

EXEMPT FROM FEES pursuant to
Gov't Code §§ 6103, 27383, and 27388.1
(filing requested/executed by municipality)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Planning Division
City of Escondido
201 North Broadway
Escondido, CA 92025-2798

This Space for Recorder's Use Only

APN: 187-500-59-00

OUT-OF-AGENCY SERVICE AGREEMENT

This OUT-OF-AGENCY SERVICE AGREEMENT ("**Agreement**") is made and entered into as of the last signature date set forth below ("**Effective Date**"), by and between the City of Escondido, a California municipal corporation ("**City**") and Mariann Mer Bowles, as Trustee of the Mariann (Mer) Bowles Trust, dated December 17, 2019 (collectively referred to herein as "**Owner**"). (The City and Owner may each be referred to herein as a "**Party**" and collectively as the "**Parties.**")

RECITALS

- A. Owner possesses and owns that certain real property located at 3216 N Broadway, Escondido CA 92026, which is outside the jurisdictional boundary of the City, and within the unincorporated County of San Diego, as further described in Exhibit A to this Agreement, attached hereto and incorporated herein by this reference ("**Property**").
- B. Pursuant to California Government Code section 56133(a), the City may provide new or extended services, as defined by California Government Code section 56074, by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the San Diego County Local Agency Formation Commission ("**LAFCO**").
- C. Pursuant to California Government Code section 56133(b), LAFCO may authorize the 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, as defined by California Government Code section 56021.
- D. Pursuant to California Government Code section 56133(c), LAFCO may authorize the City to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met: (1) The entity applying for approval has provided LAFCO with documentation of a threat to the health and safety of the public or the affected residents; and, (2) LAFCO has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with LAFCO.

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E. In accordance with California Government Code section 56133(b) and San Diego LAFCO's local policies, LAFCO provided a conditional approval for the City to establish contract wastewater service to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory for one existing dwelling unit on the Property, which is within the City's sphere of influence, and in anticipation of annexation at a later date as determined to be appropriate by the City, and subject to the LAFCO conditions stated therein and in a letter dated November 6, 2025, which is attached hereto as Exhibit B and incorporated herein by this reference ("**Conditional Approval Letter**"),

F. The City and the Owner desire to enter into this Agreement so the City may provide wastewater service to one (1) existing dwelling unit on the Property, subject to Owner meeting all of the LAFCO conditions and any conditions otherwise expressed in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, the Parties hereby mutually agree as follows:

1. Recitals. The Recitals set forth above are included herein by reference as part of this Agreement and the Parties agree that said Recitals are essential facts to this Agreement.
2. Applicability of Government Code. This Agreement is made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (California Government Code section 56000 et seq.) ("**Act**") and is subject to all of the provisions of the Act, including but not limited to Government Code section 56133.
3. Authority to Connect. Upon the Parties' execution of this Agreement and Owner's recordation of this Agreement in the County Recorder's Office for San Diego County, and subject to all other terms and conditions of this Agreement, Owner may connect to the City's sewer and water system ("**Improvements**"). Owner agrees to construct the Improvements in conformance with all applicable federal, state, and local laws and regulations. No construction of the Improvements shall occur without first securing all required permits and approvals from the City, County, or any other local agency or regulatory authority.
4. Irrevocable Offer of Annexation. Owner hereby makes an irrevocable offer of annexation of the Property to the City. Owner waives any right of protest in the annexation of the Property to the City provided for under the Act or any other law or policy. Such waiver shall be binding on Owner and its heirs, successors in interests, and assigns.
5. Conditions of Approval. Owner agrees to meet all conditions, including each of the following:
 - a. At a future date, at the City's sole discretion and upon the City's request, Owner shall provide LAFCO a landowner-petition application to annex the Property to the City ("**Annexation Petition**"), along with the required filing fee.
 - b. Owner shall provide LAFCO a signed and recorded copy of this Agreement.
 - c. Any other conditions required by LAFCO.

d. Within 10 days after execution of this Agreement by all Parties, Owner shall record this Agreement which shall run with the land and inure to and bind all successors in interest to the Property, with the Office of the County Recorder for San Diego County.

e. At the time Owner files an Annexation Petition, Owner shall file a formal application for rezoning with the City and shall diligently and in good faith prosecute such application to completion.

f. Owner shall be responsible for all LAFCO and City fees and charges in relation to the application for rezoning, application for annexation, Improvements, future wastewater service connection, or otherwise in relation to this Agreement.

g. This Agreement is limited to the provision of wastewater service to the existing one dwelling unit on the Property and shall not be construed to provide authority for the City's provision of any additional service in relation to the Property in advance of annexation.

6. No Pre-Commitment

a. Notwithstanding any other provision of this Agreement, nothing herein shall commit or otherwise require the City, or be interpreted as requiring the City, to issue any permit, entitlement, or other approval in relation to the Improvements. Rather, the City and Owner acknowledge and agree that the City retains full discretionary authority with respect to the Improvements, and may approve, disapprove, modify, or condition the Improvements, or any portion thereof, as otherwise authorized by law. Owner acknowledges and agrees that it is proceeding at its own risk and expense until such time as all required permits, entitlements, or other approvals are approved and without assurance that any required permits, entitlements, or other approvals will be approved.

7. Term. This Agreement shall commence on the Effective Date and shall remain in effect until the earlier of any of the following: (i) the Property is annexed into the City; or (ii) the Agreement is terminated by the City if Owner fails to meet any condition stated herein.

8. Indemnification. Owner (including Owner's agents, employees, contractors, and subcontractors, if any) shall hold harmless, defend (with counsel reasonably acceptable to the City), and indemnify the City, its boards, commissions, departments, officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "**Claims**"), and any attorney's, consultant, or expert fees and City staff costs for investigating or responding to any Claims, incurred in connection with or arising in whole or in part from this Agreement, the use of the Improvements by the Owner (including Owner's agents, employees, invitees, contractors, and subcontractors, if any), the condition of the Improvements, or any related construction or other work undertaken on the Property, including without limitation (i) any death or bodily injury to a person; (ii) any injury to, loss, or theft of tangible or intangible property, including economic loss; or (iii) any other loss, damage, or expense sustained by the Owner in connection with any work or obligations performed in connection with this Agreement, except for any liability resulting from the active negligence, sole negligence, or willful misconduct of the City. The duty to defend the City as described in this Paragraph 8 shall apply regardless of whether any Claims are groundless,

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fraudulent, or false. All obligations under this Paragraph 8 shall survive the termination of this Agreement.

9. Miscellaneous.

9.1 *Governing Law.* This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Any litigation arising out of this Agreement shall be conducted only in the state or federal courts of San Diego County, California.

9.2 *Entire Agreement.* This Agreement, together with its attachments or other documents, if any, described or incorporated herein, contains the entire agreement and understanding concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. Each of the Parties hereto acknowledges that no other Party, nor the agents nor the attorneys for any Party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Agreement and acknowledges that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

9.3 *Amendment.* This Agreement may not be amended except in a writing signed by all of the Parties hereto, and then only in the specific instance and for the specific purpose given. Any such amendment shall be recorded with the Office of the County Recorder for the County of San Diego.

9.4 *Independent Investigation.* The Parties acknowledge that they have conducted an independent investigation of the facts concerning the subject matter of this Agreement. The Parties agree that the factual recitals are correct and expressly assume the risk that the true facts concerning the foregoing may differ from those currently understood by them.

9.5 *Advice of Counsel.* The Parties hereby acknowledge that they have executed this Agreement after having the opportunity to consult with, and receive the advice of, their own counsel.

9.6 *Capacity.* Each individual signing this Agreement represents and warrants that he or she has been authorized to do so by proper action of the Party on whose behalf he or she has signed.

9.7 *Headings.* Section headings are for reference purposes only and shall not be used for interpreting the meaning of any provisions of this Agreement.

9.8 *Attorney's Fees.* In any action to enforce the terms of this Agreement, the Parties agree that the prevailing party shall be entitled to its reasonable attorney's fees and all costs, fees, and expenses, including the fees of expert witnesses and consultants, whether or not such costs, fees, and expenses are recoverable or allowed as costs under section 1033.5 of the California Code of Civil Procedure. In addition to the foregoing award of attorney's fees and costs, the prevailing party shall be entitled to its attorney's fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment. This provision is separate and shall survive the merger of this provision into any judgment on this Agreement.

9.9 *Counterparts.* This Agreement may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document.

9.10 *Severability.* This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.

9.11 *Notice.* All notices, demands, approvals, or consents provided for in this Agreement shall be in writing and delivered to the appropriate Party at its address as follows:

If to the City:

Director of Development Services
City of Escondido
201 N. Broadway
Escondido, CA 92025

If to Owner:

Mariann M Bowles
3216 N Broadway
Escondido, CA 92026

Any notice, delivery, or other communication shall be effective and shall be deemed to be received by the other Party within five business days after the notice has been deposited in the U.S. Mail, duly registered or certified, with postage prepaid, and addressed as set forth above. Any Party may change the address information provided above by giving written notice to the other Party in the manner provided in this Agreement.

9.12 *Covenants Run with Land.* So long as this Agreement remains in effect, the obligations and benefits provided for in this Agreement shall run with the land obligated and benefited, respectively, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof. As such, it is the intent of the Parties that this Agreement and the promises, covenants, rights, and obligations set forth herein (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Agreement, binding upon the Owner's successors in title and all subsequent owners and operators of the Property; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner and its respective successors and assigns during the term of this Agreement. Further, the Owner shall ensure that any future transfer of interest in the Property is made subject to the terms of this Agreement, such that any future successor in title or owner or operator of the Property shall be bound by the terms herein.

9.13 *Effective Date.* Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: _____ By: _____
Dane White, Mayor

OWNER(s)

Date: _____ By: _____
[Name, Title]

Date: _____ By: _____
[Name, Title]

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
Michael R. McGuinness, City Attorney

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 _____]

On _____, before me, _____,
a Notary Public, personally appeared _____,
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)

City of Escondido

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 _____]

On _____, before me, _____,
a Notary Public, personally appeared _____,
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)

(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]

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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)

(OWNER)

Exhibit A

Legal Description of Property

Parcel 2 of Parcel Map 6311, filed in the office of the County Recorder of San Diego County, September 1, 1977 being a portion of the Northwest Quarter of the Northeast Quarter of Section 33, Township 11 South, Range 2 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to United States Government Survey thereof approved January 26, 1891.

Exhibit B

Out-of-Agency Service Agreement

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Conditional Approval Letter