

**City of Fontana's
Application and Contract**

Attachment 2

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AUG 09 2012

LAFCO
San Bernardino County

LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

APPLICATION FOR
EXTENSION OF SERVICE BY CONTRACT

LAFCO SC # 368

(A certified copy of the City Council/District Board of Directors resolution or a letter from the City Manager/General Manager requesting approval for an out-of-agency service agreement must be submitted together with this application form.)

AGENCY TO EXTEND SERVICE:

AGENCY NAME: City of Fontana, California
CONTACT PERSON: Cecilia Lopez-Henderson, Administrative Project Coordinator
ADDRESS: 8353 Sierra Avenue, Fontana, CA 92335
PHONE: (909) 350-6743
EMAIL: chenderson@fontana.org

CONTRACTING PARTY:

NAME OF PROPERTY OWNER: Sultana Avenue LLC
CONTACT PERSON: Matt Englehard, Vice President, Alere Property Group LLC
Development & Construction
MAILING ADDRESS: 100 Bayview Circle, Suite 310, Newport Beach, CA 92660
PHONE: (949) 509-5000
EMAIL: menglhard@alereinc.com
Representative: Pam Steele, Senior Vice President
Hogle-Ireland, Inc., 1500 Iowa Avenue, Suite 110
Riverside, CA 92507; Ph: (951) 787-9222; Fax: (951) 781-6014
Email: psteele@hogleireland.com

ADDRESS OF PROPERTY

PROPOSED FOR CONTRACT: 8261 and 8375 Sultana Avenue, Fontana, CA 92335

CONTRACT NUMBER/
IDENTIFICATION: Preannexation Agreement No. 11-00002
PARCEL NUMBER(S): 0232-051-02, -03, -11, -12, -26, -27, -35 and -38
ACREAGE: 31.16+/- acres

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The following questions are designed to obtain enough information related to the proposed agreement/contract to allow the Commission and staff to adequately assess the proposed service extension. You may include any additional information which you believe is pertinent. Use additional sheets where necessary.

1. (a) List the type or types of service(s) to be provided by this agreement/contract.

Sewer service will be provided by the City of Fontana.

- (b) Are any of the services identified above "new" services to be offered by the agency?
 YES NO. If yes, please provide explanation on how the agency is able to provide the service.

2. Is the property to be served in the agency's sphere of influence? YES NO
3. Please provide a description of the service agreement/contract.

The Preannexation Agreement is for the provision of sewer service to an industrial high-cube warehouse/distribution facility. The building measures 647,244 square feet on a 31.16 acre site that is located on the east side of Sultana Avenue, between Foothill Boulevard and Arrow Boulevard.

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4. (a) Is annexation of the territory by your agency anticipated at some point in the future? YES NO. If yes, please provide a projected timeframe when it anticipates filing an application for annexation of territory that would include the area to be served. If no, please provide an explanation as to why a jurisdictional change is not possible at this time.

The parcels are not contiguous to the City of Fontana's corporate boundaries; however, the proposed development requires sewer service. The County of San Bernardino does not have the sewer facilities to serve the project site.

- (b) Is the property to be served contiguous to the agency's boundary? YES NO. If yes, please provide explanation on why annexation to the agency is not being contemplated.

5. Is the service agreement/contract in response to a threat to the public health and safety of the existing residents as defined by Government Code Section 56133(c)? YES NO. If yes, please provide documentation regarding the circumstance (i.e., letter from Environmental Health Services or the Regional Water Quality Control Board).

6. (a) What is the existing use of the property?

The project site is used as a metal truss manufacturing facility (Universal Truss), which includes storage of wood pallets. Seven buildings currently occupy the site totaling 77,314 square feet with additional canopy and other structures on site. The project site is mostly paved. The project site is in the unincorporated County area and is designated Regional Industrial (IR) under the County's Land Use District. The site is surrounded by similar light to medium level industrial uses to the east, south and west with vacant land to the north, and some residential uses to the west.

The most recent approvals for the site include a Conditional Use Permit (CUP-01/W153-82), which was approved by the County of San Bernardino in 2002 for additional outside storage of trusses, and truss manufacturing equipment on the site. In addition, in 2005 a lot line adjustment was approved by the County to adjust the parcel lines between four parcels (LLA-W153-82/2005/LLA01).

b) Is a change in use proposed for the property? YES NO. If yes, please provide a description of the land use change.

The project proposes to replace the existing use with a new industrial high-cube warehouse/distribution facility with office space. The project site is located within an industrial hub, which includes warehouse, distribution, and manufacturing uses to the east, south, and west of the project site.

7. If the service agreement/contract is for development purposes, please provide a complete description of the project to be served and its approval status.

Project Description:
On April 28, 2011, an application for a Conditional Use Permit was submitted to the County of San Bernardino Land Use Services Department (Planning Division) for an industrial high-cube warehouse/distribution facility. The total building area measures 647,244 square feet (including 12,000 square feet of office space), on a 31.16+/- acre site. The project site is located on the east side of Sultana Avenue, between Foothill Boulevard and Arrow Boulevard in the unincorporated County area in Fontana's Western Sphere of Influence. The proposed project also includes a Parcel Merger to combine the existing eight lots into one 31.16 acre parcel of land.

The proposed project will include 249 parking spaces; seven of the parking spaces will be ADA accessible as outlined in the Americans with Disabilities Act. Due to the anticipated operational needs of potential end users, the project proposes 118 dock doors and 167 trailer parking spaces.

The quantity of stalls will accommodate ample trailer parking spaces for an industrial/distribution use. As defined by San Bernardino County, warehouse/distribution facilities are used primarily for the storage and/or consolidation of manufactured goods prior to their distribution to retail locations or other warehouses. These facilities are commonly constructed utilizing concrete tilt-up technique, with a typical ceiling height of at least 24 feet.

Approval Status:
 On November 17, 2011, the San Bernardino County Planning Commission approved the Conditional Use Permit (No. P201100197) for the proposed development.

8. Are there any land use entitlements/permits involved in the agreement/contract? YES NO. If yes, please provide documentation for this entitlement including the conditions of approval and environmental assessment that are being processed together with the project. Please check and attach copies of those documents that apply:

- | | |
|---|-------------------------------------|
| Tentative Tract Map/Parcel Map | <input type="checkbox"/> |
| Permit (Conditional Use Permit, General Plan Amendment, etc.) | <input checked="" type="checkbox"/> |
| Conditions of Approval | <input checked="" type="checkbox"/> |
| Negative Declaration (Initial Study) | <input checked="" type="checkbox"/> |
| Notice of Determination (NOD)/Notice of Exemption (NOE) | <input checked="" type="checkbox"/> |
| Department of Fish and Game (DFG) Receipt | <input type="checkbox"/> |
| Others (please identify below) | <input type="checkbox"/> |

The documents noted above are attached.

9. Has the agency proposing to extend service conducted any CEQA review for this contract? YES NO. If yes, please provide a copy of the agency's environmental assessment including a copy of the filed NOD/NOE and a copy of the DFG Receipt.

The project was found to be exempt from further environmental review and a Notice of Exemption (NOE) was filed. A copy of the NOE is attached.

10. Plan for Service:

(a) Please provide a detailed description of how services are to be extended to the property. The response should include, but not be limited to, a description of: 1) capacity of existing infrastructure, 2) type of infrastructure to be extended or added to serve the area, 3) location of existing infrastructure in relation to the area to be served, 4) distance of infrastructure to be extended to serve the area, and 5) other permits required to move forward with the service extension.

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The City of Fontana will be providing sewer service to a project site that is located outside its corporate limits. The City has the facilities and capacity to serve the project site from an existing sewer line on Foothill Boulevard. To serve the proposed development, approximately 400 feet of sewer line will be constructed along Sultana Avenue that will intersect with the main sewer line on Foothill Boulevard.

(b) Please provide a detailed description of the overall cost to serve the property. The response should include the costs to provide the service (i.e., fees, connection charges, etc.) and also the costs of all improvements necessary to serve the area (i.e. material/equipment costs, construction/installation costs, etc.).

Fontana's Development Impact Fees shall include the following, which may be amended from time to time:

DESCRIPTION OF FEES/CHARGES	FEE	MULTIPLIER	FEE AMOUNT
Fire Facilities Fee¹	\$0.05 sf	647,244 sf	\$32,362.20
Storm Drain Fee¹	\$10,194./ac	30.88 acres	\$314,790.72
Sewer Connection Master Fee	\$876.61/EDU ²	7.9287 EDUs	\$6,950.38
Sewer Facilities Expansion Fee³	\$4,909./EDU	7.9287 EDUs	\$38,921.99
Total Development Impact Fees			\$393,025.29

¹The project site is located within the City's "in-fill" development area, thus the Preannexation Agreement reflects a 50% reduction in Storm Drain Fees and Fire Fees. The Sewer Facilities Expansion Fee is a pass through fee that is collected by the City on behalf of the Inland Empire Utilities Agency. Therefore, the Sewer Facilities Expansion Fee is not subject to a 50% reduction.

This Development Impact Fees-Infill Program, as set forth in the City's Comprehensive Fee Schedule, shall apply so long as the program remains in effect as of the date of the actual sewer connection. The Landowner shall pay the amount of those fees in effect at the time the sewer permit is issued as set forth in the Preannexation Agreement.

²EDU = Equivalent Dwelling Unit (Number of Fixture Units x Coefficient = EDU)
 107 Fixture Units x 0.0741 Coefficient = 7.9287 EDUs

³Indicates a pass-through fee collected for the Inland Empire Utilities Agency (IEUA).

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Fontana's sewer connection charges and LAFCO filing fee shall include the following, which may be amended from time to time:

CHARGE	FEE	FEE AMOUNT
Sewer Deposit⁴	4 x monthly rate x # of EDU ⁵	\$1,843.89
Sewer Connection Permit Fee	\$25.00	\$25.00
LAFCO Filing Fee	\$6,600.00	\$6,600.00
Total		\$8,468.89

⁴Sewer deposit fee calculation (as of July 1, 2012):

4 x Monthly Rate x Number of EDU

4 x (sewer fee = \$19.76 + industrial surcharge \$19 x 1.5 times city sewer rate) x 7.9287

4 x (\$58.14) x 7.9287 = \$1,843.89

⁵Noted on Page 6.

(c) Please identify any unique costs related to the service agreement such as outside City/District rates or additional 3rd party user fees and charges (i.e., fees/charges attributable to other agencies).

The monthly sewer rate for industrial development that is outside the City's corporate boundaries is \$58.14 per Equivalent Dwelling Unit (EDU) per month.

(d) If financing is to occur, please provide any special financial arrangement between the agency and the property owner, including a discussion of any later repayment or reimbursement (if available, a copy of the agreement for repayment/reimbursement is to be provided.).

The property owner is responsible for hiring a contractor for the installation and connection of the proposed development to the City's existing sewer system. The costs of improvements and financing are borne by the property owner.

11. Does the City/District have any policies related to extending service(s) outside its boundary? YES NO. If yes, has a copy been provided to LAFCO? YES NO. If not, please include a copy of the policy or policies (i.e., resolution, municipal code section, etc.) as part of the application.

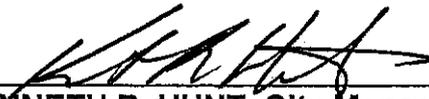
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On August 26, 2008, the City of Fontana and County of San Bernardino entered into a Memorandum of Understanding (MOU) for the City's Western Sphere of Influence. A copy of the adopted MOU is attached for your information. The MOU includes a copy of the City's adopted Annexation Policy.

CERTIFICATION

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this evaluation of service extension to the best of my ability, and that the facts, statement and information presented herein are true and correct to the best of my knowledge and belief.

SIGNED BY:



KENNETH R. HUNT, City Manager

DATE:

8/7/12

REQUIRED EXHIBITS TO THIS APPLICATION:

1. Copy of the agreement/contract.
2. Map(s) showing the property to be served, existing agency boundary, the location of infrastructure to be extended, and the proposed location of the infrastructure to be extended.
3. Certified Plan for Service (if submitted as a separate document) including financing arrangements for service.

Please forward the completed form and related information to:

Local Agency Formation Commission
215 North "D" Street, Suite 204
San Bernardino, CA 92415-0490
PHONE: (909) 383-9900 • FAX: (909) 383-9901
Email: lafco@lafco.sbcounty.gov

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

LAFCO SC # 368

City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Attn: City Manager

Exempt from Recording fee
pursuant to Gov't Code § 27383

(Space above for Recorder's use)

PREANNEXATION AGREEMENT NO. 11-00002

between

CITY OF FONTANA
a California municipal corporation

and

SULTANA AVENUE LLC
Landowner

[Dated as of July 23, 2012 for reference purposes only]

1. PARTIES AND EFFECTIVE DATE.

~~1.1. Parties.~~ **1.2. Parties.** This Preannexation Agreement ("Agreement") is entered into as of this 23rd day of July, 2012, between the City of Fontana, a California municipal corporation ("City") and Sultana Avenue LLC ("Landowner") with the principal place of business located at 100 Bayview Circle, Suite 310, Newport Beach, CA 92660, City and Landowner are sometimes individually referred to herein and "Party" and collectively as the "Parties."

1. B. Effective Date. This Agreement will not become effective until the date ("Effective Date") on which it has been executed by Landowner and has been approved by the City Council. City shall deliver a fully executed counterpart original of this Agreement to Landowner within ten (10) days from City's execution of this Agreement.

2. RECITALS.

2. A. Landowner has fee title to that property, in unincorporated San Bernardino County, commonly known as Assessor Parcel Number 0232-051-02, -03, -11, -12, -26, -27, -35, and -38 (the "Property"), more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference. An Assessor Parcel Map is attached hereto as Exhibit "B" and incorporated by this reference.

2. B. The City is contemplating annexation of certain territory, including Landowner's Property which is also located within the "Western Sphere of Influence", as defined in and subject to the Memorandum of Understanding ("MOU") between the City and County of San Bernardino approved on August 26, 2008, and as it may be amended from time to time, as well as the City's annexation policy as amended from time to time. A current copy of the MOU is attached hereto as Exhibit "C" and incorporated herein by reference. A current copy of the City's annexation policy is attached hereto as Exhibit "D" and incorporated herein by reference.

2. C. The City has general planned and rezoned the Western Sphere of Influence and, upon annexation, the Property will be zoned General Industrial (M-2) in accordance with the City's Zoning District Map.

2. D. Landowner desires to build a 647,244 square foot industrial building to be used as a high-cube warehouse distribution facility ("Project") and has requested that the City enter into this Agreement and City desires to provide sewer service to the Project. City has further determined that it is in the best interest of the citizens of the City and the Landowner to encourage the development of this Project.

3. TERMS.

In order to facilitate the annexation and the development of this Project the City and Landowner agree to the following:

3. A. City's Obligation.

(a) **Annexation.** Subject to Section 3. A. (c) noted below, upon completion of the annexation, the Property shall be subject to the same benefits and obligations as other properties zoned General Industrial (M-2) by the City.

(b) **No Representation or Warranty Regarding Annexation.** Nothing herein shall be deemed as a representation or warranty by City that the annexation of the Property will be completed.

(c) **Zoning.** The Parties acknowledge that the City has rezoned the Property, and upon annexation, the Property will be zoned General Industrial (M-2). Notwithstanding the foregoing, or anything to the contrary contained herein, this Agreement shall not limit the right of Landowner to continue any existing legal use upon the Property that is conducted prior to annexation, but is considered a legal nonconforming use following annexation and/or due to future changes to the City's General Plan or zoning ordinances.

(d) **Development Standards.** The proposed development shall meet existing City standards as required in the MOU and as approved by San Bernardino County's Conditional Use Permit No. P201100197.

3. B. Landowner's Obligations.

(a) **Development Impact Fees.** In connection with the proposed development, Landowner shall pay all fees and charges and make all deposits required by any applicable City ordinance or resolution, including those fees identified in the MOU as it may be amended from time to time. The Landowner shall pay the City all development impact fees in effect at the time of sewer connection permit issuance. Present estimates of those fees are set forth in Exhibit "E" and incorporated herein by reference.

The project site is located within an "in-fill" development area, thus the development impact fees reflect a 50% reduction in Storm Drain Fees and Fire Fees. This Development Impact Fees-Infill Program, as set forth in the City's Comprehensive Fee Schedule, shall apply so long as the program remains in effect as of the date of the actual sewer connection. The Landowner shall pay the amounts of these fees at the time of the sewer permit issuance as set forth in the Agreement, and shall pay the final Development Impact Fees-Infill Program in effect at the time of the sewer permit issuance.

(b) **City Provision of Sewer Service.** The City agrees to provide sewer service and a sewer connection to said development 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 "D"), (2) the Landowner meets all other City requirements and pays all fees imposed by the City pursuant to the 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 those development impact fees which would be applicable to the development if it were to occur within city limits as required under the City's current fee schedule and the MOU at the time a sewer connection permit is issued and in the amounts as may be established from time-to-time by the City, provided, however, that the City shall not

require the payment of any impact fee which is imposed by the County to fund the same infrastructure as being funded by the City impact fee.

(c) **Sewer Connection Charges/LAFCO Fee.** Landowner shall pay all fees and charges and make all deposits required by City to connect to and use the sewer. Landowner also agrees to pay any additional fees that may be charged by the Local Agency Formation Commission (LAFCO). Those fees shall include, but not be limited to, the following:

Sewer Deposit (see Exhibit "F")

Sewer Connection Permit Fee (see Exhibit "F")

LAFCO Filing Fee (see Exhibit "F")

Development Impact Fees as identified on Exhibit "E" and Section 3. B. (a).

Landowner agrees to be bound by all City ordinances, rules and regulations respecting the sewer system:

3. C. Event of Default. For purposes of Section 3.C., an "Event of Default" shall mean the occurrence of any of the following during the term hereof:

(a) Landowner materially breaches any of the obligations of this Agreement;

(b) Subject to Section 3.A. (c) noted above and Section 4.M. (Force Majeure) noted below, Landowner suspends or ceases operation of the development for a period in excess of thirty (30) days;

(c) Landowner makes a material misrepresentation of any fact or item in any document executed by the City with respect to this Agreement;

(d) Upon the attachment, levy, execution or other judicial seizure of any substantial portion of the assets of Landowner, that is not released, expunged, bonded, discharged, or dismissed within thirty (30) days after the attachment, levy, execution or seizure; and

(e) Landowner becomes insolvent or unable to pay Landowners' debts generally as they mature, makes a general assignment for the benefit of creditors, admits in writing Landowners' inability to pay Landowners' debts generally as they mature, file or have filed against it a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement with creditors or other similar relief under the Federal bankruptcy laws or under any other applicable law of the United States of America or any state thereof, or consents to the appointment of a trustee or receiver for it or for a substantial part of Landowner's Property.

3. D. Irrevocable Consent to Annexation. In exchange for the City's commitments hereunder to make the sewer connection available to Landowner, Landowner hereby consents to the annexation of the Property to the City. Provided that City has fully complied with its obligations under this Agreement, Landowner agrees to covenant for itself, its agents,

employees, contractors, heirs, successors and assigns ("Successors") not in any way object to, protest, delay, frustrate or otherwise impede any annexation proceedings concerning the annexation of the Property to the City. Provided that City has fully complied with its obligations under this Agreement, Landowner and its Successors shall cooperate in every reasonable way with the requests of the City, the San Bernardino Local Agency Formation Commission ("LAFCO"), or any other public agency in any proceedings to annex the Property to the City. The Landowner's and its Successor's cooperation shall include, but not be limited to, the filing of all necessary applications, petitions, plans, drawings, and any other documentation or information required by the City, LAFCO, or any other public agency at no cost or expense to Landowner or its Successor.

3. E. Duration of Agreement. This Agreement shall remain in effect for a term of three (3) years from the Effective Date or upon expiration of the County's land use approvals, including any extensions, or whichever occurs first. Approval of this Agreement is contingent upon the closure of the escrow for the parcels as identified in Exhibit "A" attached hereto which must occur no later than September 30, 2012 for this Agreement to be effective.

3. F. Property Maintenance. Landowner agrees to maintain the Property in good condition and in compliance with reasonable industrial standards. Reasonable standards are defined as the level of maintenance service necessary to keep the appearance and operation of the Property free from visible defects, deterioration, dirt and debris.

3. G. Amendments/Time Extensions. City and Landowner may amend this Agreement by written amendment mutually executed by both parties. Such amendments shall not invalidate this Agreement or relieve or release any Party from its obligations under this Agreement unless expressly stated so by such amendment.

4. GENERAL PROVISIONS.

4. A. General Compliance. Landowner agrees to comply with all applicable, federal, state and local laws and regulations, including but not limited to the City's Building, Planning and Code Enforcement Divisions.

4. B. Waiver of Liability. Accordingly, Landowner shall waive the City from all liability resulting from any damage to property or unfinished or poor quality work caused by a contractor.

4. C. Hold Harmless. Landowner shall hold harmless, defend and indemnify City, and its respective directors, officials, officers, attorneys, employees, agents, representatives and volunteers from and against any and all actual or alleged claims, actions, suits, charges, demands, judgments, and expenses (including reasonable attorneys' fees, expert witness fees and court costs) whatsoever that arise out of Landowner's or any of its contractor's performance or nonperformance of this Agreement. Landowner shall defend, at Landowner's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought against City and its respective directors, officials, officers, attorneys, employees, agents, representatives and volunteers. City shall hold harmless, defend and indemnify Landowner, and its respective directors, officials, officers, attorneys, employees, agents,

representatives and volunteers from and against any and all actual or alleged claims, actions, suits, charges, demands, judgments, and expenses (including reasonable attorneys' fees, expert witness fees and court costs) whatsoever that arise out of City's or any of its contractor's performance or nonperformance of this Agreement. City shall defend, at City's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought against Landowner and its respective directors, officials, officers, attorneys, employees, agents, representatives and volunteers.

4. D. Suspension or Termination. City may suspend or terminate this Agreement, in whole or in part, if Landowner materially fails to comply with any term of this Agreement or with any of the rules, regulations or provisions referred to herein; and the City may declare Landowner ineligible for any further participation in City contracts, in addition to other remedies as provided by law.

4. E. Attorneys' Fees. In the event of the bringing of an action or suit by a Party against another Party by reason of any breach of any of the covenants contained in this Agreement or any other dispute between the Parties concerning this Agreement, then, in that event, the prevailing Party in such action or dispute, whether by final judgment or out of court settlement shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section, Costs shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions; (ii) contempt proceedings, (iii) garnishment, levy, and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section shall survive any expiration or termination of this Agreement.

4. F. Interpretation. City and Landowner acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting. Accordingly, the rule of construction which provides the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the parties.

4. G. Counterpart Originals; Integration; Modification. This Agreement may be executed in by the Parties in counterparts, all of which together shall constitute a single Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the matters set forth in this Agreement and supersedes any and all writings and oral discussions concerning the same. The performances of City's and Landowner's respective obligations under this Agreement are not intended to benefit any party other than the City or Landowner, except as expressly provided otherwise herein. The foregoing notwithstanding, the City is declared to be an intended third party beneficiary of the Landowner's obligations hereunder.

4. H. No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term,

covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

4. I. Venue; Jurisdiction; Governing Law. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate court in the County of San Bernardino, California. Each Party hereto irrevocably consents to the personal jurisdiction of the court. This Agreement shall be governed by the laws of the State of California, without regard to conflict of laws principles.

4. J. 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.

4. K. Authority to Enter Agreement; Subcontracting; Recordation. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. The Parties agree that this Agreement may be recorded with the San Bernardino County Recorder's Office.

4. L. Non Assignability. Landowner may not assign any of their rights or obligations under this Agreement without the express written consent of the City, which may not be unreasonably withheld or delayed. Notwithstanding the foregoing, Landowner may assign this Agreement, upon written notice to City: (i) to any entity in which Landowner owns a majority and controlling interest, and, (ii) following the completion of the Improvement Work to any third party who purchases the Business for the purpose of operating the Business on the Property in substantially the same manner as Landowner currently operates the Business. No unpermitted successor or assign of Landowner's rights under this Agreement shall be deemed to possess or be entitled to exercise any such right; provided, however, that the obligations of this Agreement shall nonetheless be binding upon such unpermitted successor or assign.

4. M. Force Majeure. Landowner shall be excused for the period of any delay in the performance of its obligations hereunder, when prevented from so doing by any cause beyond its control including, but not limited to, construction, labor unrest, litigation, unavailability of material, weather, war, acts of God, and refusal or failure of governmental authorities to grant necessary approvals and permits for construction of the Improvements in the manner contemplated herein ("Force Majeure").

4. N. Notices. All notices required or allowed by this Agreement shall be in writing and addressed as set forth below. Notices shall be deemed received upon (i) actual receipt by the intended recipient if the method of delivery is personal service, messenger service or facsimile transmission, (ii) actual receipt by the intended recipient if the method of delivery is overnight delivery service such as Federal Express or the like, or (iii) three business days after deposit in the United States mail, postage prepaid, return receipt requested. Notices shall be addressed as follows:

If to City: City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Telephone: (909) 350-7654
Facsimile: (909) 350-6613
Attn: City Manager

With a copy to: Best Best & Krieger LLP
3500 Porsche Way, Suite 200
Telephone: (909) 989-8584
Facsimile: (909) 944-1441
Attn: ~~Clark Alsop~~ Jeff Ballinger

If to Landowner: Sultana Avenue LLC
100 Bayview Circle, Suite 310
Newport Beach, CA 92660
(949) 509-5000
Attn: Matt Enghard

With a copy to: Hogle-Ireland, Inc.
1500 Iowa Avenue, Suite 110
Riverside, CA 92507
(951) 787-9222
Attn: Pam Steele

Any party's address for notices may be changed by written notice as provided above.

[Signatures on following pages]

ACKNOWLEDGMENT

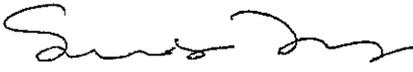
State of California
County of ORANGE)

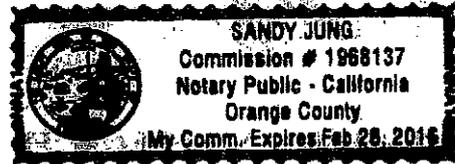
On July 25, 2012 before me, Sandy Jung, Notary Public
(insert name and title of the officer)

personally appeared Daniel L. Webb
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)



STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)

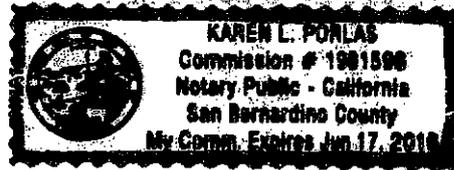
ss.

On August 7, 2012, before me, Karen L. Porlas, Notary Public, personally appeared Kenneth R. Hunt 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.

Karen L. Porlas
Notary Public



STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)

ss.

On _____, 20____, before me, _____, 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.

Notary Public

EXHIBIT A
TO
PREANNEXATION AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

ASSESSOR PARCEL NO. 0232-051-02, -03, -11, -12, -26, -27, -35, AND -38

Real property in the unincorporated area of the County of San Bernardino, State of California described as follows:

PARCEL 1: (APNS: 0232-051-12-0-000 AND 0232-051-11-0-000)

LOTS 154 AND 167, ALL IN ETIWANDA VINEYARDS, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGE 29, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON AND MINERAL SUBSTANCES CONTAINED IN THE PROPERTY, PROVIDED THAT GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT TO GO UPON THE SURFACE OF THE PROPERTY FOR THE PURPOSE OF EXTRACTING SAID OIL, GAS OR OTHER HYDROCARBON AND MINERAL SUBSTANCES, NOR FOR ANY PURPOSE IN CONNECTION THEREWITH, BUT SHALL HAVE THE RIGHT TO EXTRACT AND REMOVE SAID OIL, GAS AND OTHER HYDROCARBON AND MINERAL SUBSTANCES BY MEANS OF SLANT-DRILLED WELLS LOCATED ON ADJACENT OR NEARBY LAND, OR BY ANY OTHER MEANS WHICH SHALL NOT REQUIRE ENTRY UPON THE SURFACE OF THE PROPERTY, AS RESERVED BY SANTA FE LAND IMPROVEMENT COMPANY, A CALIFORNIA CORPORATION IN THE DEED RECORDED DECEMBER 27, 1985, INSTRUMENT NO. 85-329463, OFFICIAL RECORDS.

PARCEL 2: (APNS: 0232-051-02-0-000 AND 0232-051-03-0-000)

LOTS 155 AND 166, EXCEPTING THEREFROM THE EASTERLY 22-1/2 FEET THEREOF, LYING WEST OF THE WEST LINE OF MALAGA STREET, DEEDED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY, A KANSAS CORPORATION, RECORDED MAY 15, 1923, IN BOOK 795, PAGE 200, OF DEEDS, RECORDS OF SAID COUNTY; ALL IN ETIWANDA VINEYARD, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGE 29, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON AND MINERAL SUBSTANCES CONTAINED IN THE PROPERTY, PROVIDED THAT GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT TO GO

8 6

UPON THE SURFACE OF THE PROPERTY FOR THE PURPOSE OF EXTRACTING SAID OIL, GAS OR OTHER HYDROCARBON AND MINERAL SUBSTANCES, NOR FOR ANY PURPOSE IN CONNECTION THEREWITH, BUT SHALL HAVE THE RIGHT TO EXTRACT AND REMOVE SAID OIL, GAS AND OTHER HYDROCARBON AND MINERAL SUBSTANCES BY MEANS OF SLANT-DRILLED WELLS LOCATED ON ADJACENT OR NEARBY LAND, OR BY ANY OTHER MEANS WHICH SHALL NOT REQUIRE ENTRY UPON THE SURFACE OF THE PROPERTY, AS RESERVED BY SANTA FE LAND IMPROVEMENT COMPANY, A CALIFORNIA CORPORATION IN THE DEED RECORDED DECEMBER 27, 1985, INSTRUMENT NO. 85-329463, OFFICIAL RECORDS.

PARCEL 3: (APN: 0232-051-27-0-000)

PARCEL 3A:

THE NORTH 1/2 OF LOT 151, ETIWANDA VINEYARDS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 OF MAPS, PAGE 29, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3B:

THE EAST 120.00 FEET OF THE SOUTH 1/2 OF LOT 151, ETIWANDA VINEYARDS TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17, PAGE 29, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4: (APN: 0232-051-26-0-000)

THE SOUTH 1/2 OF LOT 151, ETIWANDA VINEYARD TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGE 29, RECORDS OF SAID COUNTY. SAVING AND EXCEPTING THE EAST 120 FEET THEREOF.

PARCEL 5: (APN: 0232-051-38-0-000)

THE WEST 1/2 OF LOT 150 OF ETIWANDA VINEYARDS, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGES 29 AND 30, RECORDS OF SAID COUNTY.

TOGETHER WITH THE WEST 1/2 OF LOT 139 OF SAID ETIWANDA VINEYARDS.

EXCEPTING THEREFROM THE NORTH 105.00 FEET OF THE WEST 1/2 OF SAID LOT 139.

SAID LEGAL DESCRIPTION IS MADE PURSUANT TO CERTIFICATE OF COMPLIANCE NO. WVL 081-05, LLA NO. W153-82, RECORDED AUGUST 29, 2006, INSTRUMENT NO. 20060590635, OFFICIAL RECORDS.

PARCEL 6 (APN: 0232-051035-0-000)

LOT 138 OF ETIWANDA VINEYARDS, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGES 29 AND 30, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 105.00 FEET OF SAID LOT 138.

SAID LEGAL DESCRIPTION IS MADE PURSUANT TO CERTIFICATE OF COMPLIANCE NO. WVL 080-05, LLA NO. W153-82, RECORDED AUGUST 29, 2006, INSTRUMENT NO. 20060590656, OFFICIAL RECORDS.

EXHIBIT B
TO
PREANNEXATION AGREEMENT

ASSESSOR'S PARCEL MAP

[Attached Behind This Page]

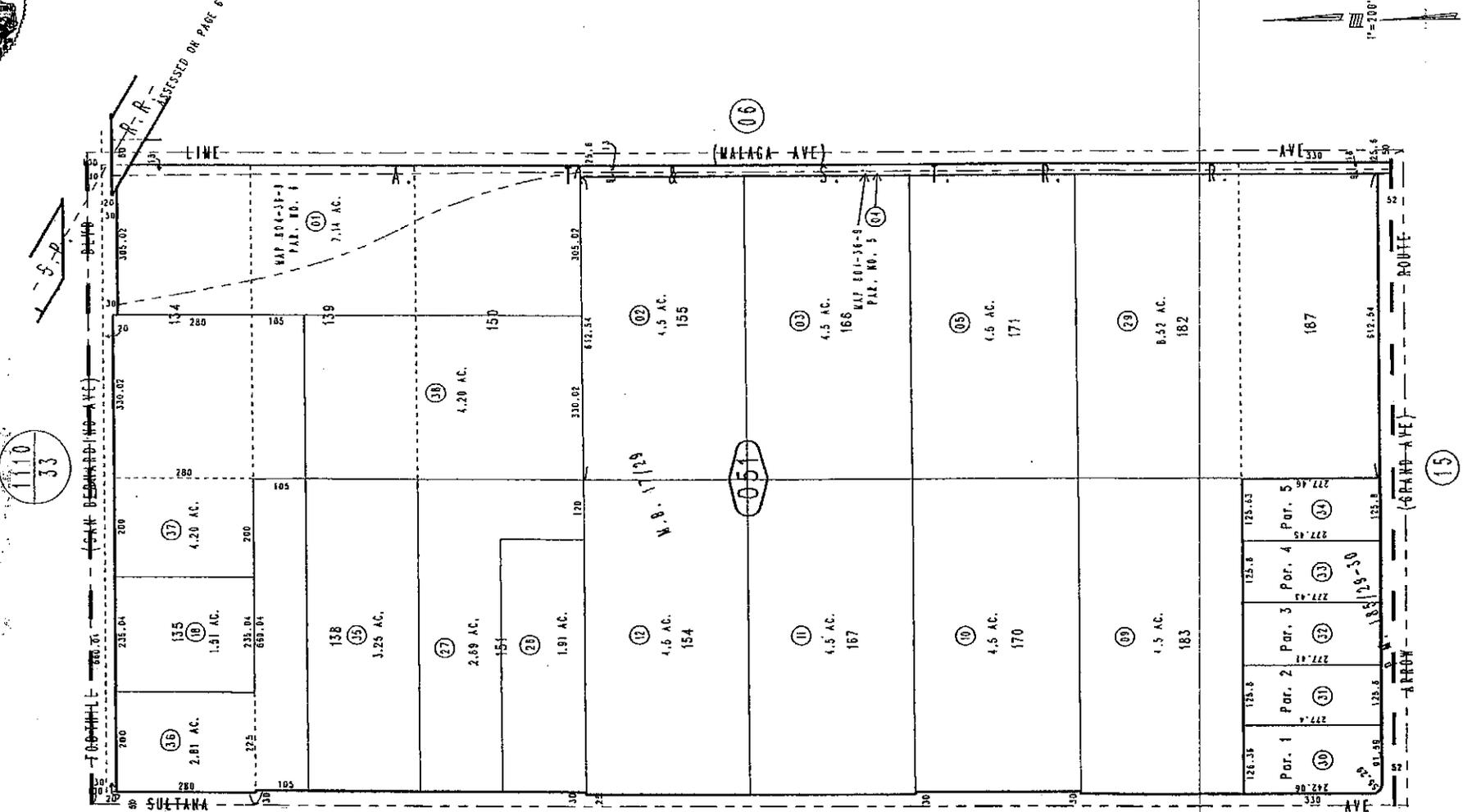
THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.



Ptn. Etiwanda Vineyards Tract M.B. 17/29

Fontana Unified
Tax Rate Area
74031

0232-05



February 2004

Parcel Map No. 14975, P.W. 185/29-30

Ptn. N.W.1/4, Sec. 12
T.1S., R.6W.

Assessor's Map
Book 0232 Page 05
San Bernardino County

REVISED
01/28/09 RM
05/21/09 LH
08/18/10 KA

EXHIBIT C
TO
PREANNEXATION AGREEMENT

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FONTANA
AND COUNTY OF SAN BERNARDINO

(WESTERN SPHERE OF INFLUENCE)

[Attached Behind This Page]

MEMORANDUM OF UNDERSTANDING

BETWEEN
CITY OF FONTANA
AND
COUNTY OF SAN BERNARDINO
AUGUST 26, 2008

WESTERN SPHERE OF INFLUENCE

MEMORANDUM OF UNDERSTANDING
(Western Sphere of Influence)

This 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 August 26, 2008. 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, 2008, 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 San Bernardino County Redevelopment Agency has previously adopted a redevelopment plan ("Plan") for a redevelopment project area known as the "Speedway Redevelopment Area" ("Project Area"). The boundaries of the Project Area are located entirely within the Western Sphere and are also identified on the attached Exhibit "A".

C. 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.

D. 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.

E. 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 "C" 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.

F. The Parties further recognize that development within the Western Sphere will be enhanced and facilitated by the reinvestment of sales tax revenues generated within the Western Sphere as more particularly described in Section 5 of 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 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, the City agrees it will not file a formal application with the Local Agency Formation Commission seeking to annex any part of Speedway Redevelopment Area 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. It is the desire of the Parties that a yearly General Fund commitment equal to approximately thirty-seven percent (37%) of the sales tax revenue received by the Parties and attributable to the application of the Bradley - Burns Uniform Sales and Use Tax Law (Revenue and Taxation Code Section 7200, *et seq*) upon taxable sales and lease transactions occurring within the Western Sphere (the "Western Sphere Sales Tax Revenues") shall be returned to that same area through funding of public improvement projects as approved by both Parties or projects described in Section 4, above, even if, over time, portions of the Western Sphere are incorporated within the City. The County shall provide the City with a Statement of Account upon request of the City. The Statement of Account shall include the following: Western Sphere Sales Tax Revenue received by the County to date for the current Fiscal Year; Western Sphere Sales Tax Revenue applied to public improvement projects under Section 4 above from the date of this Agreement. If the City annexes some or all of the Western Sphere, the City shall provide the same information as to Western Sphere Sales Tax Revenues received by the City to the County upon request. It is the intent of the Parties that the sales tax revenue allocations are to be above and beyond the Parties' current expenditures in the Western Sphere.

Notwithstanding anything to the contrary in this Agreement, any such Western Sphere Sales Tax Revenues received by the County and/or City, as applicable, shall remain the sole property of the County or City, as applicable, unless and until they have been contractually committed by the owning Party in a separate agreement for a specific project. Notwithstanding anything in this Section 5 or elsewhere in this Agreement to the contrary, the Parties agree that neither Party is making a pledge of Western Sphere Sales Tax Revenues or of their respective General Funds. Both Parties acknowledge that all Western Sphere Sales Tax Revenues must by law be deposited into the receiving Party's General Fund and is subject to appropriation and expenditure only in accordance with law. Nothing in this Agreement is a representation or agreement by either Party to fund a particular project or to make a particular expenditure, which

actions must be, if at all, authorized by the City Council or Board of Supervisors, as applicable, following all legally required prerequisites.

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 supercedes 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]

E

E

SIGNATURE PAGE
TO
MEMORANDUM OF UNDERSTANDING
(Western Sphere of Influence)

COUNTY:

CITY:

COUNTY OF SAN BERNARDINO

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

Paul Biane
Paul Biane, Chairman
Board of Supervisors

Kenneth R. Hunt
Kenneth R. Hunt
City Manager

Dated: AUG 26 2008

Dated: 8/28/08

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

ATTEST:

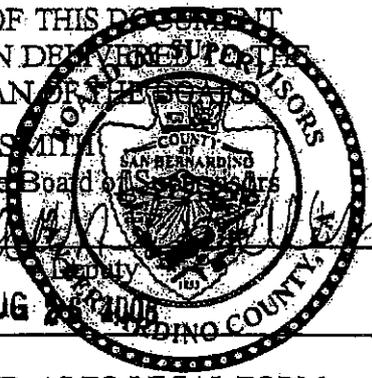
DENA M. SMITH
Clerk of the Board of Supervisors

Gandra Medina, Deputy
City Clerk

By: Dena M. Smith

Dated: 9/2/08

Dated: AUG 28 2008



APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

RUTH E. STRINGER
County Counsel

BEST BEST & KRIEGER LLP

By: Rex A. Hinesley
Rex A. Hinesley, Chief Assistant

Ray Bais
City Attorney

Dated: 8-19-08

Dated: September 2, 2008

EXHIBIT A
TO
MEMORANDUM OF UNDERSTANDING
WESTERN SPHERE AREA MAP
(See following page.)

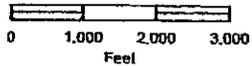
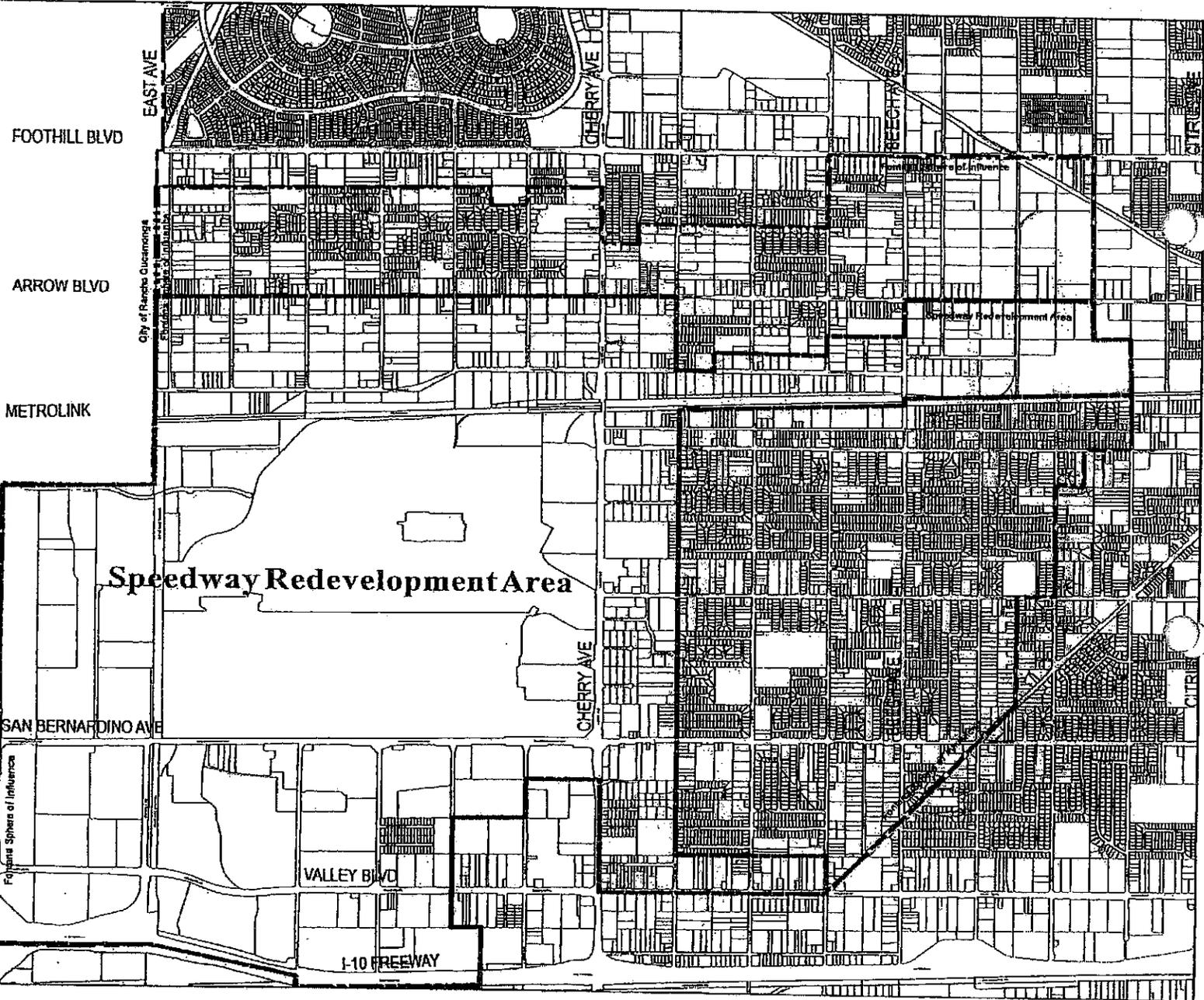
Western Sphere of Influence

CITY OF FONTANA



Legend

- City of Fontana
- County Area
- Speedway RDA



City of Fontana
DSO/Annexation Program
GSanchez, 7/1/08
Western Sphere of Influence

EXHIBIT B
TO
MEMORANDUM OF UNDERSTANDING

ANNEXATION POLICY
(See following pages.)

RESOLUTION NO. 2006-95

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.

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 conditions are met:

The proposed development is of a quality and design that is comparable to existing City standards.

The development mitigation fees would be paid by the developer as required by all developments in the City. The City would agree to set these mitigation fees aside for use in partnership with County Redevelopment for the creation of the necessary infrastructure to serve the growth needs of the area.

The proposed development would agree to enter into a Preannexation Agreement with the City that would include an Irrevocable Agreement to Annex to the City if and when the area is brought forward for annexation.

The County would agree to use recurring revenues generated by development in the area to support community service needs in the unincorporated area of Fontana.

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

APPROVED AND ADOPTED this 13th day of June, 2006.

READ AND APPROVED AS TO LEGAL FORM:

/s/ Clark Alsop
City Attorney

I, Beatrice Watson, 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 13th day of June, 2006 by the following vote to wit:

AYES: Council Members Roberts, Rutherford, Scialdone, Warren

NOES:

ABSENT: Mayor Nuaimi

/s/ Beatrice Watson
City Clerk of the City of Fontana

/s/ Mark N. Nuaimi
Mayor of the City of Fontana

ATTEST:

/s/ Beatrice Watson
City Clerk