

SEWER SERVICE AGREEMENT

No. 2021-09-01

THIS AGREEMENT, is entered into this 9th day of August, 2021; by and between Michael Elliott and Carlo Feranil, hereinafter referred to as "OWNERS", and the City of Upland, a municipal corporation, hereafter referred to as "CITY".

WITNESSETH:

WHEREAS, OWNER holds title to the parcels of real property presently located in unincorporated areas of the County of San Bernardino, and the parcels are further described by legal description and San Bernardino County Assessor's Parcel Number 1003-382-08-0000. The subject real property shall be referenced hereafter as the "Land";

WHEREAS, the Land is within the Sphere of Influence of the CITY; and

WHEREAS, the City of Upland and the County of San Bernardino entered into a Memorandum of Understanding on June 13, 1989, allowing the City of Upland to provide sewer service to the county unincorporated area to those requesting it; and

WHEREAS, OWNER desires to obtain sewer service for the Land; and

WHEREAS, sewer service could be provided to said parcels by connecting to the CITY's sewage system, said system otherwise being available only to properties with the City of Upland corporate limits; and

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

WHEREAS, CITY is willing to allow connection of the Land to its sewage system, due to the fact that the Land is within CITY's Sphere of Influence; and

WHEREAS, the covenants and conditions set forth herein shall create a binding covenant running with the land upon the Land, and shall be fully binding upon OWNER's heirs, successors and assigns.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION I: **OWNER Agrees:**

1. To construct, at their own cost and expense, the sewer main extensions and appurtenances thereto, connecting their development to the CITY's sewer system.

2. To pay all fees and charges and make all deposits required by CITY to connect to and use the sewer, and further agrees to be bound by all CITY ordinances, rules and regulations respecting the sewage system. The service charge for the sewer users subject to this agreement is anticipated to be 1.5 times the normal rate or fees paid by users within the city limits. The additional monies are required to offset additional costs to provide the services outside of the CITY's corporate boundary.

3. To comply with Section 13.32.140, "General Restrictions and Prohibitions on the Use of the Community Sewers" of the Upland Municipal Code, relating to the discharge of materials into CITY's sewage system, and all other applicable County, State, Federal or district regulations applicable to discharges.

4. To make application to the Local Agency Formation Commission (LAFCO) and pay all applicable fees, for approval to connect to CITY's sewage system, pursuant to Section 56133 of the Government Code.

5. To make application to the County of San Bernardino for Road Excavation Permits as applicable and comply with all permit conditions under which the connection shall be made.

6. To make application to CITY for a Sewer Connection Permit and comply with the permit terms and conditions under which the connection shall be made and maintained.

7. That no connection to the CITY system shall occur until all the requirements of this Agreement, including the actions of third parties have been fully completed.

SECTION II: CITY Agrees:

1. To allow the Land to connect to the CITY's sewage system subject to payment of all applicable fees and permits, and further subject to satisfaction of the terms and conditions of this Agreement.

SECTION III: Be it Mutually Agreed, as follows:

- a. City Clerk for CITY shall record the Agreement with the County Recorder.
- b. The benefit to the Land 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 run with the land.
- c. The approval granted to connect said Land to CITY's sewage system is contingent upon OWNER securing final, unappealable approval from the Local Agency Formation Commission.
- d. Indemnification: OWNER shall defend indemnify and save harmless CITY, its elected and appointed officials, officers, agents and employees, from all liability from loss, damage or injury to persons or property, including the payment by OWNER of any and all legal costs and attorney's fees, in any manner arising out of the acts and/or omissions of OWNER pursuant to this Agreement, including, but not limited to, all consequential damages, to the maximum extent permitted by law.
- e. Assignment: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part by OWNER without the prior written consent of the CITY.

f. Independent OWNER: The parties hereto agree that OWNER and its employees, officers and agents are independent OWNERS under this Agreement and shall not be construed for any purpose to be employees of CITY.

g. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

h. Attorney's Fees: In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorney's fees and costs from the opposing party in an amount determined by the court to be reasonable.

i. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party, which is not embodied herein, nor any other agreement, statement, or promise not contained in the Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing signed by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective officials thereunto duly authorized.

OWNER

CITY OF UPLAND

By: _____
Michael Elliott, Owner

By: _____
Stephen Parker, Acting City Manager
for
Bill Velto, Mayor

By: _____
Carlo Feranil, Owner

ATTEST:

Keri Johnson
City Clerk