

RECORDING REQUESTED BY:

Order No:

WHEN RECORDED MAIL

DOCUMENT TO:

City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Attn.: City Clerk

Space Above This Line for Recorder's Use Only
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to Gov. Code §§ 27383, 6103

OUT-OF-AREA SEWER SERVICE AGREEMENT

BETWEEN

**THE CITY OF FONTANA,
a California municipal corporation**

and

Jose Felix Garcia and Lucila Garcia

**Date effective upon authorization of Local Agency Formation Commission
(LAFCO) for reference purposes**

OUT-OF-AREA SEWER SERVICE AGREEMENT

This Out-of-Area Sewer Service Agreement (also referred to as “Irrevocable Agreement to Annex”) (this “**Agreement**”) is entered into by and between the City of Fontana, a California municipal corporation (“**City**”) and **Jose F. Garcia and Lucila Garcia**, an individual (“**Owner**”). City and Owner may be individually referred to herein as a “**Party**.”

RECITALS

A. The Owner is fee title holder of one (1) parcel in the County of San Bernardino, State of California (“**County**”) with Assessor’s Parcel Number 0233-271-08-0000 (the “**Property**”). The Property is located outside the City’s boundaries but within the City’s sphere of influence, and is more particularly described in Exhibit A, attached hereto and incorporated herein.

B. The Property currently includes one residential structure of approximately 1,028 square feet in size (“**Existing Development**”). The sewage disposal needs of the Existing Development are presently served by a septic tank system.

C. The County of San Bernardino is requiring that the Existing Development and the connect to a public sewer system to receive sewer service (“**Service**”).

D. The Owner has requested to connect to the City’s sewer system and receive service for the Existing Development pursuant to subsection (b) of Section No. 56133 of the California Government Code and the policies and procedures of the County of San Bernardino’s Local Agency Formation Commission (“**SBLAFCO**”).

E. Pursuant to the “First Amended and Restated Memorandum of Understanding” between the City and the County to provide Service to the Existing Development, the Owner must: 1) comply with the City’s annexation policy, 2) meet all City requirements and pay applicable services fees imposed by the City pursuant to the Fontana Municipal Code and other such policies and regulations in connection with sewer services and 3) pay the required **Development Impact Fees (“DIF”)** to the City.

F. The City’s annexation policy, attached hereto as Exhibit B and incorporated herein, requires existing landowners to enter into an “Irrevocable Agreement to Annex for Sewer Service” also referred to as “Out-of-Area Service Agreement,” with the City before providing sewer services to the respective landowner’s property.

G. The DIF associated with this Service is attached hereto as Exhibit C and incorporated herein.

H. The Owner shall, at the Owner's sole cost and expense, and subject to the City's ordinances, rules, regulations, policies, procedures, and orders, shall install one or more private laterals and any necessary appurtenances (collectively, "**Private Improvements**"), as well as any public improvements or appurtenances (generally, "**City Facilities**") which the City deems necessary to provide Service to the Property. The City Facilities and Private Improvements shall collectively be known as the "**Improvements**" for purposes of this Agreement.

I. If the Owner and the City wish to set forth the circumstances and terms and conditions under which the City will provide Service to the Property.

J. Pursuant to California Government Code Section No. 56133, new or extended sewer service agreements must be approved by SBLAFCO. SBLAFCO may authorize a city to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

K. Following execution by the Parties, the City will submit this Agreement to SBLAFCO for approval.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants as well as for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. PROVISION OF SERVICES

1.1. City Provision of Service. The City hereby agrees to furnish, and Owner hereby agrees to accept, Service to the Property in accordance with the terms and conditions in this Agreement, subject to the Owner completing the Improvements in accordance with the City's municipal code, ordinances, rules, regulations, policies, procedures, and orders ("**Rules and Regulations**").

1.2. Construction, Ownership, and Responsibility for Private Improvements. The Owner shall install and connect the Private Improvements in accordance with all applicable federal, state, and local statutes and regulations, and all of the terms and conditions of this Agreement, including, but not limited to, review and approval of the planning materials for the Private Improvements, obtaining all inspections, City or County permits, or other authorizations required to install and connect the Private Improvements. The Owner shall specifically agree that ownership and maintenance of the Private Improvements shall be and remain Owner's responsibility.

1.3. Service Strictly Limited to Existing Development and Proposed Development. The Parties agree that City's Service under this Agreement is exclusively limited to sewer service to the Existing Development as described in the Recitals. The Owner understands and agrees that no additional construction, development, or subdivision of the Property shall receive sewer service from the City under this Agreement. Any sewer service to structures or facilities on the Property other than the

Existing Development shall require SBLAFCO review and approval prior to the addition/extension of any such services. Further, the Owner understands and agrees that, in the event of any material change to the nature of the Existing Development, or increase in size thereof, this Agreement must be amended by the Parties, and such amendment shall be subject to review and approval by SBLAFCO.

2. PAYMENT FOR CONNECTION AND SERVICES

The Owner hereby agrees to and shall timely pay to the City all monthly or yearly charges for the Service, a sewer connection fee as illustrated in Exhibit D, and incorporated herein, facilities expansion fee as illustrated in Exhibit D, plan check fee, inspection fee, capacity charge, and any other applicable one-time or recurring fees and charges in effect and paid by the owners of similarly situated real property at the rate(s) established therefor by the City (subject to any adjustments provided for by the City from time to time), including any applicable penalties or interest lawfully imposed by the City ("**Fees and Charges**"). The City reserves the right to collect the Fees and Charges (or any delinquencies thereof) in any lawful manner, including, but not limited to, having them collected on the property tax bill for the Property.

3. CONDITIONS AND COVENANTS

3.1. Conditions Prior to Services. Prior to and as a condition of providing Service to the Property, the Owner shall complete the installation of City Facilities, which shall be subject to acceptance by the City under its Rules and Regulations.

3.2. Compliance with Applicable Law. The Owner shall comply with all applicable laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State of California, the County of San Bernardino, the City, or any other political subdivision with jurisdiction over the Property, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the City, Owner, or the Property, including all applicable federal, state, and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, zoning and development standards, City or County permits and approvals, building, plumbing, mechanical, and electrical codes, as they apply to work undertaken pursuant to this Agreement, and all other provisions of the City and its Rules and Regulations. Without limiting the generality or applicability of the foregoing, the Owner shall not discharge into the Improvements any waste oil, acid, storm water, ground water, or any other matter detrimental to the City's sewer system or treatment processes and shall otherwise comply with City requirements related thereto. Further, if the Owner makes or allows any such non-permitted discharge, the City may perform repairs, mitigation, or maintenance work at the expense of the Owner, who agrees to pay for such repair, mitigation, or maintenance work.

3.3. Failure to Construct City Facilities and Connect. The Owner understands and agrees that this Agreement and the City's obligations, duties, and responsibilities hereunder shall be null and void and of no further force or effect in the event that the Owner fails, neglects, or refuses to construct the City Facilities to the satisfaction of the City Engineer and actually connect the Private Improvements to the City Facilities.

3.4. Submission of Plans; Notification of Construction and Connection. Before the Owner submits any plans for the aforementioned Private Improvements to the County for approval, the Owner shall submit such plans to the City of Fontana's Engineer Department. The City of Fontana's Engineer Department will review and reasonably approve or deny the Owner's plans for Private Improvements within 15 days of receipt. The Owner shall provide at least 48-hours written notice to the City prior to commencing any construction activity and prior to making connection to the City's sewer system.

3.5. Indemnification.

3.5.1. Indemnification of City. The Owner agrees and covenants to indemnify, defend, and hold the City and its officers, employees, contractors, and agents ("**Indemnitees**") harmless from and against any and all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) (collectively, "**Claims**") arising from or as a result of the Owner's failure to comply with any provision of this Agreement, or by any act or omission of the Owner, or the Owner's officers, employees, contractors, and agents arising out of or in connection with this Agreement or the design, construction or installation of the Improvements. In case the City shall, without fault, be made a party to any litigation that is commenced by or against the Owner or any other person, or if the City shall, in its sole and reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, including, without limitation, the incurring of costs, expenses, and attorneys' fees, then the Owner shall protect and hold the City harmless by attorneys satisfactory to the City and shall pay all costs, expenses, and reasonable attorneys' fees incurred or paid by the City in connection with such litigation.

3.5.2. City's Right to Engage Attorneys. The City shall have the right to engage its own attorneys in connection with any of the provisions of this section or any other provision of this Agreement, including, without limitation, any defense of the City or intervention by the City, notwithstanding any contrary provisions of the laws or court decisions of the state.

3.5.3. Survival. The Owner's obligations under this Section No. 3.5 (Indemnification) shall survive the expiration or termination of this Agreement.

3.6. Further Construction and Dedication Requirements. The City and the Owner anticipate that they may enter into a Facilities Agreement or other separate agreement(s) regarding the construction of the City Facilities. Any such agreement shall not limit or abrogate the City's or the Owner's obligations under this Agreement.

3.7. Annexation Of Property. The Owner covenants and agrees not to oppose any future attempts by City to annex the Property into the City of Fontana.

4. NO EFFECT ON ANNEXATION OR PROVISION OF OTHER SERVICES

Notwithstanding any other provision of this Agreement, the City does not waive any rights with regard to future annexation of the Property to the City or commit itself to any future decisions or actions related thereto. Further, the City shall have no obligation to provide any other service to the Property except as expressly set forth in this Agreement.

5. DEPOSIT FOR CITY PROCESSING COSTS

The Owner will submit one thousand five-hundred and thirty-two dollars (\$1,532) to City as an initial deposit to cover City costs and expenses related to the processing and approval of this Agreement ("Initial Deposit"). Payment of the Initial Deposit shall be made prior to or concurrently with the execution of this Agreement. The City shall use the Owner's deposited funds toward City staff or consultant expenses, attorney review costs, SBLAFCO fees, and other direct expenses the City incurs related to the processing or approval of this Agreement. The Owner will deposit additional funds with the City, as necessary, to maintain sufficient funds to cover the City's costs as outlined in this section. The Owner will deposit additional funds within 15 days of written notice to Owner by the City. If applicable after the Effective Date, any balance of deposited funds remaining will be refunded to the Owner. The Owner will pay any outstanding balance due as of the Effective Date within 10 days of notification of said balance due.

The Owner acknowledges and agrees that the deposit described in this section is not intended to cover fees or costs described in Section No. 2 of this Agreement, and such amounts shall be separately due and payable to the City of Fontana as provided under Section No. 2 and the City's Rules and Regulations.

6. SBLAFCO APPROVAL; EFFECTIVE DATE; TERM

Because this Agreement is an out-of-area service agreement, California Government Code Section No. 56133 requires that Agreement be submitted for approval by SBLAFCO. The effective date of this Agreement is the date on which SBLAFCO approves this Agreement ("**Effective Date**"). The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect unless terminated: (i) by the City; (ii) by annexation of the Property into the City (after which time the Property will receive Service in the same manner as other properties situated within the boundaries of the City and subject to the City's Rules and Regulations), or (iii) as otherwise specified herein.

7. DEFAULT; REMEDIES.

The Owner shall be in default under this Agreement if the Owner fails to comply with any obligation hereunder, has been given a written notice specifying the failure, and: (a) with respect to a default involving the payment of money, fails to cure it within the period of ten (10) days, or (b) with respect to any other type of default, (i) fails to cure it within the period of thirty (30) days, or (ii) commences to cure the default within such period of time, and if the default cannot be cured within the time specified above in (i), thereafter does not diligently proceed to complete the curing of the default. In addition to any other available rights in law or equity, in the event the Owner defaults under this Agreement, the City shall have the right to seek damages, immediately terminate this Agreement (including the right thereafter to plug or disconnect the Private Improvements from the City's sewer system), or enjoin such violation or threatened violation in a court of competent jurisdiction.

8. RECORDATION

This Agreement shall be recorded in the Official Records of the County of San Bernardino,

State of California within fifteen days of receipt of SCLAFCO's approval of this Agreement. This Agreement shall be recorded at the Owner's sole cost.

9. MISCELLANEOUS PROVISIONS

9.1. Recitals. The above Recitals are true and correct and fully incorporated in this Agreement.

9.2. Scope of Agreement. Nothing contained in this Agreement shall be construed as representing the establishment of any precedent or the formation of any policy by the City to provide Service or any other type of City service in the future to any unincorporated territory on the terms and conditions contained herein or on any terms and conditions whatsoever.

9.3. No Third-Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and no other person or entity has or shall acquire any rights hereunder. This Agreement does not create any third-party beneficiary rights.

9.4. Binding Effect; Assignment. All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No assignment of this Agreement shall be made without the prior written consent of the parties to the Agreement, which consent may not be unreasonably withheld.

9.5. Covenants Running with the Land. All of the benefits and obligations described herein, including any and all covenants, conditions, and restrictions set forth in this Agreement shall be binding on the Parties and their heirs, successors, grantees, transferees, and permissible assigns and shall run with the land comprising the Property.

9.6. Performance. Whenever performance is required of any party hereunder, that party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of a party (acts by the performing party causing the situation to be beyond reasonable control excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused.

9.7. Severability. Invalidity of any of the provisions contained in this Agreement, or of the application thereof to any person or circumstance, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.8. Notice.

9.8.1. Form of Notice. Any notice to any party shall be in writing and given by delivering the same to such party in person or by sending the same by certified mail, return receipt requested, with postage prepaid to the party's mailing address.

The respective mailing addresses of the parties thereto are, until changed as hereinafter provided, the following:

To the City: City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: Jon Dille, Associate Planner

To Owner: Jose Felix Garcia and Lucila Garcia
1096 North Lancewood Avenue
Rialto, CA 92376

9.8.2. Change of Address. Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided herein at least ten days prior to the date such change is effective.

9.8.3. Effective Date of Notice. All notices under this Agreement shall be deemed given, received, made, or communicated on the date personal delivery is effected or, if mailed, on the delivery date shown on the return receipt.

9.9. Entire Agreement. This writing constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all oral or written representations or written agreements which may have been entered into between the parties. This Agreement may be cancelled, changed, modified, or amended in whole or in part only by a written and recorded instrument executed by the Parties (or their respective successors and assigns).

9.10. Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof.

9.11. Governing Law; Venue. This Agreement shall be governed by the laws of the State of California. Any legal action concerning or arising out of this Agreement shall be filed in a court of the State of California having jurisdiction of the subject matter, and venue shall be in the County of San Bernardino, California.

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

9.13. Attorney Fees. The prevailing party in any action or proceeding to enforce or interpret this Agreement or otherwise arising out of or in connection with the subject matter hereof (including, but not limited to, any suit, arbitration, entry of judgment, post-judgment motion or enforcement, appeal, bankruptcy litigation, attachment, or levy) shall be entitled to recover its costs and expenses, including, but not limited to, reasonable attorneys', experts', and consultants' fees and costs.

9.14. Non-Waiver. No waiver by any Party of any default in performance on the part of the another Party, or of any breach or series of breaches of the terms, covenants, or conditions of this Agreement, will constitute a waiver of any subsequent breach or a waiver of any term, covenant, or condition.

9.15. Counterparts. This Agreement may be executed in one or more counterparts, each of which counterparts shall, for all purposes, be deemed an original and all of which counterparts, when taken together, shall constitute one and the same instrument.

SIGNATURES AND APPROVAL ON THE FOLLOWING PAGES

IN WITNESS WHEREOF, this Out-of-Area Sewer Service Agreement has been executed and delivered by City and Owner as of a date effective upon authorization of the Local Agency Formation Commission (LAFCO).

CITY

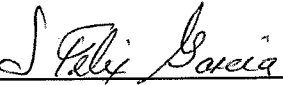
CITY OF FONTANA, a California municipal corporation

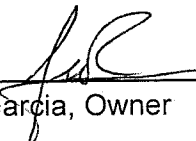
Date: _____ By: _____
Matthew C. Ballantyne, City Manager

Attest:

By: _____
Germaine Key, City Clerk

OWNER

Date: 12-17-24 By: 
Jose Felix Garcia, Owner

Date: 12-17-24 By: 
Lucila Garcia, Owner

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Bernardino)

On December 17, 2024 before me, Juan Pablo Reynoso Bautista, Notary
(insert name and title of the officer)

personally appeared Jos Felix Garcia,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

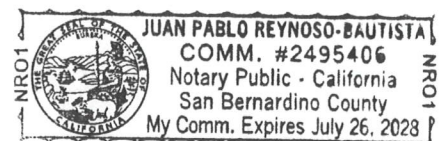
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Bernardino

On December 17, 2024 before me, Juan Pablo Reynoso Bautista, Notary
(insert name and title of the officer)

personally appeared Lvaila Garcia,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

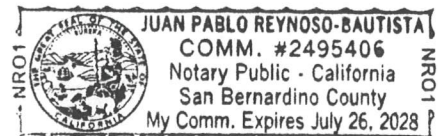


EXHIBIT A

9266 Poplar Street
(SEWER SERVICE)

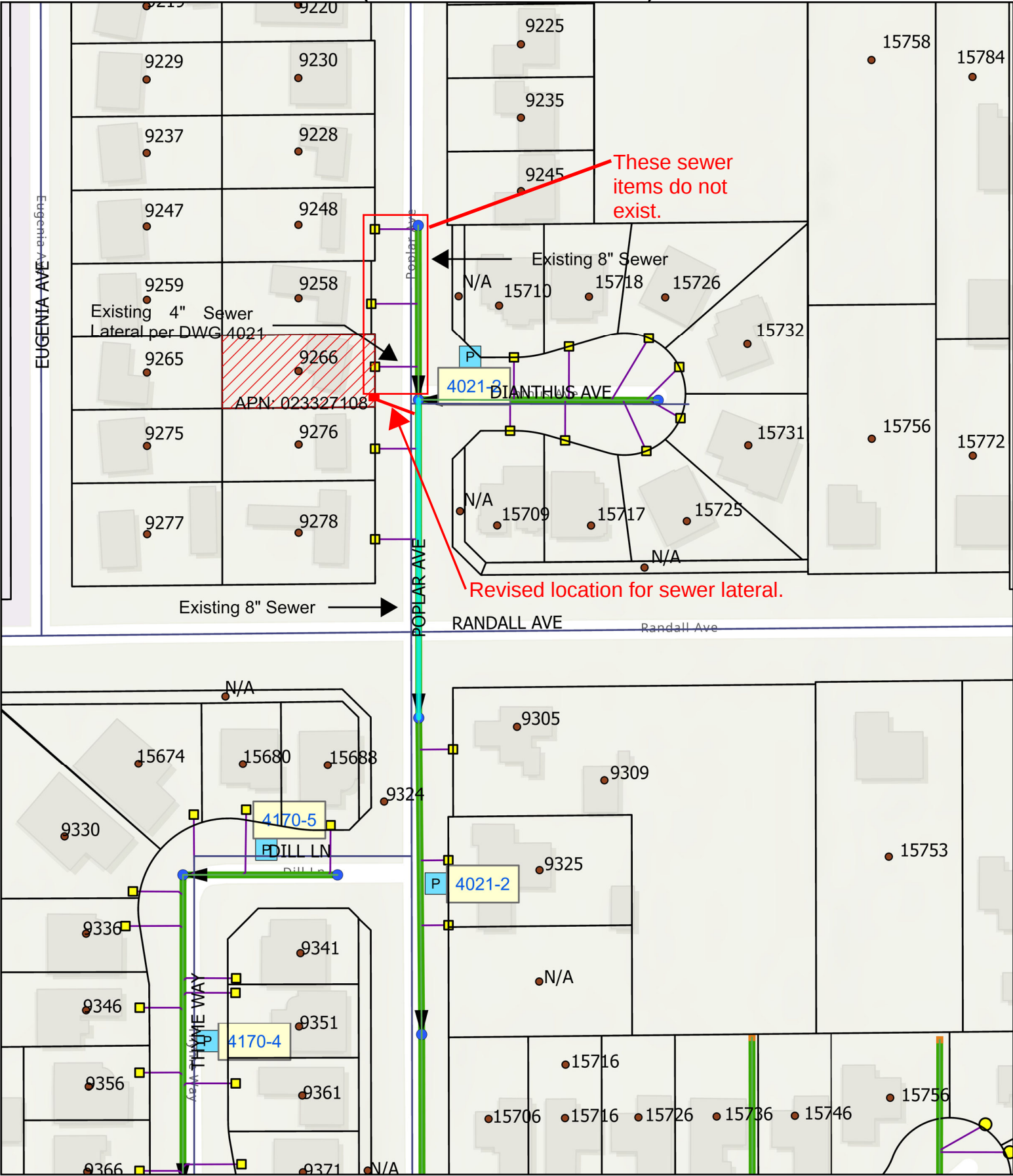


EXHIBIT B

**FIRST AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING**

BETWEEN

**CITY OF FONTANA
AND
COUNTY OF SAN BERNARDINO**

AMENDED AS OF OCTOBER 9 , 2012

WESTERN SPHERE OF INFLUENCE

CITY OF FONTANA / COUNTY OF SAN BERNARDINO

**FIRST AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING
(Western Sphere of Influence)**

This First Amended and Restated Memorandum of Understanding (Western Sphere of Influence) ("Agreement") is entered into between (1) the City of Fontana, a California general law city and municipal corporation ("City") and, (2) the County of San Bernardino, a political subdivision of the State of California ("County"). This Agreement is reference dated as of October 9, 2012, and supersedes that certain Memorandum of Understanding (Western Sphere of Influence) dated August 26, 2008 (the "2008 MOU"). This Agreement will not become effective until the occurrence of the "Effective Date" defined below. If the Effective Date does not occur on or before December 31, 2012, then this Agreement may not thereafter become effective and any prior approvals and/or signatures of the Parties shall be deemed, automatically and without need of further act or instrument by either Party, rescinded and void ab initio. The City and the County are sometimes referred to in this Agreement, individually, as a "Party" and, collectively, as the "Parties".

This Agreement will become effective on the date ("Effective Date") on which it has been approved by both the City Council on behalf of the City and the Board of Supervisors on behalf of the County and fully executed counterpart originals have been exchanged between the Parties. The term ("Term") of this Agreement shall commence on the Effective Date and shall automatically end upon the City's annexation of the entire Western Sphere (as defined in Recital A, below), or either Party's election to terminate this Agreement, which election may be made at any time and for any reason (or for no reason), notice of which shall be given as provided by Section 6.

RECITALS

A. Immediately adjacent to the westerly border of the City is an unincorporated area of land located within the County and designated by the San Bernardino County Local Agency Formation Commission ("LAFCO") as the City's Western Sphere of Influence ("Western Sphere"). The Western Sphere is approximately 8.5 square miles in size. A map depicting the boundaries of the Western Sphere is attached as Exhibit "A".

B. The City provides sanitary sewer services within portions of the Western Sphere. The City owns and maintains the pipes and other transmission infrastructure needed to provide such service, whereas the Inland Empire Utilities Agency ("IEUA") provides wastewater treatment services within portions of the Western Sphere through a series of agreements with the City. The City's current annexation policy is to require any landowner or developer within the Western Sphere who desires to connect to the City's sanitary sewer system to either sign an irrevocable agreement to annex to the City or to complete a pre-annexation agreement. By this Agreement, the City and County have agreed on certain practices and procedures that they intend will facilitate economic development within the Western Sphere.

C. The City and the County acknowledge that the Western Sphere, or some portion of it, may be annexed into the City at some future date. The County further acknowledges that the City's intent in entering into this Agreement includes ensuring that development within the Western Sphere which occurs prior to such annexation be accomplished in a manner that as closely as possible reflects the City's practices and requirements as established in the City's Development Code as it exists from time to time throughout the Term of this Agreement.

D. The Parties recognize that development within the Western Sphere will be enhanced and facilitated by the investment of public funds into the public infrastructure needed to support such development. The chief sources of public funds for such public infrastructure are those fees and charges imposed and collected from developers within the Western Sphere as a condition to the obtaining of building permits and other entitlements for such development. County has a limited program for the collection of such fees. The City, in connection with the pre-annexation agreements described in Recital "B" above, requires developers within the Western Sphere to pay to the City certain of those development impact fees that would otherwise be assessed against such development if it were located within the City's jurisdictional boundaries. As to the Western Sphere, these development impact fees will consist solely of sewer connection and expansion fees, a storm drainage facilities fee, a fire facilities fee, and a park development fee (for residential properties only) (collectively, the "Western Sphere Development Impact Fees" or "Western Sphere DIF"). The Western Sphere DIF shall be charged at the same rates which City charges for similar development projects within the City's incorporated boundaries, as such rates may be amended from time to time. To facilitate the economic development and revitalization of the Western Sphere, the City and the County have agreed that the Western Sphere DIF and the corresponding impact fees collected by the County from projects being developed within the Western Sphere shall be invested into public infrastructure projects located within the Western Sphere as more particularly described in this Agreement.

AGREEMENT

Section 1. Incorporation of Recitals. The Parties each acknowledge the accuracy of the factual matters set forth in the Recitals and further acknowledge that such facts form the material basis for their entry into this Agreement.

Section 2. County's Obligation to Consult re Development Entitlements and Development Code and Development Standard Changes. The City has reviewed the County's current Development Code and other regulations concerning development within the Western Sphere (collectively, the "County Standards"). Although not identical to City standards, the City is nonetheless satisfied that development which takes place in accordance with the County Standards will be of sufficient quality and character so as to be compatible with the development in the adjoining portion of the City. Accordingly, and in order to foster the continued development of the Western Sphere consistent with the above objective, the County agrees as follows:

2.1. The County shall submit to the City full and complete copies of any and all development or other entitlement permits or applications for development entitlements occurring within the Western Sphere. Such information shall be provided to the City

no less than thirty (30) days prior to the administrative or County Planning Commission hearing at which the development application or other entitlement is to be considered. The City shall promptly review the application and, within twenty (20) days following its receipt from the County, the City will provide written comments to the County for its consideration. The County agrees to reasonably consider the City's comments and, to the extent not in conflict with the County Standards, to incorporate such City-recommended changes as either modifications to or conditions of approval of such entitlement.

2.2. The County shall provide to the City no less than thirty (30) days prior notice of any proposed changes to any of the County Standards, including General Plan amendments and Zoning and Development Code amendments. The County shall review and reasonably respond to any suggested changes and County staff shall incorporate such City-recommended changes for consideration by the County Planning Commission or Board of Supervisors, as applicable.

2.3. The requirements of the foregoing Sections 2.1 and 2.2 shall not operate to modify, waive or abridge any County obligation arising under the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) ("CEQA") to provide the City with environmental notice and opportunity to comment as prescribed by CEQA.

2.4. The County shall review and consider a proposed change to the County Standards to make the County Standards consistent with the City's Automatic Fire Sprinkler Systems standards as set forth in City Code Sections 11-26 thru 11-31.

Section 3. City Provision of Sewer Service. To the extent the City/IEUA has available wastewater (sewer) treatment capacity, the City agrees to provide sewer service to and authorize a sewer connection by any landowner requesting such connection and service within the Western Sphere provided that: (1) such landowner complies with the City's annexation policy, as it may be amended from time to time (a current copy of which is attached as Exhibit "B"); (2) the landowner meets all other City requirements and pays the applicable sewer service fees which are imposed by the City pursuant to the City's Municipal Code and other policies and regulations, as they may be amended from time-to-time, in connection with such sewer service; and (3) the landowner pays to the City the Western Sphere DIF which would be applicable to the development if it were to occur in the City at the time a sewer connection permit is issued. Provided, however, that the City shall not require the payment of any development impact fee which is imposed by the County to fund the same infrastructure as being funded by the City impact fee, City agrees that this Agreement will accomplish, in major part, what annexation would provide for the Western Sphere. Therefore, notwithstanding the requirement for a landowner to comply with the City's annexation policy or LAFCO's requirements, or both, the City agrees it will not file a formal application with the Local Agency Formation Commission seeking to annex any part of the Western Sphere as long as this Agreement is in effect, unless the annexation application is otherwise agreed upon by the City and the County.

Section 4. Use of Development Impact Fees Within Western Sphere. Each year as part of their preparation and approval of their respective Capital Improvement Plans described by Government Code Section 66002, the City and the County shall each use reasonable good faith efforts to include capital improvement/public infrastructure projects within

the Western Sphere which will be funded by the Western Sphere DIF (as to the City) and those development impact fees received by the County from development occurring within the Western Sphere. Without limiting the legislative discretion granted to either the City Council or the Board of Supervisors, the Parties agree that, to the extent possible, the following projects shall be given priority in the allocation of Western Sphere DIF and those development impact fees received by the County from development occurring within the Western Sphere:

- 4.1 Sewer Facilities
- 4.2 Storm Drainage Facilities
- 4.3 Park Development: a central park
- 4.4 Fire Facilities

The above list is intended by the Parties to be precatory only and shall not be a binding commitment to fund. The County's Second District Supervisor and City's Mayor are authorized to meet and attempt to resolve any disputes regarding the priority of projects to be funded and/or add new projects, subject to the consent and ratification of the City Council and Board of Supervisors. Actual funding of such projects shall require separate agreements for each specific project, as approved by both the City Council and Board of Supervisors.

Section 5. Sales Tax Allocations. Sharing of Sales Tax under the 2008 MOU is hereby terminated. In lieu of the ongoing Sales Tax allocation by the County under the 2008 MOU, the County's remaining obligation under Section 5 shall be fulfilled in its entirety by the following actions:

5.1 Five Million Five Hundred Sixty Seven Thousand Eight Hundred and Sixty Seven Dollars and 39/100 (\$5,567,867.39) currently set aside in the County Fire CIP accounts to fund construction of Fire Station 80 shall be paid by the County to the Fontana Fire Protection District within ten (10) days following the Effective Date of this Agreement, for use in the acquisition of land and construction of a fire station to serve the Western Sphere area, tentatively located near the intersection of Foothill Boulevard and Banana Avenue; and

5.2 County shall, within ten (10) days following the Effective Date of this Agreement, pay to the City Four Million Five Hundred Thousand Dollars (\$4,500,000.00) to fund the improvement of a flood control/water quality control basin by the City.

Section 6. Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective parties may provide in writing for this purpose.

City

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335

Attention: City Manager

County

County of San Bernardino
385 North Arrowhead Avenue
San Bernardino, CA 92415

Attention: County Administrative Officer

Section 7. Integration/Modifications. This Agreement contains the entire understanding of the Parties with respect to the matters set forth in this Agreement and supersedes any and all prior writings and oral discussions concerning the same. This Agreement may not be amended except by a writing duly signed and duly approved by the City and County. This Agreement is not intended to and shall not accrue to the benefit of any person or entity other than the City and the County.

Section 8. Governing Law. This Agreement shall be governed by the procedural and substantive laws of the State of California.

Section 9. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

Section 10. Counterpart Originals. This Agreement may be executed by the Parties in counterparts, all of which together shall constitute a single Agreement.

Section 11. Attorney's Fees. If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, shall bear its own costs and attorneys' fees.

Section 12. Authority to Enter into Agreement. City and County both warrant that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind both respective Parties to this Agreement.

[Signatures on following pages]

**SIGNATURE PAGE
TO
FIRST AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING
(Western Sphere of Influence)**

COUNTY:

COUNTY OF SAN BERNARDINO

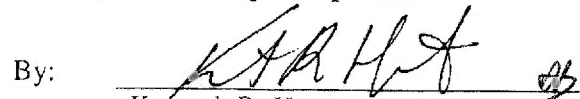
By: 

Josie Gonzales, Chair
Board of Supervisors

Dated: OCT 23 2012

CITY:

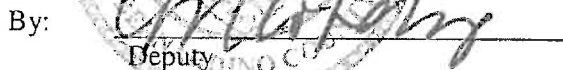
CITY OF FONTANA, a California general
law city and municipal corporation

By:  
Kenneth R. Hunt
City Manager

Dated: 10/11/12

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

LAURA H. WELCH
Clerk of the Board of Supervisors

By: 
Deputy

Dated: OCT 23 2012

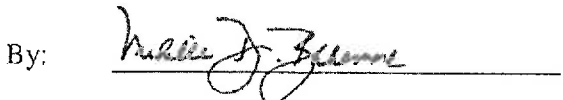
ATTEST:

By: 
City Clerk

Dated: 10/11/12

APPROVED AS TO LEGAL FORM:

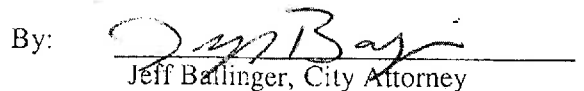
JEAN-RENE BASLE
County Counsel

By: 

Dated: 10-22-12

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: 
Jeff Ballinger, City Attorney

Dated: 10/16/2012

**EXHIBIT A
TO
FIRST AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING**

WESTERN SPHERE AREA MAP

(See following page)

Western Sphere of Influence

CITY OF FONTANA

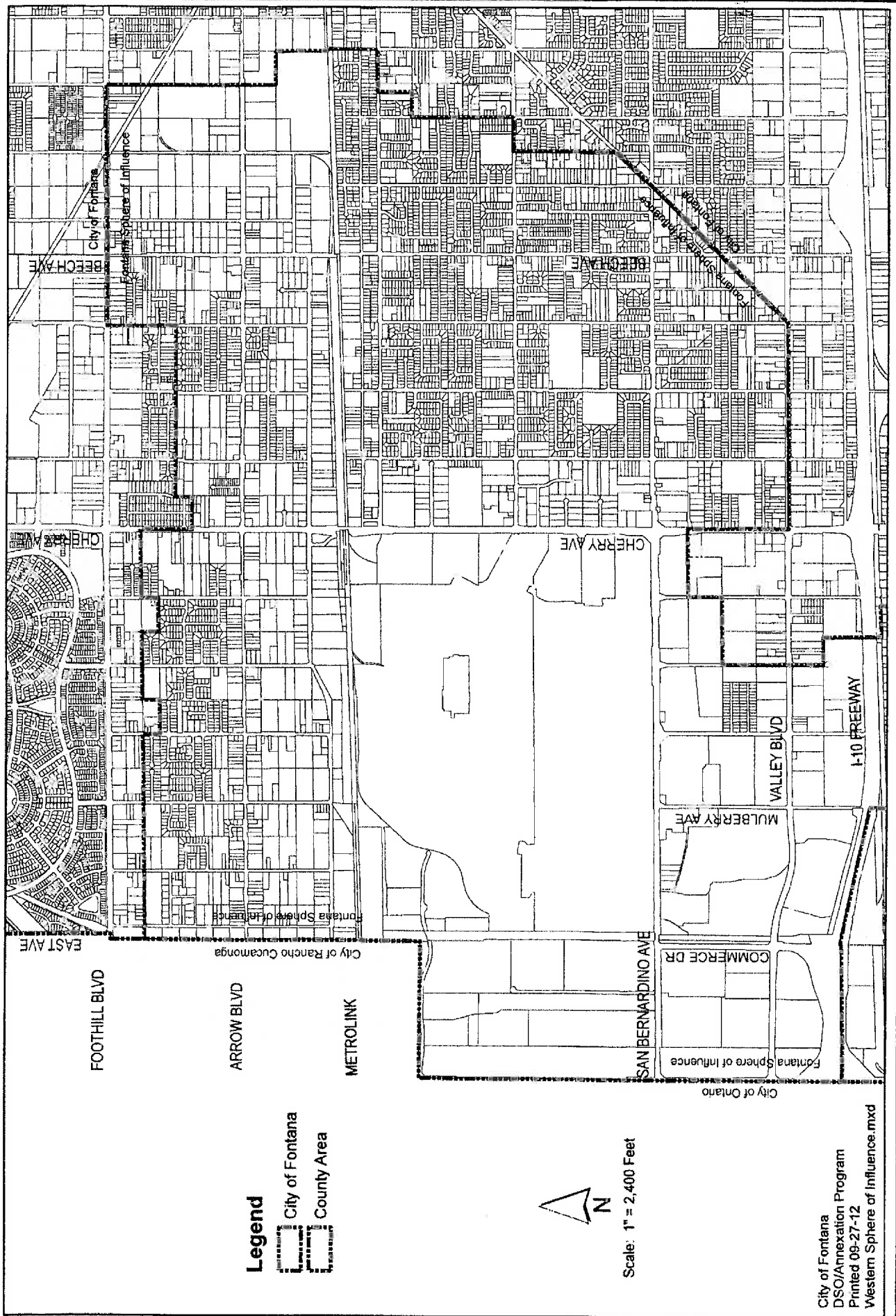


EXHIBIT C

RESOLUTION NO. 2008-142

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA AMENDING THE CITY OF FONTANA'S POLICY PERTAINING TO ANNEXATION.

WHEREAS, the City Council of the City of Fontana ("City") has approved a policy pertaining to annexation as noted in Chapter 3 (Land Use Element) of the General Plan;

WHEREAS, the City has determined that in order to promote the City Council's economic and General Plan goals and objectives, amending the City's policy on annexation is an important benefit for the City's economic development;

NOW THEREFORE, BE IT RESOLVED, determined and ordered by the City Council of the City of Fontana as follows:

Section 1. Annexations shall be pursued that promote Community balance, quality development, and improvement of the City's economic base as follows:

Annexations may be initiated by the City Council (adopted resolution) or by property owners or registered voters (written petition);

A Plan for Services shall be prepared for all annexations and submitted to the City Council for review and consideration;

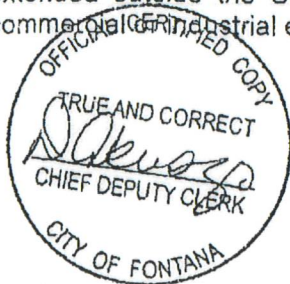
A fiscal impact analysis shall be conducted for all annexation areas;

All City and Local Agency Formation Commission (LAFCO) filing fees for annexation must be paid by the applicant.

Section 2. Irrevocable Agreements to Annex for Sewer Service—Existing Development (Contiguous and Non-Contiguous Areas)

An Irrevocable Agreement to Annex is an agreement between the landowner and the City for only sewer service. This agreement outlines that the City shall provide sewer service outside its corporate limits and the landowner agrees not to oppose a future attempt by the City to annex the area. Upon approval by LAFCO, the agreement shall be recorded with the County Recorder's office. Upon recordation, the agreement shall be considered a covenant on the land.

Irrevocable Agreements to Annex may be utilized when sewer service is extended outside the City's corporate limits to an existing residence or an existing commercial or industrial establishment that is experiencing a failing septic system.



Section 3. Irrevocable Agreements to Annex for Sewer Service—New Development (Non-Contiguous Areas)

Irrevocable Agreements to Annex for sewer service may be utilized for new developments for areas that are not contiguous to the City's limits.

Irrevocable Agreements to Annex in the Western Sphere of Influence will be subject to the terms of the adopted Memorandum of Understanding (MOU) between the City and County of San Bernardino (copy attached).

Section 4. Preannexation Agreements—New Development (Contiguous and Non-Contiguous Areas)

A Preannexation Agreement may be utilized for new developments for areas that are contiguous or not contiguous to the City's limits. An applicant may wish to consider a preannexation agreement to outline land use designations, development standards, conditional use permits approved by the County of San Bernardino, donation of right-of-way easements, sewer service, and other requirements as necessary.

Annexation may be deferred by use of a Preannexation Agreement if the following condition is met:

Preannexation Agreements in the Western Sphere of Influence will be subject to the terms of the adopted MOU between the City and County (copy attached).

Section 5. This Resolution shall take effect immediately upon its adoption.

APPROVED AND ADOPTED this 9th day of December, 2008.

READ AND APPROVED AS TO LEGAL FORM:

/s/ Clark Alsop
City Attorney

Resolution No. 2008-142

I, Tonia Lewis, City Clerk of the City of Fontana, California, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing resolution is the actual resolution duly and regularly adopted by the City Council at a regular meeting thereof, held on the 9th day of December, 2008 by the following vote to wit:

AYES: Mayor Nuaimi, Council Members Roberts, Rutherford, Scialdone, Warren

NOES: None

ABSENT: None

/s/ Tonia Lewis
City Clerk of the City of Fontana

/s/ Mark Nuaimi
Mayor of the City of Fontana

ATTEST:

/s/ Tonia Lewis
City Clerk of the City of Fontana

EXHIBIT D

Pre-Annexation Agreement

Estimated

Development Impact Fees

Sewer Connection Charges/LAFCO Fee

Impact Fees	Fee	Multiplier	Fee Amount
¹ Fire Facilities	\$431.00 - SFD	0.5	\$215.50
Engineering Fees			
¹ Park Development	\$7,733 - SFD	0.5	\$3,866.50
¹ Storm Drain Fee (Fontana East)	\$16,550.00	0.5	\$8,275.00
Sewer Deposit	\$60.24	4 month deposit	\$240.96
City Sewer Connection Master Fee	\$1,023.00 per EDU	1 EDU's ³	\$1,023.00
City Sewer Connection Permit	\$25.00	1	\$25.00
² Sanitary Sewage Facilities Expansion Fee (Inland Empire Utilities Agency)	\$8,620 Per EDU Effective 7/1/24	1 EDU's ³	\$8,620.00
⁴ LAFCO Fee	\$650.00	1	\$650.00
Total			\$22,916.96

¹ Fees listed are reduced by 50% pursuant to City of Fontana In-fill Ordinance No. 1748 adopted on September 13, 2016. (If applicable)

² Indicates a pass-through fee collected for other agencies.

³ Equivalent Dwelling Units (EDU's) have been estimated for the project and will be adjusted at time of plan check for the "Sewer Connection" permit.

⁴ Subject to LAFCO's adopted fee resolution.

All Fees shall be due and payable prior to issuance of the "Sewer Construction" permit issued by the Engineering Department and the "Sewer Connection" permit issued by the Building & Safety Division. Additional fees will apply for the permit issuance and inspection. The estimated fee will be collected at the actual rate when the construction permit is issued.