

SAN MATEO



# LOCAL AGENCY FORMATION COMMISSION

455 COUNTY CENTER, 2ND FLOOR • REDWOOD CITY, CA 94063-1663 • PHONE (650) 363-4224 • FAX (650) 363-4849

November 13, 2019

**To:** LAFCo Commissioners

**From:** Martha Poyatos, Executive Officer *M. Poyatos*

**Subject:** LAFCo File No. 19-08 – Proposed Outside Service Agreement for sewer by the City of South San Francisco to an existing single-family home at 382 Dorado Way, unincorporated San Mateo County (APN 013-124-010) pursuant to Government Code Section 56133 (less than one acre)

## Summary

Pursuant to Government Code Section 56133, Commission approval is required for extension of service by local agencies to territory outside the agency's boundaries. This section requires that the public agency apply to LAFCo by resolution on behalf of the landowner. In this case, the City of South San Francisco has applied by resolution for extension of sewer service to a proposed home at 382 Dorado Way, unincorporated San Mateo County (APN 013-124-010). The sewer connection is a County of San Mateo condition of approval for the building permit.

The project area is within the sphere of influence of the City of South San Francisco and is contiguous to the City boundary. However, the City's General Plan currently does not permit the City to annex individual parcels in the Country Club Park area. The Plan states that no portion of the area should be annexed unless the entire area is annexed. In recognition of this policy constraint and the City's ongoing General Plan Update, LAFCo staff supports an Outside Service Agreement in lieu of annexation. However, as a condition of approval the property owner shall record a document consenting to future annexation of the property to the City. Commission approval is recommended.

## Departmental Reports

*County Assessor:* The net assessed land valuation shown in the records of the County Assessor is \$1,250,000. The boundaries of the annexation area as proposed conform to lines of assessment and ownership.

**COMMISSIONERS:** ANN DRAPER, CHAIR, PUBLIC ▪ JOSHUA COSGROVE, VICE CHAIR, SPECIAL DISTRICT ▪ RICH GARBARINO, City ▪ DON HORSLEY, COUNTY ▪ MIKE O'NEILL, CITY ▪ WARREN SLOCUM, COUNTY ▪ RIC LOHMAN, SPECIAL DISTRICT

**ALTERNATES:** KATI MARTIN, SPECIAL DISTRICT ▪ HARVEY RARBACK, CITY ▪ JAMES O'NEILL, PUBLIC ▪ DAVE PINE, COUNTY

**STAFF:** MARTHA POYATOS, EXECUTIVE OFFICER ▪ REBECCA ARCHER, LEGAL COUNSEL ▪ ROB BARTOLI, MANAGEMENT ANALYST

*County Clerk:* The territory has three registered voters. The Outside Service Agreement would not conflict with any political subdivision boundaries.

*County Public Works:* The property is not located within any County district. An encroachment permit will be required for any work in the County right-of-way.

*City of South San Francisco:* The City's General Plan designation is low density residential. The Outside Service Agreement and application to LAFCo for the sewer connection was approved by the South San Francisco City Council on October 9, 2019. The property owner will be required to extend a sewer lateral to the City's existing sewer main. The property owner will be required to record a document consenting to any future annexation of the property to the City.

*County Planning Department:* The property is zoned R-1/CCP and has a General Plan Designation of low density residential - urban. The property is currently developed with a single family house, which the applicant proposed to demolish and build a new single-family house. The property is within the sphere of influence of the City of South San Francisco. A building permit (BLD2019-00383) to address an interior remodel conducted without permits has been issued by the Department. Permits from County Planning and Building will be required for any development on the property, including the construction of the new sewer line. County Planning recommends approval of the proposal.

*County Environmental Health Services:* The California Water Service Company and the City of South San Francisco provide the available water and sewer service in the area. Environmental Health Services recommends approval of the proposal.

### **California Environmental Quality Act**

The proposal is categorically exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) under Section 15303, Class 3, as it consists of a service extension for an exempt facility (up to three single-family residences and utilities, including water, to serve them).

### **Executive Officer's Report**

This proposal has been submitted by resolution by the City of South San Francisco in order to connect a proposed single-family dwelling to City sewer. The sewer extension is consistent with Section 56133 and the existing policies of San Mateo LAFCo. The subject property is within the Sphere of Influence of the City of South San Francisco and is contiguous to the City boundary.

However, while the City has a General Plan policy that supports annexation, a separate policy requires that no portion of the area should be annexed unless the entire area is annexed. LAFCo's adopted OSA policy permits the extension of services when annexation is infeasible. As required by San Mateo LAFCo policy, the property owner will record an agreement consenting to future annexation to the City and waive protest if annexation is proposed. Separately, the City of South San Francisco is undertaking an update to their General Plan. San Mateo LAFCo will remain engaged through this update process and will work towards a comprehensive solution that allows for annexations within the County Club Park area.

**Condition of Approval**

1) The applicant shall record the deferred annexation agreement with the San Mateo County Recorder's Office, and provide a copy of the recorded document to LAFCo, prior to the issuance of the approval letter for the Outside Service Agreement for 382 Dorado Way.

**Recommended Commission Action**

By motion, approve LAFCo File No. 19-08 – Proposed Outside Service Agreement for Sewer by the City of South San Francisco to a proposed single-family home at 382 Dorado Way, unincorporated San Mateo County (APN 013-124-010) pursuant to Government Code Section 56133 (less than one acre) with the condition of approval.

**Attachments**

- A. Outside Service Application for at 386 Dorado Way
- B. Vicinity Map
- C. Copy of City of South San Francisco Resolution and Draft Deferred Annexation Agreement

Distribution: Sharon Ranals, City of South San Francisco  
Jason Hallare, City of South San Francisco  
Marilyn Hollinger, Applicant  
Kanoa Kelley, San Mateo County Planning Department  
John Brennan, San Mateo County Building Department

APPLICATION FOR A CHANGE OF ORGANIZATION OR REORGANIZATION TO THE SAN MATEO LOCAL AGENCY FORMATION COMMISSION

RECEIVED

AUG 01 2019

LAFCO

A. GENERAL INFORMATION

1. Briefly describe the nature of the proposed change of organization or reorganization.

Extend South San Francisco city sewer service to 382 Dorado Way, which is located in unincorporated South San Francisco.

2. An application for a change of organization or reorganization may be submitted by individuals in the form of a petition or by an affected public agency in the form of a certified resolution. This application is submitted by (check one):

- Landowners or registered voters, by petition
x An affected public agency, by resolution

(If this application is submitted by petition of landowners or registered voters in the affected territory, complete the petition form.)

3. What are the reasons for the proposal?

Existing septic system is insufficient for the additional building desired by the homeowner. In addition, the home was purchased with fraudulent disclosures, stating that the property was on the city sewer system already.

4. Does this application have 100% consent of landowners in the affected area?

- x Yes No

5. Estimated acreage: 0.69 acres

B. SERVICES

1. List the name or names of all existing cities and special districts whose service area or service responsibility would be altered by the proposed change of organization or reorganization.

South San Francisco
San Mateo County

2. List all changes to the pattern of delivery of local services to the affected area. For each service affected by the proposed change(s) of organization, list the present source of service (state "none" if service is not now provided), the proposed source of service and the source of funding for

construction of necessary facilities (if any) and operation. Example is given on the first two lines of the space provided for your response.

SERVICE	PRESENT SOURCE	PROPOSED SOURCE	FUNDING SOURCE	
			CONSTRUCTION	OPERATING
Sewer	None	City of South San Francisco	Proponent	Fees

**C. PROJECT PROPOSAL INFORMATION**

1. Please describe the general location of the territory which is the subject of this proposal. Refer to major highways, roads and topographical features.

The property located at 382 Dorado Way in (unincorporated) South San Francisco.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Describe the present land use(s) in the subject territory.

Single family home.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. How are adjacent lands used?

North: Single family home, also in unincorporated South San Francisco

South: Single family home, also in unincorporated South San Francisco

East: Road, then single family home in the city of South san Francisco

West: Single family home, also in unincorporated South San Francisco

4. Will the proposed change of organization result in additional development? If so, how is the subject territory to be developed?

No

\_\_\_\_\_

\_\_\_\_\_

5. What is the general plan designation of the subject territory?

Single family homes

6. What is the existing zoning designation of the subject territory?

R1/CCP

7. What rezoning, environmental review or development approvals have already been obtained for development in the subject territory?

none

8. What additional approvals will be required to proceed?

Approval from the South San Francisco City Council

9. Does any portion of the subject territory contain any of the following --agricultural preserves, sewer or other service moratorium or wetlands subject to the State Lands Commission jurisdiction?

no

10. If no specific development projects are associated with this proposal, will the proposal increase the potential for development of the property? If so, how?

Yes. The existing home can be made larger (add more bedrooms) than the existing septic system can accommodate

\* \* \* \* \*

LAFCo will consider the person signing this application as the proponent of the proposed action(s). Notice and other communications regarding this application (including fee payment) will be directed to the proponent at:

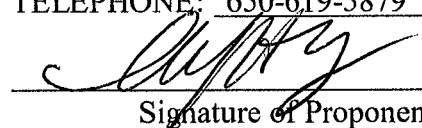
NAME: Marilyn Hollinger

EMAIL: marilyn@marilynj.com

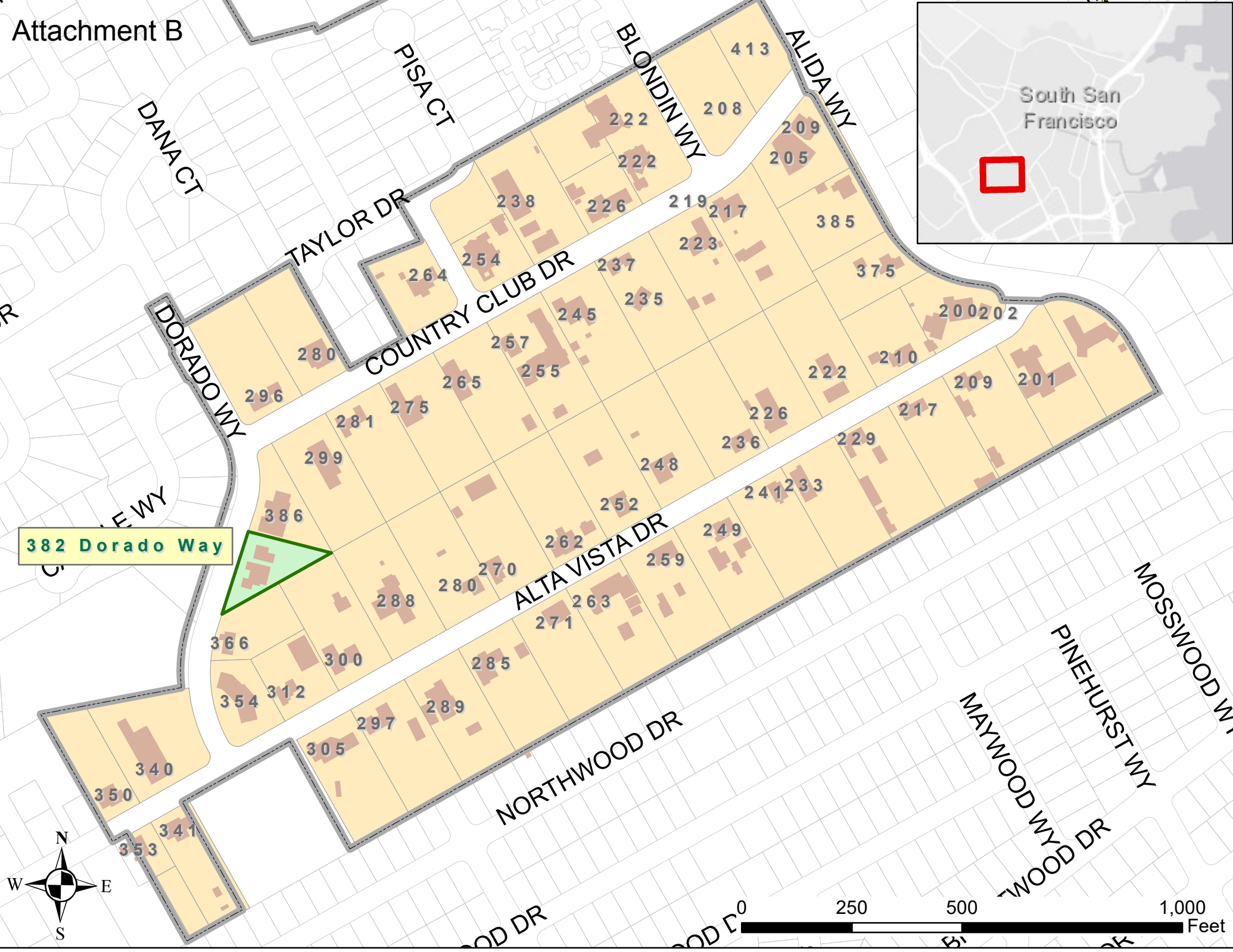
ADDRESS: 382 Dorado Way, SSF 94080

TELEPHONE: 650-619-5879

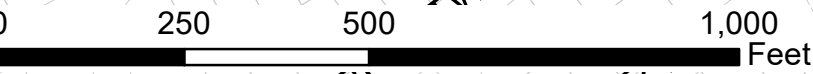
ATTN: \_\_\_\_\_

  
Signature of Proponent

Attachment B



382 Dorado Way







# City of South San Francisco

P.O. Box 711 (City Hall,  
400 Grand Avenue)  
South San Francisco, CA

## City Council

### Resolution: RES 129-2019

**File Number: 19-837**

**Enactment Number: RES 129-2019**

RESOLUTION APPROVING AN OUTSIDE SEWER SERVICE AGREEMENT WITH THE PROPERTY OWNER OF 382 DORADO WAY (APN # 013-124-010), AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR RECORDATION.

WHEREAS, the City has received a request from Marilyn Hollinger, owner of single family residence at 382 Dorado Way (APN 013-124-010) (the “property”), to authorize sewer connections from the property to the City of South San Francisco’s (“City”) sanitary sewer system; and

WHEREAS, the property is located within the unincorporated portion of San Mateo County (“County”), commonly known as the Country Club Park subdivision, which is outside the jurisdictional boundaries of the City but inside the City’s sphere of influence and sewer service area; and

WHEREAS, the property currently does not have a sewer connection and instead utilizes a septic tank, which is insufficient for the additional home expansion desired by the property owner; and

WHEREAS, in order to assist residents of the County Club Park area eliminate obsolete septic systems and move forward with related property improvements prior to annexation of the area to the City, the City has entered into several outside sewer service agreements with various property owners in this area to permit them to connect to the City’s sewer system; and

WHEREAS, the Outside Sewer Service Agreement (“Agreement”), attached hereto and incorporated as Exhibit A, addresses issues relating to extending sewer service to unincorporated County area such as future protests against proposed annexation, payment of sewer connection and service fees, cost-share of public improvements and additional sewer facilities needed to serve the area, and construction and maintenance of a sewer lateral for the property; and

WHEREAS, the Agreement has been reviewed and accepted by the property owners; and

WHEREAS, the proposed sewer extension is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15302, Class 2 (c), as a replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity; further, it is also categorically exempt based on Section 15303, Class 3 (d), as a “water main, sewage, electrical, gas and other utility extensions, including street improvements, of reasonable length to serve such construction”, which would include “construction and location of limited numbers of new, small facilities or structures”; and



WHEREAS, staff recommends approval of the Agreement to be executed with the property owner of 382 Dorado Way (APN # 013-124-010).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of South San Francisco that the City Council approves an Outside Sewer Service Agreement, attached hereto as Exhibit A, to be executed with the property owner at 382 Dorado Way (APN # 013-124-010).

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the agreement on behalf of the City of South San Francisco and to make amendments and modifications thereto that do not substantially alter the terms of the agreement or increase the City’s obligations, subject to approval by the City Attorney, and to record the agreement in the San Mateo County official records upon execution.

BE IT FURTHER RESOLVED that the resolution shall become effective immediately upon its passage and adoption.

\* \* \* \* \*

At a meeting of the Special City Council on 10/9/2019, a motion was made by Mark Addiego, seconded by Richard Garbarino, that this Resolution be approved. The motion passed.

**Yes:** 5 Councilmember Nagales, Mayor Matsumoto, Councilmember Addiego, Councilmember Nicolas, and Vice Mayor Garbarino

Attest by   
\_\_\_\_\_  
Rosa Govea Acosta

**RECORDING REQUESTED BY  
AND WHEN RECORDED  
RETURN DOCUMENT TO:**

City Clerk  
City Of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080

With a copy to:

San Mateo LAFCo  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063

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**OUTSIDE SEWER SERVICE AGREEMENT**

**RECITALS**

WHEREAS, the City of South San Francisco, California, a municipal corporation (“City”) owns and operates public sewer facilities within its boundaries; and,

WHEREAS, the [REDACTED] (“Owner”) is the owner of property located at [REDACTED], County of San Mateo (“Parcel”), which property is outside the boundaries of the City and is therefore not entitled to connect to or use City’s sewer facilities, but is within the City’s Sphere of Influence as defined under state law; and,

WHEREAS, the property is identified as APN [REDACTED] by the San Mateo County Assessor; and,

WHEREAS, Owner desires the Parcel to receive sewer services from the City; and,

WHEREAS, City has agreed to allow such sewer connection and provide sewer services subject to the terms and conditions of this Outside Sewer Services Agreement (“Agreement”); and

WHEREAS, on [REDACTED], the City Council of the City adopted a Resolution authorizing the application by the City to San Mateo Local Agency Commission (LAFCo) requesting approval for extension of sewer services to the Parcel pursuant to Government Code Section 56133; and

WHEREAS, as a condition to said sewer service connection, LAFCo has required the Owner to evidence consent to annexation to the City and waiver of protest to such annexation in the event the Parcel were to be proposed for annexation to the City; and

WHEREAS, Owner desires to evidence such consent and waiver as aforesaid; and

WHEREAS, Owner understands that any future annexation to the City is subject to any and all City rights and determinations, whether legislative, quasi-judicial, administrative, or however characterized, with respect to any proposed annexation of the Parcel to the City.

Now, therefore, City and Owner agree as follows:

### **AGREEMENT**

Owner is hereby authorized to connect to City's sewer line, located within the right of way running along [REDACTED], subject to the following conditions:

1. Consent to Future Annexation. In the event the Parcel shall be proposed for annexation to the City, Owner hereby consents to said annexation, and hereby waives Owner's rights to protest such annexation pursuant to the provisions of law governing such annexations.
  - a. Taxes or Other Charges. In the event annexation of the Parcel to the City shall be duly approved by all agencies having jurisdiction thereof, Owner agrees that the Parcel shall be subject to any and all general, special, extraordinary, or additional taxes or assessments, or any and all general, special extraordinary, or additional service charges, fees, or rates, levied against, imposed upon, or otherwise pertaining to the Parcel by any and all agencies, including the City, having jurisdiction thereof in the same fashion as other like property located within the territorial limits of the City.
2. Improvements in the Event of Annexation. If a request for annexation is approved by the San Mateo Local Agency Commission ("LAFCo") the Parcel is annexed to the City of South San Francisco, Owner, on behalf of themselves, their successors and assigns, agrees to comply with either of the following conditions:
  - a. Design and construct public improvements including sidewalk, curb and gutter improvements for the Parcel. Accordingly, Owner shall, upon the request of City in a form provided by the City, execute a subsequent Deferred Improvement Agreement guaranteeing the construction of such public improvements and compliance with other permitting, security, and regulatory requirements for constructing the improvements. A form Deferred Improvement Agreement template is attached to this Agreement as Exhibit A and incorporated herein by this reference; or alternatively,
  - b. Pay for the design and construction of public improvements including sidewalk, curb and gutter improvements for the Parcel, by paying a one-time charge, hereafter called a "public improvements fee," for the purpose of funding construction of said improvements from the property to the centerline of the street or roadway, covering one-half of the street or roadway. The public improvements fee shall be a figure representing the cost of constructing such improvements from the property to the centerline of the street or roadway. Thus, as an example only, if the cost for constructing a sidewalk, driveways, curbs, gutters, two-inch grind overlay to the centerline, design costs, and contingency for a property is estimated to be \$244 per foot, the cost of constructing said improvements would be approximately \$51,500.



3. Owner, on behalf of themselves, their administrators, heirs, assigns, and transferees,, agrees to pay a pro-rata share of construction of new sewer facilities installed, owned and operated by City, if the City secures the funding for such facilities, for the purpose of providing sewer service to the area, including the Parcel, known as “Country Club Park”.

- a. Accordingly, Owner agrees to participate in an assessment district to fund construction of new sewer facilities serving the Parcel, or
- b. Alternatively, pay a one-time charge, hereinafter referred to as the “frontage fee”, for the purpose of funding construction of said new facilities. The frontage fee shall be a figure representing one-half of the cost of said improvements, apportioned to each parcel served in a pro rata fashion, and then applied to individual parcels according to the amount of each parcel’s frontage to the City’s facilities, measured in lineal feet. Thus, as an example only, if the frontage fee were established in the amount of \$244 per foot, a parcel that has 100 feet of frontage will pay \$24,400.

4. Owner shall, where a sewer lateral does not exist to serve the property directly, construct the sewer lateral at their sole cost and expense. Owner shall obtain all applicable permits, including any construction and encroachment permits, prior to commencing construction. All work shall be in accordance with plans and specifications approved by the City, and Owner shall reimburse the City for all costs of engineering and inspection incurred by the City for the sewer lateral extension. In addition, Owner shall obtain a permit from the City to connect to the sewer lateral and shall pay all applicable permit charges prior to beginning any on-site construction. Further, Owner shall be responsible for the maintenance, repair and replacement of the sewer lateral.

5. Owner agrees to pay a one-time sewer connection fee and sewer services fee as follows:

- a. Owner will be charged, and shall pay, (1) a one-time sewer connection fee; and (2) an annual sewer service charge, both under then-applicable schedules of rates and charges, as may be amended from time to time.
- b. Should Owner fail or refuse to pay the sanitary sewer charges required herein on or before the due date, the City may elect to collect said charges by commencement of a suit within 30 days after demand for payment and Owner shall pay all costs of the suite and reasonable attorney’s fees incurred therewith. As an alternative remedy, the City may require Owner to disconnect from the City’s sanitary sewer system at Owner’s sole cost and expense.

6. The sewer connection and subsequent service provided under this Agreement is limited to existing legal lots of record as of October 9, 2019, or lots existing on the Parcel as of the date of this Agreement, whichever is fewer. City is under no obligation to provide additional hookups or service to subsequently created lots on the Parcel. This requirement is not intended to prohibit a lot line adjustment, so long as it does not result in creation of lots exceeding in number the lots which existed on the Parcel on October 9, 2019, or lots existing on the Parcel as of the date of this Agreement, whichever is fewer.

7. The Owner shall pay for all City costs in connection with preparing and processing this Agreement, and with processing the Owner’s application for sewer services. The Owner shall deposit with the City \$5,000 to cover initial cost and pay the remainder of any costs over \$5,000

prior to recordation of the Agreement by the County of San Mateo. The deposit shall not be refundable if Owner withdraws the application after making the deposit.

8. Owner shall conform to the current City standards for sewer lateral construction, maintenance and inspection including those set forth under South San Francisco Municipal Code Chapter 14.14, most currently in effect and as may be amended from time to time, between the City main and the Parcel. Owner shall be responsible for the costs necessary to perform any inspections, testing, repairs, reconstruction, replacement, and/or clean out installation as required by the City Engineer to conform the sewer lateral to current City standards.

9. For all future developments and constructions on the Parcel, Owner agrees to conform to the relevant height, aircraft noise, and safety policies and compatibility criteria contained in the most recently adopted version of the San Mateo County Comprehensive Airport Land Use Plan for the environs of San Francisco International Airport.

10. Owner shall and does hereby agree to hold the City, its officers, agents and employees free and harmless from any claim or action arising out of this Agreement, and the said connection to the City's sanitary system and/or the connection into the City's sanitary sewer system, and owner shall and does hereby agree to defend any or all such claims and actions and to indemnify the City for any losses sustained as a result thereof.

11. The parties hereto acknowledge that this Agreement is subject to approval by LAFCo, and shall not be effective absent such approval. Owner agrees to prepare all necessary application materials, and to pay all required fees, in connection with City's application to LAFCo for approval of this Agreement. If LAFCo agrees that their approval is not required, owner shall provide a letter from LAFCo indicating this.

12. The covenants and conditions contained in this Agreement shall inure to the benefit of and bind the respective parties hereto and their successors, heirs, assigns, and transferees, and all covenants shall apply to and run with the land.

13. City and Owner agree that a copy of this Agreement shall be recorded with the County recorder of San Mateo County to give constructive notice of its terms, and that this Agreement shall not be effective until such recording.

14. This Agreement represents the final expression of the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

15. CAPTIONS. Paragraph headings as used herein are for convenience only, and shall not be deemed to affect the meaning or intent of the paragraph headed thereby.

IN WITNESS WHEREOF,  
the parties have executed this Agreement, as of the date set forth below.

Date: \_\_\_\_\_

THE CITY OF SOUTH SAN FRANCISCO

BY: \_\_\_\_\_  
Charles Michael Futrell, City Manager

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
, Owner

\_\_\_\_\_  
Printed Name and Title

Approved as to form:

By: \_\_\_\_\_  
City Attorney

3380016.2  
3380016.4

Recorded at the Request of,  
and Return to:

Exempt from Recording Fees  
per G.C. secs. 6103, 27383

Re: APN: [REDACTED]

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### **DEFERRED IMPROVEMENT AGREEMENT FOR OUTSIDE SEWER SERVICES**

This Deferred Improvement Agreement (“Agreement”) is made and entered into this [REDACTED] day of [REDACTED], 2019 (“Effective Date”), by and between City of South San Francisco (hereinafter the "City"), and [REDACTED] (hereinafter "Owner"). The City and the Owner are collectively referred to herein as the “Parties.”

#### RECITALS

A. Owner owns certain real property located in the City of South San Francisco, County of San Mateo, State of California, commonly referred to as APN: [REDACTED]. The parcel is hereinafter referred to as the “Subject Property”.

B. The Subject Property is outside the boundaries of the City and is therefore not entitled to connect to or use City’s sewer facilities, but it is within the City’s sphere of influence as defined by state law.

C. The Owner desires to utilize the Subject Property’s existing sewer connection in order to receive sewer services from the City, and the City and Owner have executed an Outside Sewer Service Agreement, attached hereto and incorporated as Exhibit A.

D. A condition pursuant to the Outside Sewer Service Agreement for the Subject Property require the Owner to complete the following public improvements:

[REDACTED]  
(hereinafter the “Improvements”) upon annexation of the Subject Property to the City. Owner shall be responsible for the cost of designing and constructing the Improvements when requested by the City as outlined in Section 2 below.

E. City requires Owner to enter into this Agreement to ensure that the Improvements shall be designed and constructed by Owner pursuant to the terms hereof upon annexation of the Subject Property to the City. City also requires Owner to obtain all



necessary permits for access and construction of the Improvements, and to enter into any other necessary agreements to allow for the construction of the Improvements.

F. Owner is willing to enter into this Agreement to design and construct the Improvements at a later date upon annexation of the Subject Property to the City, and under the terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, BE IT AGREED as follows:

1. RECITALS. The foregoing recitals are true and correct and are incorporated into this Agreement by this reference.

2. IMPROVEMENTS TO BE CONSTRUCTED. Owner agrees to design and construct or cause to be constructed the Improvements outlined in Recital D above. The Improvements shall conform to all applicable local, state and federal laws, and standards in effect at the time of construction, and shall be completed in a manner satisfactory to the City Manager or designee.

3. TIME OF CONSTRUCTION. Owner's obligation to design and construct or cause to be constructed the Improvements shall commence upon a request for annexation is approved by the San Mateo Local Agency Commission ("LAFCO") and the Subject Property is annexed to the City of South San Francisco. Upon annexation of the Subject Property, Owner shall design and construct or cause to be constructed the Improvements within the time set forth in a written demand from the City Manager or designee, who shall have the sole and exclusive right and power to determine the date at which construction of the Improvements shall commence and be completed; provided, however, that Owner shall be given at least [REDACTED] days after notification to complete the work.

4. COST OF CONSTRUCTION. The Improvements shall be designed and constructed at the sole cost and expense of Owner, and Owner shall pay such connection, inspection, and other fees as shall at the time be required by any ordinance and resolutions of the City. The total estimated cost of construction is [REDACTED] (\$ [REDACTED]), which includes costs of constructing the Improvements and for inspection, testing, permits, and City administration.

5. APPROVAL BY THE CITY. All work required under this Agreement shall be subject to inspection by the City and shall not be deemed complete until the City has indicated in writing that the Improvements have been completed in a satisfactory manner and in accord with all applicable local, state, and federal standards then in effect. Notwithstanding the foregoing, City inspection, approval or acceptance of the Improvements shall not relieve the Owner of its obligations to fulfill this Agreement as provided herein, nor shall the City be estopped from bringing any action for damages arising from Owner's failure to comply with the terms and conditions of this Agreement.

6. ONE YEAR REPAIR AND WARRANTY PERIOD. For a period of one year from the date the City approves the completed Improvements, Owner agrees to maintain

the Improvements and repair any defects or unsatisfactory work to the reasonable satisfaction of the City Engineer. The City shall provide written notice of any repair or correction work which, in the reasonable opinion of the City Engineer, must be completed. If within the one-year period Owner fails, refuses or neglects to complete any such repairs or corrections within 30 days of receipt mailing by Owner of written notice from the City, or such reasonably longer period if the repair or correction work cannot be reasonably completed within such 30 day period, the City may complete the work and recover the reasonable cost and expense of doing so from Owner, including proceeding against the security posted by Owner as required in section 6 below.

7. SECURITY

a. Owner will be required, prior to commencing construction of the Improvements and at the sole discretion of City, to execute and deliver to City the following bonds:

(1) Faithful Performance Bond. Owner shall submit a corporate surety bond in the amount of 100% of the total estimated cost of construction of the Improvements indicated in Section 3, guaranteeing the faithful performance of this Agreement. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California and shall be in a form and with a surety approved by the City Attorney. Any additions, alterations or modifications to this Agreement or the plans and specifications including any extension of time within which the Improvements may be completed, shall not release or exonerate the surety(ies) on the bond.

(2) Labor and Materials Bond. Owner shall submit a corporate surety bond in the amount of 100% of the total estimated cost of construction of the Improvements as indicated in Section 3, guaranteeing the payment of all persons for labor or materials furnished in the construction of the Improvements. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California and shall be in a form and with a surety approved by the City Attorney.

(3) Maintenance Bond. Before the City's acceptance of the Improvements, Owner shall deposit with the City either cash or an acceptable corporate surety bond in the amount of 50% of the estimated cost of construction of the Improvements indicated in Section 3, as security for maintenance of the Improvements and to guarantee the Improvements against any defective work or labor done, or defective materials used in the work.

b. As a part of the obligation guaranteed by the security, and in addition to the full amount of the security, there shall be included costs and reasonable expenses and fees, including attorneys' fees, incurred by the City in enforcing the obligations secured.

8. OWNER'S WARRANTY. The undersigned warrants to City that Owner is the sole titleholder to the Subject Property, and that the signatory is authorized to execute this Agreement on behalf of the Owner.



9. ENCROACHMENT PERMIT; OTHER PERMISSIONS; PREVAILING WAGES.

a. Encroachment permit. For any work done in the public right-of-way, Owner shall obtain an encroachment permit from the City and shall, at its sole cost, furnish the City with the required certificates of insurance and endorsements for review and approval by the City before the start of any work, and shall maintain insurance throughout the duration of the Agreement. Owner will obtain any and all other permits that may be required to complete the Improvements, including, but not limited to, permits from [REDACTED].

b. Prevailing wages. If it is determined that Owner is required to pay prevailing wages for the work performed under this Agreement, the Owner shall pay all penalties and wages as required by law.

10. HOLD HARMLESS. To the fullest extent permitted by law, Owner shall hold harmless and, upon request, promptly and fully protect, defend and indemnify City and its officers, agents, and employees from any liability or claims, including any actions at law or equity, for personal injury, including death, to any person or damage to any property arising out of the acts or omissions of Owner or of any officer, agent or employee of Owner or any contractor or subcontractor of Owner during (i) the construction or subsequent use of the Improvements, or (ii) caused in whole or in part by any activity authorized or required by this Agreement, or the performance or nonperformance of the work.

11. DEFAULT.

a. Owner shall be deemed to be in default of this Agreement if Owner or any officer, agent or employee of Owner fails to comply with any of the provisions of this Agreement and to remedy such failure within ten (10) calendar days of receipt of written notice from City specifying the nature of such failure. The determination as to whether such default has occurred shall be made by the City Manager or designee.

b. If the default relates to a failure of Owner to complete the Improvements in accordance with the terms of this Agreement, City may, after first giving the Owner at least ten (10) days prior written notice of its intent to do so, elect to construct or arrange for the construction of the Improvements on behalf of and at the expense of Owner. Should City elect this option, City shall be entitled to recover from Owner the actual cost to City of completing the Improvements, plus an administrative fee of 5% of the actual cost. City shall make a written demand for such costs and fee on or after the time the Improvements are deemed complete. In the event Owner fails to pay the costs and fee so demanded within ten (10) days of receipt of the demand, the amount of the costs and fee shall become a personal obligation of the Owner and a lien against the Subject Property. City may enforce such a lien by judicial foreclosure or any other proceeding authorized by law. If the Subject Property is subdivided at the time the lien is imposed, the amount of the lien shall be divided proportionately among the various parcels.

c. In the event that City serves a notice of default upon Owner's surety, Owner's surety shall have the duty to take over and complete the Improvements herein specified; provided, however, that if the surety, within five (5) days after such notice by City fails to provide City with a written acknowledgment that the surety will take over and complete such Improvements, then by further written notice to the surety by City, City may elect to take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of the Owner and Owner's surety. Owner and Owner's surety shall be liable to the City for any cost or damages occasioned City thereby, including those costs and reasonable expenses including attorneys' fees; and in such event, City, without liability for so doing, may take possession of, and utilize in completing the Improvements, such materials, appliances, plans and other property belonging to Owner as may be on the site of the work and necessary therefore.

12. ATTORNEY FEES. Should it become necessary for either party hereto to institute legal action against the other to enforce any part of this Agreement or any lien arising thereunder, all reasonable costs and expenses incurred by the prevailing party in successfully enforcing this Agreement or lien shall be paid by the non-prevailing party, including reasonable attorney fees. All such costs, expenses and fees shall be taxed as costs and included in any judgment rendered, and may also become a lien on the Subject Property.

13. AGREEMENT BINDING ON SUCCESSORS IN INTEREST. The provisions of this Agreement are for the benefit of the Subject Property as well as for the protection of the health, safety, and welfare of the residents of the City. For this reason, such provisions are intended to bind, and shall bind the heirs, executors, administrators, grantees and any other assignees or successors in interest of the Owner; and any burden imposed by such provisions shall run with the Subject Property.

14. RECORDATION. Immediately following execution, this Agreement shall be recorded by City in the Official Records of the County Recorder of the County of San Mateo.

15. NOTICES. All notices given by City to Owner pursuant to Paragraphs 2 and 10 of this Agreement shall be by personal service or sent by certified or registered mail, return receipt requested, with delivery restricted to addressee only. The date of delivery on the return receipt shall be conclusive upon all parties to this Agreement. All other notices, demands, requests, consents, approvals or communications that either party desires or is required by this Agreement to give to the other shall be in writing and either served personally or sent by prepaid, first-class mail. Notice mailed in this manner shall be conclusively deemed communicated within forty-eight (48) hours from time of mailing. Either party may change its address by notifying the other party in writing. Until notification of such change has been received, all notices sent under this Paragraph shall be addressed as follows:

Owner:

xxx  
Attn: xxx  
xxx  
xxx



City:

City of South San Francisco

Attn: \_\_\_\_\_

xxx

xxx

16. INTERPRETATION. The parties agree that they have carefully reviewed this Agreement, have consulted independent counsel if they saw fit or have independently elected not to do so. The doctrine that any ambiguities in a contract are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. This Agreement shall be interpreted and construed according to the domestic laws of the State of California, without regard to the choice of law doctrine.

17. SEVERABILITY. If any part, term, or provision of this Agreement is held by any court to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

18. MODIFICATION. This Agreement may be modified or amended only with the prior written consent of the parties, or their successors in interest. Such modifications and amendments shall be executed with the same formality as this Agreement, shall be recorded, and shall be interpreted as provided in this Agreement.

19. EFFECTIVE DATE. This Agreement shall become effective on the date of execution, which shall be deemed to be the date first written above.

20. QUITCLAIM DEED. Upon performance of Owner's obligations under this Agreement, City agrees, if requested by Owner, to execute, acknowledge and deliver a quitclaim deed to Owner within thirty (30) days after performance and to execute, acknowledge and deliver any other documents required by any title company to remove the cloud of this Agreement from the title to the Subject Property.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement on the date hereinafter indicated.

[SIGNATURES ON THE FOLLOWING PAGE]

**CITY**

**Owner**

\_\_\_\_\_  
Charles Michael Futrell, City Manager

\_\_\_\_\_  
[NAME], Property Owner

ATTEST

\_\_\_\_\_  
Rosa Acosta, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

3380057.1

TEMPLATE ONLY