RESOLUTION NO. 1891-21 WWD

A RESOLUTION OF THE WINDSOR WATER DISTRICT APPROVING EXTENSION OF SEWER AND WATER SERVICE TO 6606 EMMERSON STREET, APN 163-012-001, AND AUTHORIZING THE DISTRICT MANAGER TO ENTER INTO AN OUTSIDE SERVICE AREA AGREEMENT WITH THE PROPERTY OWNERS AND EXECUTE SAID AGREEMNT

WHEREAS, the property located at 6606 Emmerson Street, Windsor, CA (APN 163-012-001) ("Parcel") is located outside of Town limits, but within the Town's Urban Growth Boundary (UGB) and developed with two detached single-family homes and one accessory dwelling unit (ADU); and

WHEREAS, each dwelling unit on the Parcel is served by its own septic system and one on-site well provides potable water to the Parcel and all three dwelling units; and

WHEREAS, in July 2018, the owners of the Parcel, Oliver and Kimberly Benson, requested that the Town Council prezone the Parcel in order to make the Parcel eligible for annexation to the Town, subject to Local Agency Formation Commission of Sonoma County (LAFCO) approval of an annexation application in order to allow the Parcel to connect to Town sewer and water services due to failing septic systems and a failing well; and

WHEREAS, in May 2019 the Town Council prezoned the property (Ordinance No. 2019-334) and accepted a California Environmental Quality Act (CEQA) environmental checklist that found the prezoning, including the ability for the Town to provide sewer and water service to the Parcel, to be within the scope of the 2040 General Plan and the analysis included in the 2040 General Plan EIR; and

WHEREAS, on April 7, 2021, the property owners submitted an annexation application to LAFCO and LAFCO is currently processing said application; and

WHEREAS, LAFCO staff recommended to the property owners and the Town that sewer and water services be extended to the Parcel while LAFCO continues processing the annexation application due to unexpected delays in processing the annexation application; and

WHEREAS, in May 2021, the Town received a request from the property owners requesting that the Town extend sewer and water service to the Parcel due to failing septic systems and an unreliable well in order to allow the Town to review and process the permits necessary to extend sewer and water service to the Parcel and three dwellings while LAFCO continues to process the annexation application; and

WHEREAS, Town of Windsor Public Works staff evaluated the information provided by the property owners and found the request for the extension of sewer and water services to be warranted; and

WHEREAS, 2040 General Plan land use *Policy LU-7.10 Limit Service Extensions Outside*

UGB, allows Town services to be extended to properties outside of Town limits when the following requirements are met and the request to extend sewer and water service is consistent with the requirements as described below each requirement; and

- The land use to which the service would be extended or expanded is consistent with all applicable policies of the Town's General Plan.

  Consistent: The Parcel has a prezoning designation of Surrounding Residential, which implements the Very Low Density Residential (VLDR) 2040 General Plan land use designation of the parcel. The VLDR designation allows residential development. The existing residential development on the site is consistent with the land uses allowed within the VLDR land use designation. No development is proposed as part of the extensions of services or annexation. Based on the above, extending Town sewer and water services to the Parcel is consistent with this policy.

- The land use to which the sewer service would be extended or expanded is compatible with open space uses as defined in the General Plan, does not interfere with accepted agricultural practices, and does not adversely affect the stability of land use patterns in the area.

  Consistent: The Parcel is not currently used or zoned for agriculture or open space uses by the County. The County zoning of the parcel is Rural Residential (RR). The Town's General Plan land use and Zoning designations of the Parcel are Very Low Density Residential and Surrounding Residential, respectively. No development or change in land use patterns would occur as a result of extending sewer and water service to the Parcel. Based on the above, extending Town sewer and water services to the Parcel is consistent with this policy.

- The property to which the service would be extended or expanded is immediately adjacent to land already served by the service(s) to be extended.

  Consistent: The Parcel is located on the southeast corner of Pleasant Avenue and Emmerson Street adjacent to the easternmost Town limits. Single-family homes on Fox Hollow Place back to Emmerson Street and are served by Town sewer and water. Based on the above, extending Town sewer and water services to the Parcel is consistent with this policy.

- Specific Circumstances, unique to the property to which the service would be extended or expanded would otherwise deprive the property of privileges enjoyed by other comparable property outside the Urban Growth Boundary and in the vicinity of the property to be served.

  Consistent: The Parcel is two-acres in size. Due to the location of development on the site and County of Sonoma locational requirements for septic systems, there is no location on the site where new septic system(s) could be located. The onsite well has not provided

consistent potable water adequate water. During past droughts and the current drought, the water supplied by the well is even less reliable, resulting in the need for a different source of potable water. Based on the above, extending Town sewer and water services to the Parcel is consistent with this policy.

- In addition to payment of applicable capacity fees and connection charges, the property to which the service would be extended or expanded shall bear the cost of extending and/or expanding the Town pipes and appurtenances for water, sewer, and/or recycled water service to property, including an alignment of the service that is determined by the Town Engineer and in compliance with Town Standards.

  Consistent: The Bensons have been working with Public Works, Building, and Planning staff on providing services to the parcel and are aware that as the owners of the property, they are responsible for all costs associated with extending Town sewer and water services to the parcel, any expansion of the service(s) needed to serve the parcel, and connecting the three dwelling units on the property to the extended sewer and water services. Based on the above, extending Town sewer and water services to the Parcel is consistent with this policy.

- The property to which the service would be extended or expanded shall be subject to the same rules and regulations as other Town customers for water, sewer, and/or recycled water service to the property, said rules and regulations at the time of application including but not limited to water conservation measures, metering of individual residential units, pretreatment, fire service, etc.

  Consistent: The Bensons have been working with Public Works, Building, and Planning staff are aware of the rules and regulations of connecting, permit requirements, connection and capacity fees, and other requirements for connecting to Town services. Based on the above, extending Town sewer and water services to the Parcel is consistent with this policy.

WHEREAS, Town of Windsor Municipal Code Section 12-4-482 (Connection Outside of the District Boundaries) allows properties located outside of and adjacent to Town limits and within the Town's UGB to connect to be Town sewer and water when specific requirements are met. The requirements of Muni Code Section 12-4-482(b) for extension of services are the same as *Policy LU-7.10 Limit Service Extensions Outside UGB* (above) and include the three additional requirements below. The extension of services is consistent with the requirements as described below; and

- The property owner is required to live on the property.

  Consistent: The property owners reside in one of the single-family homes on the Parcel.

- The property owner is required to enter into an Outside Service Area Agreement with the District.

Consistent: *The property owners are required to enter into the agreement with the Windsor Water District prior to extension of services to the Parcel.*

- Windsor Water District approval of the extension is required at a public hearing.

  Consistent: A duly noticed public hearing was held on September 15, 2021, at which the Water District Board of Directors considered the request to extend services.

WHEREAS, in April 1993, the Windsor Water District adopted Resolution No. 165-93, which established three circumstances under which water service can be extended to properties outside of Town limits, which included the need to protect public health, and the failed septic systems and lack of an adequate water supply threaten public health.

NOW, THEREFORE BE IT RESOLVED that the Windsor Water District Board of Directors do hereby approve the extension of sewer and water services to the Parcel, subject to the property owners entering into an Outside Service Area Agreement with the Windsor Water District a draft of which is attached hereto as "Exhibit A."

PASSED, APPROVED AND ADOPTED this 15th day of September 2021, by the following vote:

AYES:	**BOARD MEMBERS FUDGE, LEMUS, VICE PRESIDENT REYNOZA AND PRESIDENT SALMON**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

SAM SALMON, PRESIDENT

ATTEST:

IRENE CAMACHO-WERBY, SECRETARY

Attachment:

- **Exhibit A:** Draft Outside Service Area Agreement

EXHIBIT A

RECORDING REQUESTED BY:
TOWN OF WINDSOR

WHEN RECORDED RETURN TO:
Town Engineer
Town of Windsor
P. O. Box 100
Windsor, CA 95492-0100

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 163-012-001

OUTSIDE SERVICE AGREEMENT BETWEEN THE WINDSOR WATER DISTRICT AND OLIVER AND KIMBERLY BENSON

This Outside Service Area Agreement ("Agreement") is made in Windsor, California, on this ___ day of _____, 2021 by and between the Windsor Water District, a special district (hereinafter referred to as "**District**"), and Oliver and Kimberly Benson (hereinafter referred to as "**Owner**").

WHEREAS, the District owns and operates public water and sanitary sewer facilities within its jurisdictional boundaries; and

WHEREAS, the Owner is the owner of property located at 6606 Emmerson Street, County of Sonoma, Assessor's Parcel Number 163-012-001 ("Property") and the Property is outside the jurisdictional boundaries of the Town of Windsor, but inside the Urban Growth Boundary and therefore entitled to connect to or use the District's water and sewer facilities through the execution of an Outside Service Agreement; and

NOW, THEREFORE, District and Owner agree as follows:

Owner is hereby authorized to connect to the District's water main and sewer main, located at 6606 Emmerson Street, subject to the following conditions:

1. The Owner, its successors and assigns agree to annex or support proceedings to annex, or support proceedings that would lead to the annexation of the Property to the Town, and shall waive all rights to protest annexation to the Town if such annexation proceedings are commenced in the future.

2. Upon annexation of the Property to the Town, this Agreement shall become null and void, and the Property shall be subject to all regulations, conditions, and fees as established by the District with respect to public water service, water use and shortages and with respect to sewer service.

3. Owner agrees that District's service to the Property is limited to the existing level of development, as of September 1, 2021, which includes two single family homes and one accessory dwelling unit on the existing single parcel of land.

4. Owner will be charged, and shall pay, a water capacity fee, water connection charges and water reclamation capacity fee under the then applicable schedules of rates and charges as may be amended from time to time.

5. Owner shall construct a new water service to District standards between the District water main and a District-approved location on the Property in compliance with the current District standards. Owner shall pay all costs of installation, including for backflow prevention, and all required permits and inspections and shall pay the then-applicable schedule of water service rates as may be amended from time to time.

6. Owner shall construct a new sewer service to District standards between the District sewer main and a District-approved location on the Property in compliance with the current District standards. Owner shall pay all costs of installation and all required permits and inspections and shall pay the then-applicable schedule of sewer service rates as may be amended from time to time.

7. The water and sewer connection and subsequent service provided under this Agreement is limited to the single existing legal lot of record as of the date of this Agreement. District will not provide additional connections or capacity to subsequently created lots or structures on the Property.

8. No permit or authorization to connect to District's water system or sewer system shall be issued until proof of recordation of this Agreement is provided to the District.

9. Owner shall fully cooperate with District to carry out the intent of this Agreement, including but not limited to, providing the District with temporary or permanent easements that may be necessary in order for District to repair, improve and/or maintain said water and sewer service improvements.

10. The terms and conditions contained in this Agreement shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all terms and conditions shall apply to and run with the land.

11. District and Owner agree that a copy of this Agreement shall be recorded, at the expense of the Owner, in the Official Records of the Sonoma County Recorder's office and that this Agreement shall not be effective until such recording.

12. By execution of this Agreement, Owner grants to the District, its employees, contractors, agents and assigns, the authorization to enter upon the Property described above to repair, improve or maintain the public water service or sewer service or any portion thereof to be done by its own forces or by contract.

13. In the event of litigation to enforce or interpret this Agreement, the prevailing party shall be entitled to recoup all costs and expenses involved, including reasonable attorney's fees, and that the same shall become a part of the lien against the Property.

14. To the fullest extent permitted by law, Owner agrees to indemnify, defend, release and hold harmless the Town and District, their respective officials, officers, agents, volunteers and employees from and against any and all claims, suits, liabilities, actions, damages, administrative proceedings, regulatory proceedings, failure to comply with any current or prospective laws, fines and penalties, causes of action, or expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened by any person, including Owner, for any personal injury, death or damage to Property, or any fines or penalties arising out of or in connection with (1) Owner's connection to the District's water system or sewer system; (2) the Owner's performance or non-performance under this Agreement or (3) the parties' exercise of their rights and/or discharge of their obligations hereunder regardless of any passive negligence of the District and except for the sole negligence or willful misconduct of District.

15. This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

16. Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create any rights for third parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

ON BEHALF OF DISTRICT:
Windsor Water District

_____
Ken MacNab
General Manager

RECOMMENDED FOR APPROVAL:

_____
Shannon Cotulla
Public Works Director/District Engineer

APPROVED AS TO FORM FOR DISTRICT:

_____
Jose Sanchez
District Counsel

ON BEHALF OF OWNER:

_____
Oliver Benson

_____
Kimberly Benson

EXHIBITS:
Exhibit A – Site Map

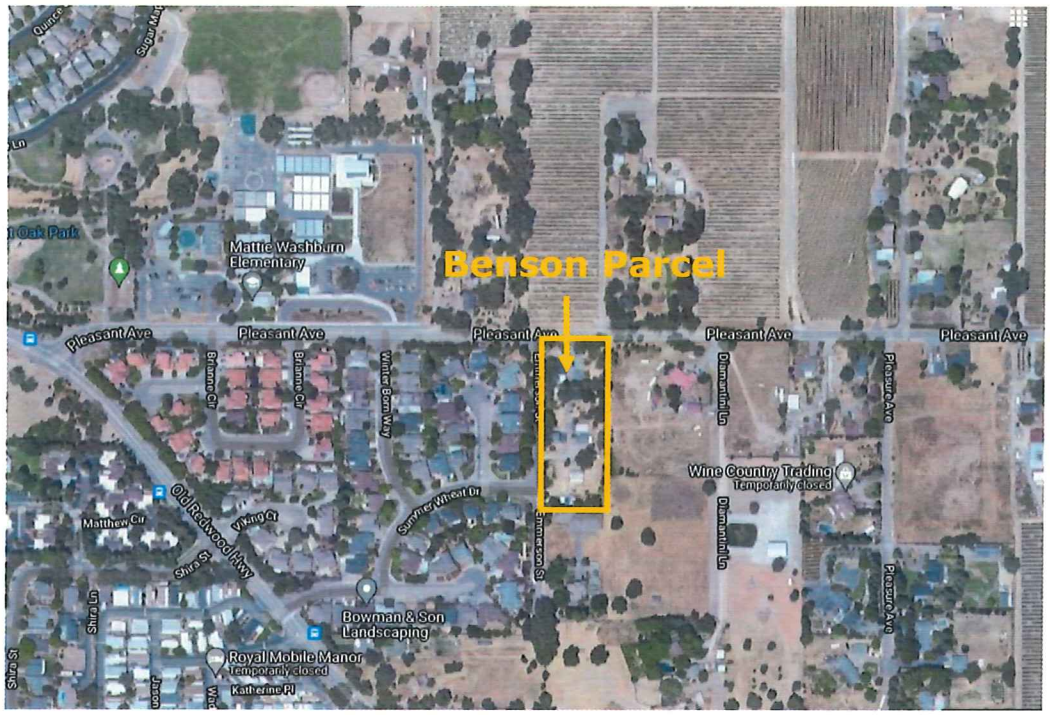
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EXHIBIT A TO
AGREEMENT

Benson Outside Services
6606 Emmerson Street / APN 163-001-012

LOCATION MAP



SITE MAP

