

5.9 Historic Structures on the Property.

(3) After complying with the relocation obligations of subsections 5.9(1), if necessary, and 5.9(2), Owner may, notwithstanding the provisions of section 5.8 above, scarify the soil in the Scarifying Area (shown on Exhibit E to this Agreement) to a depth of three feet (3.0') and drive piles in the area shown on Exhibit E to support the eventual 37-story office tower. The scarifying and pile driving shall be done at a time and manner as set forth in plans submitted by Owner and approved by the Executive Director of the Public Works Agency, and only after written notice of the commencement date and estimated duration of the pile driving has been given by Owner to the Santa Ana Unified School District, Orange County High School of the Arts, and El Sol Academy. The scarified area shall be refilled after the pile driving is complete to its original grade as shown in the approved plans and, if a building permit has not been issued and construction of the Project has not commenced within one hundred twenty (120) days thereafter, landscaped, irrigated and fenced in accordance with plans submitted by Owner and approved by the Executive Director of the Planning and Building Agency.

7. Except as hereby expressly amended by this Amendment, the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed by the City of Santa Ana, acting by and through its City Manager, pursuant to Ordinance No. NS-2806 authorizing such execution, and by Property Owner.

[Signatures Provided on Next Page]

Dated this 3rd day of August, 2010.

ATTEST:

THE CITY OF SANTA ANA

MARIA D. HUIZAR
Clerk of the Council

DAVID N. REAM
City Manager

APPROVED AS TO FORM:

JOSEPH W. FLETCHER
City Attorney

ONE BROADWAY PLAZA, LLC,

By: _____
MICHAEL F. HARRAH
Managing Member

1200 N. MAIN, LLC

By: _____
MICHAEL F. HARRAH
Managing Member

845 BROADWAY LLC

By: _____
MICHAEL F. HARRAH
Managing Member

EXHIBIT C-1
(rev. July, 2010)
OFF-SITE IMPROVEMENTS

Description of Improvement	Estimated Cost (2004 Dollars)	Entity Responsible For Improvement	Funded Prior to Indicated Triggering Event (Cash)
1. Install a new traffic signal at Main/15 th , including communication cable and conduits to connect to the City's Traffic Management Center, and striping.	\$200,000	Owner	Building Permit
2. Install a new traffic signal at Sycamore/15 th , including communication cable and conduits to connect to the City's Traffic Management Center, and striping.	\$200,000	Owner	Building Permit
3. Install a new traffic signal at Santa Ana Blvd./French St., including communication cable and conduits to connect to the City's Traffic Management Center, and striping.	\$200,000	Owner	Building Permit
4. Construct landscaped median on Broadway at the Broadway/Parking Structure egress.	\$100,000	Owner	Building Permit
5.a. Acquire necessary ROW for roundabout at the intersection of 10 th Street and Sycamore.	\$2,400,000	Owner, unless City undertakes per section 5.1.1	Final Map

Description of Improvement	Estimated Cost (2004 Dollars)	Entity Responsible For Improvement	Funded Prior to Indicated Triggering Event (Cash)
5.b. Construct roundabout at the intersection of 10 th Street and Sycamore, with 10 th Street one-way EB, including necessary striping, traffic signs, pedestrian crosswalks and pedestrian refuge areas. Right-of-way shall be acquired at S/W, S/E and N/W corners by developer.	\$600,000	Owner	Building Permit
6. Restripe: (1) WB Santa Clara to provide one LT lane and one shared LT/RT lane; (2) NB Grand Avenue from Fruit Street to 14 th Street at Santa Ana Blvd/I-5 HOV ramps to provide three NB travel lanes; (3) I-5 NB off-ramps to provide a WB LT lane, a shared LT/RT lane and a RT lane at Grand Ave.	\$50,000	Owner	Building Permit
7. Remove existing on-street parking stalls and parking meters on Main Street from Civic Center Dr. to Buffalo St., restripe and slurry seal this Main Street segment to provide three NB and two SB travel lanes, and construct median on Main St. south of 10th Street.	\$300,000	Owner	Building Permit
8. Acquire necessary ROW and construct southbound RT lane at Main/17 th and Broadway/17 th , including striping, traffic signal modification, and ADA compliant wheel chair ramps.	\$6,500,000	Owner, unless City undertakes per section 5.1.1	Final Map

Description of Improvement	Estimated Cost (2004 Dollars)	Entity Responsible For Improvement	Funded Prior to Indicated Triggering Event (Cash)
9. Implement neighborhood traffic plans to mitigate changes in traffic patterns or increased cut through traffic resulting from the One Broadway Plaza Project in French Park, French Court, Willard, Floral Park, West Floral Park, and Washington Square Neighborhoods. Traffic plans costs shall include traffic studies, staff time to process neighborhood traffic plan, and the construction of appropriate semi-diverters, diagonal diverters, and street closures.	\$1,200,000 (actual cost, not an estimate)	City	Six month prior to issuance of the first certificate of occupancy but no later than 22 month from the 1 st building permit
10. Reconstruct 10 th St. one-way EB and Washington Ave. one-way WB between Main St. and Broadway, which will include: (1) traffic signal modifications at Main/Washington, Main/10 th , Washington/Sycamore, Broadway/Washington, and Broadway/10 th (2) restriping streets and intersections, and (3) installing appropriate traffic signs (4) retiming traffic signals (5) constructing ADA compliant wheel chair ramps.	\$850,000	Owner	building Permit
SUBTOTAL	\$12,600,000		

Notes:

1. Estimated costs are based on 2004 year of expenditure. Owner shall fund item 5.a. and 8 (if necessary) based on estimated actual construction and right-of-way costs at time of indicated funding event, and supplement if necessary.
2. Items not complete and accepted by the City shall be fully bonded for pursuant to an offsite subdivision improvement agreement, prior to issuance of final map.
3. All improvements, including improvements to be constructed by Owner and not City, shall be completed and accepted by City prior to issuance of Certificate of Occupancy.