

9. Irrevocable Agreement to Annex No. 2024-375 (Ward 5)

Recommendation:

It is recommended that the Mayor and City Council of San Bernardino, California adopt Resolution No. 2024-003 of the Mayor and City Council of the City of San Bernardino, California, approving the application to the Local Agency Formation Commission to provide City sewer services to a property located at 1199 West 41st Street, San Bernardino, California, within the unincorporated territory of Arrowhead Farms; and authorizing the City Manager to execute an Irrevocable Agreement to Annex.



CONSENT CALENDAR

City of San Bernardino Request for Council Action

Date: January 17, 2024

To: Honorable Mayor and City Council Members

From: Charles A. Montoya, City Manager;
Mary E. Lanier, Director of Community Development and Housing

Department: Community Development and Housing

Subject: **Irrevocable Agreement to Annex No. 2024-375 (Ward 5)**

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It is recommended that the Mayor and City Council of San Bernardino, California adopt Resolution No. 2024-003 of the Mayor and City Council of the City of San Bernardino, California, approving the application to the Local Agency Formation Commission to provide City sewer services to a property located at 1199 West 41st Street, San Bernardino, California, within the unincorporated territory of Arrowhead Farms; and authorizing the City Manager to execute an Irrevocable Agreement to Annex.

Executive Summary

The recommended actions are the first step to initiate proceedings for the property owner to connect to the City Water and Sewer System. The Water Department has indicated that there is adequate capacity at the wastewater treatment plant to serve this property and that the existing residential use is consistent with the City's General Plan. The Water Department has determined that there is an available 10-inch vitrified clay pipe sanitary sewer main within the West 41st Street area, fronting the subject parcel.

Background

In July 2023, the San Bernardino Water Department received a request for sewer service from the owner of a parcel located at 1199 West 41st Street (APN: 0265-221-23) for a connection to the City sewer collection system. The property owner is abandoning the existing septic tank and is desirous of a connection to City water and sewer collection services.

In 1994, the California Government Code Section was amended by the addition of Section 56133, which requires the Local Agency Formation Commission (LAFCO) to approve the provision of new City services outside its corporate boundaries. The annexation of single parcels is not desirable since it creates uneven boundaries and creates confusion regarding the delivery of other City services. This property is contiguous to City boundaries; however, annexation of this property would result in other islands.

In September of 1997, the City of San Bernardino adopted Resolution No. 97-275, a policy relative to the providing of sewer services outside of City boundaries. The policy includes a payment of \$1,300 for the initial sewer connection application processing fee. Additionally, the petitioner will pay all LAFCO-related fees directly to LAFCO and the normal sewer capacity and connection fees to the Water Department for processing the Irrevocable Annexation Agreement.

The policy also requires the land use to be consistent with the City's General Plan and the property owner to execute an "Irrevocable Agreement to Annex" in the event that this property is included in an annexation proceeding sometime in the future.

Discussion

The Water Department has indicated that there is adequate capacity at the wastewater treatment plant to serve this property and that the existing residential use is consistent with the City's General Plan. The Water Department has determined that there is an available 10-inch vitrified clay pipe sanitary sewer main within the area of W 41st Street, fronting the subject parcel.

LAFCO requires the Agency providing the service to complete the application. The resolution will allow the City to submit an application to LAFCO if approved by Mayor and City Council. Upon approval by LAFCO, the Irrevocable Agreement to Annex will be executed between the City and the applicant.

2021-2025 Strategic Targets and Goals

The Irrevocable Agreement to Annex is consistent with Key Target No. 4b: Update the General Plan and Development Code as it ensures this property meets General Plan use and will be included in a future City annexation of this unincorporated area.

Fiscal Impact

There is no General Fund impact associated with this item as the application processing fee has been paid by the applicant.

Conclusion

It is recommended that the Mayor and City Council of San Bernardino, California adopt Resolution No. 2024-003 of the Mayor and City Council of the City of San Bernardino, California, approving the application to the Local Agency Formation Commission to provide City sewer services to a property located at 1199 West 41st Street, San

Bernardino, California, within the unincorporated territory of Arrowhead Farms; and authorizing the City Manager to execute an Irrevocable Agreement to Annex.

Attachments

Attachment 1 - Resolution No. 2024-003

Attachment 2 - Exhibit A - Irrevocable Agreement to Annex

Attachment 3 - Exhibit B - Vicinity Map

Attachment 4 - Exhibit C - Application

Ward:

Fifth Ward

Synopsis of Previous Council Actions:

September 2, 1997 The City of San Bernardino adopted Resolution No. 97-275 relative to the providing of sewer services outside of City boundaries.

RESOLUTION NO. 2024-003

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO, CALIFORNIA, APPROVING THE APPLICATION TO THE LOCAL AGENCY FORMATION COMMISSION TO PROVIDE CITY SEWER SERVICES TO A PROPERTY LOCATED AT 1199 W 41ST STREET, SAN BERNARDINO, CALIFORNIA, WITHIN THE UNINCORPORATED TERRITORY OF ARROWHEAD FARMS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN IRREVOCABLE AGREEMENT TO ANNEX

WHEREAS, RK Capital Group, a California Corporation, the owner of the property located 1199 W 41st Street, San Bernardino, California, in the unincorporated area known as Arrowhead Farms, also known as Assessor's Parcel Number 0265-221-23, has requested connection to the City of San Bernardino's sewage system; and

WHEREAS, said Property is located within the City's Sphere of Influences; and

WHEREAS, pursuant to Section 2.28.030 (Service outside City Limits) of the San Bernardino Municipal Code, the Mayor and City Council must approve any water and sewer service outside the corporate limits of the City of San Bernardino; and

WHEREAS, pursuant to California Government Code Section 56133, a city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries subject to approval from the Local Agency Formation Commission (LAFCO); and

WHEREAS, pursuant to Resolution No. 97-275 the property owner is requesting connection to the City's sewage system must pay all applicable fees required by the City, San Bernardino Municipal Water District, and LAFCO.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The Mayor and City Council of the City of San Bernardino hereby authorize an application to the LAFCO for the connection to the City's sewage system for property located at 1199 W 41st Street, Assessor's Parcel Number 0265-221-23, more fully described as follows:

The West 95 feet of the North 198 feet of that portion of Lot 33, Arrowhead Suburban Farms, Tract A, in the County of San Bernardino, State of California, as per Plat recorded in Book 1, Page 6 of Maps, records of said County.

SECTION 3. The City Manager is hereby authorized to execute an Irrevocable Agreement to Annex No. 2024-375, a copy of which is attached as Exhibit “A”.

SECTION 4. The City Clerk of said City is hereby authorized and directed to file, or cause to be filed, a certified copy of this resolution with the Executive Officer of the LAFCO.

SECTION 5. The Mayor and City Council finds this Resolution is not subject to the California Environmental Quality Act (CEQA) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as in this case, that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 6. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Resolution are declared to be severable.

SECTION 7. Effective Date. This Resolution shall become effective immediately.

APPROVED and **ADOPTED** by the City Council and signed by the Mayor and attested by the City Clerk this 17th day of January 2024.

Helen Tran, Mayor
City of San Bernardino

Attest:

Genoveva Rocha, CMC, City Clerk

Approved as to form:

Sonia Carvalho, City Attorney

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF SAN BERNARDINO)

I, Genoveva Rocha, CMC, City Clerk, hereby certify that the attached is a true copy of Resolution No. 2024-003, adopted at a regular meeting held on the 17th day of January 2024 by the following vote:

<u>Council Members:</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
SANCHEZ	_____	_____	_____	_____
IBARRA	_____	_____	_____	_____
FIGUEROA	_____	_____	_____	_____
SHORETT	_____	_____	_____	_____
REYNOSO	_____	_____	_____	_____
CALVIN	_____	_____	_____	_____
ALEXANDER	_____	_____	_____	_____

WITNESS my hand and official seal of the City of San Bernardino this ____ day of _____ 2024.

Genoveva Rocha, CMC, City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of San Bernardino
290 N. D Street
San Bernardino, California 92401
Attn: City Manager

Exempt from Recording fee
pursuant to Gov't Code §§ 27383, 6103

(Space above for Recorder's use)

IRREVOCABLE AGREEMENT TO ANNEX
No. 2024-375

This Irrevocable Agreement to Annex ("Agreement"), is entered into this 17th day of January, 2024; by and between RK Capital Group, a California Corporation, hereinafter referred to as "OWNER," and the CITY OF SAN BERNARDINO, a charter city and municipal corporation, hereafter referred to as a "CITY." OWNER and CITY may be referred to in this Agreement individually as "Party" and collectively as "Parties".

RECITALS:

WHEREAS, OWNER holds title to the one parcel, APN 0265-221-23-0000, located at 1199 W 41st Street, San Bernardino, California, and parcel is further described as follows:

The West 95 feet of the North 198 feet of that portion of Lot 33, Arrowhead Suburban Farms, Tract A, in the County of San Bernardino, State of California as per Plat recorded in Book 1, Page 6 of Maps, records of said County. with Assessor's Parcel Number: 0265-221-23 ("Property").

WHEREAS, the Property is within the CITY's sphere of influence; and

WHEREAS, OWNER desires to obtain CITY's sewage system and wastewater treatment plant service for the Property; and

WHEREAS, CITY's sewage system and wastewater treatment plant service could be provided to the Property by connecting to the CITY's sewage system; and

WHEREAS, CITY's sewage system and wastewater treatment plant have sufficient capacity to convey and treat the sewage generated by the Property; and

WHEREAS, the covenants and conditions set forth herein shall create an equitable servitude upon the parcel, and shall be fully binding upon the OWNER, heirs, successors and assigns.

NOW, THEREFORE, the Parties hereto agree as follows:

SECTION I OWNER AGREES:

- a. To consent to the annexation of the Property to the CITY. OWNER 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. OWNER and their 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 OWNER and their 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.
- b. To pay such annexation fees and costs and other municipal charges as would ordinarily be charged in the annexation of property to the CITY. Said fees shall be payable when the same becomes due and payable.
- c. To pay all fees and charges and make all deposits required by the CITY to connect to and use the CITY’s sewage system and wastewater treatment plant service system, and further agrees to be bound by all CITY ordinances, rules and regulations respecting the sewage system.
- d. To acknowledge that execution of this Agreement to annex is on behalf of all future heirs, successors, and assigns; and that said Agreement shall be irrevocable without written consent of CITY.
- e. To comply with the San Bernardino Municipal Code, General Plan (emphasis on the circulation plan-street section) and any rules and regulations promulgated by the Water Board of the San Bernardino Municipal Water Department relating to CITY’s sewage system and wastewater treatment plant service system.
- f. To make application to LAFCO and allow CITY to make application on behalf of the OWNER and pay all application fees, for approval to connect to CITY’s sewage system, pursuant to Section 56133 of the Government Code.
- g. To execute a standard form agreement with CITY stipulating the terms and conditions under which the connection to the CITY’s sewage system and wastewater treatment plant service system shall be made and maintained.
- h. OWNER acknowledges and agrees that if CITY determines that any attempted annexation fails or is unreasonably delayed because the OWNER or Successors failed to exercise good faith and best efforts to cause or assist in permitting the annexation to occur, any connection to CITY’s sewage system and wastewater treatment plant service system permitted or authorized by this agreement may

be disconnected at the sole option of CITY and upon reasonable notice to the OWNER to provide for alternative service.

- i. OWNER agrees to maintain the Property in good condition and in compliance with reasonable 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.
- j. OWNER shall indemnify, defend, and hold the CITY and its officials and staff harmless from any and all liability, claims, costs (including reasonable attorneys' fees), damages, expenses and causes of action resulting from any construction performed under or otherwise related to performance of this Agreement.

SECTION II CITY AGREES:

- a. To allow OWNER'S parcel, described hereinbefore, to connect to CITY's sewage system and wastewater treatment plant service system, subject to payment of all applicable fees and permits.

SECTION III BE IT MUTUALLY AGREED, AS FOLLOWS:

- a. City Clerk for CITY shall record this Agreement with the County Recorder.
- b. The benefit to the subject parcel will inure to the benefit of subsequent owners, their heirs, successors, and assigns, and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.
- c. The approval granted to connect said parcel to CITY's sewage system and wastewater treatment plant service system is contingent upon OWNER securing approval from LAFCO.
- d. This Agreement may be executed in counterparts.
- e. CITY and OWNER 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.
- f. This Agreement may only be amended by the written consent of all of the Parties at the time of such amendment. If either Party commences an action against the other Party arising out of or in connection with this Agreement, the

prevailing party shall be entitled to have and recover from the losing Party reasonable attorneys' fees and costs of suit, and, if CITY is awarded such attorneys' fees and costs, such award shall constitute a lien upon the Property.

- g. 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.
- h. This Agreement has been executed in and shall be governed by the laws of the State of California. Venue shall be in the County of San Bernardino.

SIGNATURE PAGE TO IRREVOCABLE AGREEMENT TO ANNEX

IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be entered into as of the Effective Date set forth above.

CITY OF SAN BERNARDINO

OWNER

Approved By:

Charles A. Montoya
City Manager

RK Capital Group
Signature

Ana Medrano
Name

City Attorney

Signature

Attested By:

Name

Genoveva Rocha
CMC, City Clerk

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, _____
(insert name and title of the officer)

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)

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, _____
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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)**

EXHIBIT B

Vicinity Map

Annex 2024-375 (Ward 5)

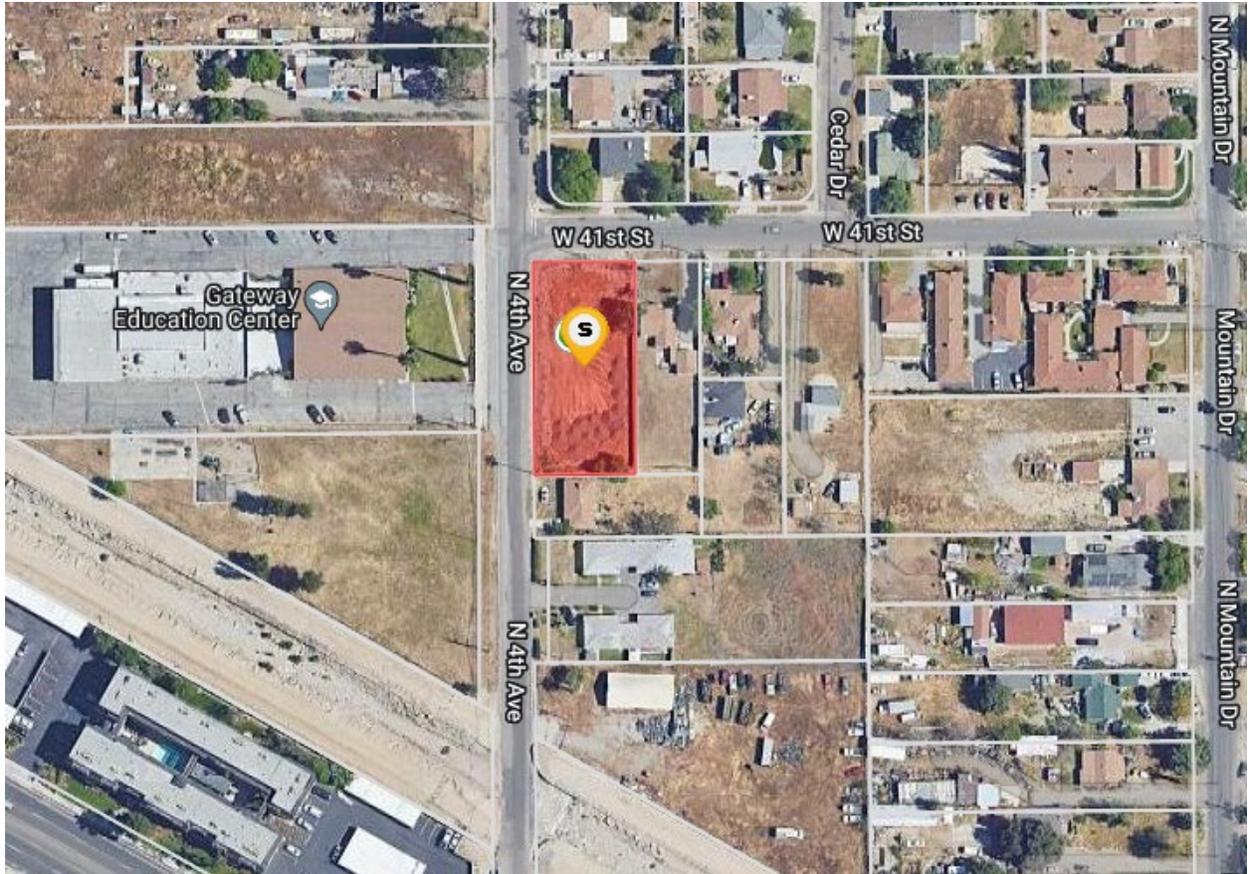


EXHIBIT C



APPLICATION FOR SEWER SERVICES OUTSIDE OF CITY BOUNDARIES

To: City of San Bernardino Public Works Department, Real Property Section 300 N. "D" Street - 3rd Floor, San Bernardino, CA 92418 (909) 384-5111

This application is hereby submitted to the City of San Bernardino, to initiate proceedings for the connection to the City Sewer System from my property, which is located outside the boundaries of the City of San Bernardino pursuant to established City policies, a copy of which I have received and read, and Government Code Section 56133. I understand that a \$1,300.00 non-refundable processing fee is due at the time this application is submitted. I further understand that prior to the City submitting an application to the Local Agency Formation Commission (LAFCO), I will be required to deposit any applicable LAFCO fees with the City (or to be paid directly to LAFCO). Additional LAFCO fees may be due at the conclusion of the proceedings, which I will be required to pay. I may request a waiver of these fees from LAFCO, based upon an immediate health and safety issue. In the event that the waiver of all or a portion of the LAFCO fees is granted by LAFCO, the waived amount will be refunded. I also understand that I will be required to execute an "Irrevocable Agreement to Annex" in the event that my property may be subject to Annexation into the City of San Bernardino at some future time, if this application is approved. I further understand that sewer capacity and hook-up fees to the City will be due prior to permit processing. This application is being submitted with the understanding that approval is not guaranteed.

Please submit this application with proof of ownership (Copy of Deed, Title Policy, etc.) along with processing fee of \$1,300.00 and plat map showing location of property.

Property Owner(s): RK Capital Group

Mailing Address: P.O. Box 1915 Yucca CA 92399

Property Address: 1199 W. 41st St San Bernardino, CA

Assessor's Parcel No(s): 0265221230000 Tel. No.: (909) 635-7768

- Existing Development: [] Residential (Single Family) No. Bedrooms: [] Residential (multi family). Describe: [] Commercial/Industrial. Describe: New Development: [X] Residential (Single Family) No. Bedrooms: [] Residential (multi family). Describe: New fourplex [] Commercial/Industrial. Describe:

Note: For new development and/or additions, please provide a copy of the site-plan along with a copy of development permit application, if any, filed with the County of San Bernardino.

Additional Comments:

[] I request a waiver of LAFCO fees based upon the following health and safety urgency:

Date: 09/06/23 Signature(s): [Signature]

FOR CITY USE ONLY

Received on: by: Receipt No.:

Nearest sewer main:

CITY FEES: Filing: \$ 1,300.00 Comments: Capacity: Connection: Inspection: TOTAL: \$