

**LARRY WALKER**

Auditor/Controller – Recorder

R Regular Mail

Recording requested by
and when recorded mail to:

City Clerk
City of Redlands
P. O. Box 3005
Redlands, CA 92373

Doc#: **2003-0599602**

Titles: 1 Pages: 8

Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

AGREEMENT FOR ANNEXATION AND PROVISION FOR CITY UTILITY SERVICES

**FEES NOT REQUIRED
PER GOVERNMENT CODE
SECTION 6103**

This Agreement for Annexation and Provision of City Utility Services ("Agreement") is made and entered into this 5th day of August, 2003, by and between the City of Redlands, a municipal corporation organized and existing under the laws of the State of California ("City") and Marilyn J. Burchill, ("Developer"). The City and Developer are sometimes collectively referred to herein as the "Parties."

RECITALS

WHEREAS, to provide for orderly planning, the City (1) has the authority pursuant to Government Code Sections 65300 and 65301 to include in its General Plan property outside its boundaries which is in the City's sphere of influence or which in the City's judgment bears a relation to its strategic planning, and (2) also has the authority pursuant to Government Code Section 65859 to pre-zone property within its sphere of influence for the purpose of determining the zoning designation that will apply to such property in the event of a subsequent annexation of the property to the City; and

WHEREAS, Developer has provided evidence, satisfactory to the City, that Developer is the fee owner of the property comprising San Bernardino County Tentative Tract No. 15602, which is located in an unincorporated area within the City's sphere of influence (the "Property") and which the Developer intends to develop as a single family residential development; and

WHEREAS, Government Code Section 56133 authorizes the City to provide new or extended services by contract outside its jurisdictional boundaries if it first receives written approval from the Local Agency Formation Commission for San Bernardino County ("LAFCO"), and provides that LAFCO may authorize the City to provide such services within the City's sphere of influence in anticipation of a later change of organization; and

WHEREAS, the City's General Plan and Chapter 13.60 of the Redlands Municipal Code establish policies and procedures for the approval of City utility services to development located within the City's sphere of influence and require, among other things, the owner of the property to be served to enter into an agreement and record the same in the official records of the County requiring the owner to annex the property to the City upon certain conditions; and

WHEREAS, the City has prepared a General Plan for the unincorporated area in which the Property is located to provide for the orderly planning of such area and has determined that the Property is consistent with the goals and policies of the City's General Plan and the development standards of the Redlands Municipal Code; and

WHEREAS, it is the policy and goal of the City to discourage and not facilitate development in the City's sphere of influence which is unwilling and/or fails to comply with the City's General Plan and the City's development standards by refusing to extend utility services in such instances; and

WHEREAS, pursuant to the requirements of Chapter 13.60 of the Redlands Municipal Code and in consideration for the City's agreement to extend utility services outside its jurisdictional boundaries to the Property, Developer has entered into this Agreement to provide assurances to the City that development of the Property will occur in accordance with the Redlands General Plan and the Development Standards of the Redlands Municipal Code, and that the Property shall be annexed to the City in accordance with this Agreement's terms, provisions and conditions;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Redlands and Marilyn J. Burchill agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct.
2. Definitions. The following terms when used in this Agreement shall have the meanings ascribed to them:
 - a. "Agreement" means this Agreement for Annexation and Provision of Utility Services.
 - b. "Annexation" means the procedure for a change of organization or reorganization set forth in the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 (Government Code sections 56000 et seq.).
 - c. "Developer" means Marilyn J. Burchill and her successors-in-interest to all or any part of the Property.
 - d. "Project" means the improvement of the Property for the purposes of constructing a maximum of five (5) single family residential dwellings, pursuant to existing project approvals.
 - e. "Existing Project Approvals" means Tentative Tract No. 15602, its conditions of approval issued by the County of San Bernardino as of the effective date of this Agreement and as described in Exhibit "A" attached hereto and incorporated herein by reference, and those certain project approvals in effect as of the effective date of this Agreement with respect to this Property.
 - f. "Property" means the real property owned by Developer which is more particularly

described in Exhibit "B", attached hereto and incorporated by this reference.

3. Provision of Utility Services. The City agrees to provide utility services to the Property consistent with the terms and conditions of this Agreement, provided that the Project complies with all rules and regulations of the City governing the extension and provision of utility services to properties located outside the City's boundaries at the time a request by Developer for application for a water and sewer connection is approved by the City's Municipal Utilities Department. Nothing herein represents a commitment by the City to provide such services unless and until Developer complies with all such rules and regulations. In accordance with the voter-approved General Plan amendment known as Measure "U," Developer agrees to pay, as a condition of approval of an application for water and sewer connection and prior to receiving any services, the full cost of such services as established by the City for the extension of utility services to the property.

4. Agreement to Develop by City Standards. In consideration of the City's agreement to provide City water and sewer services to the Property, Developer shall develop the Property in accordance with the Redlands General Plan, the Development Standards of the A-2 Zone of the Redlands Municipal Code, and all other applicable provisions of the Redlands Municipal Code.

5. Agreement to Annex. In consideration of the City's agreement to provide City water and sewer services to the Property, Developer hereby irrevocably consents to annexation of the Property to City and agrees it shall take any and all reasonable and necessary actions, and fully and in good faith cooperate with City, to cause the annexation of the Property to the City. Developer and the City agree that in the event City initiates an annexation of the Property, the City shall be responsible for the costs of such annexation. In all other instances where the annexation of the Property is proposed to the City, Developer shall be responsible for such costs.

6. Payment of Fees. Concurrent with the City's extension of services to the Property, Developer shall pay to the City, as a condition of receiving such services in accordance with the voter approved amendment to the City's General Plan known as Measure "U", a sum equivalent to all capital improvement and other development fees which would be applicable to the Property if the property was within the City limits at the time of extension of the services.

7. Taxes and Assessments. Developer hereby consents to the imposition of, and agrees Developer shall pay, all taxes and assessments imposed and/or levied by the City which may be applicable to the Property at the time the Property is annexed to the City.

8. Recordation. By entering into this Agreement, Developer and the City acknowledge and agree that, among other things, it is the express intention of the Parties that any and all successors in interest, assigns, heirs and executors of Developer shall have actual and constructive notice of Developer's obligations under, and the benefits and burdens of, this Agreement. Therefore, this Agreement and any amendments hereof, shall be recorded in the official records of the County of San Bernardino. Developer further agrees that City shall, at the sole cost of Developer, have the right to cause the recordation of this Agreement.

9. Breach/Failure to Annex In the event Developer fails to comply with its obligations under this Agreement or takes any action to protest, challenge, contravene or otherwise breach any

of its obligations or representations under this Agreement, the City shall have the right to, without any liability whatsoever, cease the provision of City utility services to the Property. This right shall be in addition to any other legal or equitable relief available to the City.

10. Not a Partnership. The Parties specifically acknowledge that the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint-venture or other association of any kind is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating the development of private property and the owner of such property.

11. Indemnity and Cost of Litigation.

a. Hold Harmless - Project. Developer agrees to and shall hold the City, its elected officials, officers, agents and employees free and harmless from any and all liability for damage or claims for damage for personal injury, including death, and claims for property damage which may arise from the operations, errors, or omissions of Developer or those of its contractors, subcontractors, agents, employees or any other persons acting on Developer's behalf which relate to the Project. Developer agrees to and shall defend, indemnify and hold harmless the City, its elected officials, officers, agents, employees and representatives from all actions for damages caused or alleged to have been caused by reason of Developer's acts, errors or omissions in connection with the Project. This hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of Developer's or its representatives' acts, errors or omissions regardless of whether or not the City supplied, prepared or approved plans or specifications relating to the Project and regardless of whether or not any insurance policies of Developer relating to the Project are applicable.

b. Third Party Litigation Concerning Agreement. Developer shall defend, at its expense, including attorneys' fees, indemnify and hold harmless the City, its elected officials, officers, agents and employees from any claim, action or proceeding against any of them to attack, set aside, void or annul the approval of this Agreement or the approval of any permit or entitlement granted in furtherance of this Agreement. The City may, in its sole discretion, participate in the defense of any such claim, action or proceeding.

12. Liquidated Damages In the event that the property is not annexed to the City in accordance with the terms of the Agreement, the owner of the property shall pay each year to the City, as liquidated damages, a sum equal to the property taxes and any sales taxes the City would have received had the property been annexed. Failure to make such liquidated damages payments shall be cause for the City to cease water and/or sewer service to the Project.

13. Section Headings. All section headings and sub-headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

14. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and construed in accordance with the laws of the State of California.

15. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms

or conditions of this Agreement the prevailing party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees.

16. Binding Effect. The burdens of this Agreement bind and the benefits of this Agreement inure to the successors in interest of the Parties hereto.

17. Authority to Execute. The person or persons executing this Agreement in behalf of Developer warrant and represent that they have the authority to execute this Agreement on behalf of the legal, fee title owner of the Property.

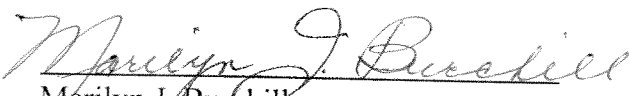
18. Waiver and Release. Developer hereby waives and releases any and all claims it may have against City, its elected officials, officers, employees and agents with respect to any City actions or omissions relating to the Project and Developer's and City's entry into and execution of this Agreement. Developer makes such waiver and release with full knowledge of Civil Code Section 1542, and hereby waives any and all rights thereunder to the extent of this waiver and release, of such Section 1542 is applicable. Civil Code Section 1542 provides as follows:

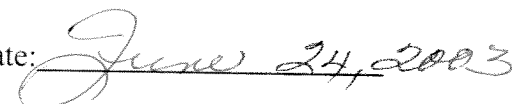
"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

19. Construction. The Parties agree that each party and its counsel have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. The Parties further agree that this Agreement represents an "arms-length" transaction agreed to by and between the Parties and that each party has had the opportunity to consult with legal counsel regarding the terms, conditions and effect of this Agreement.

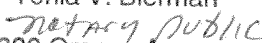
20. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties as to the matters contained herein, and there are no oral or written representations, understandings or ancillary covenants or agreements which are not contained or expressly referenced herein, and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

DEVELOPER


Marilyn J. Burchill.

Date: 

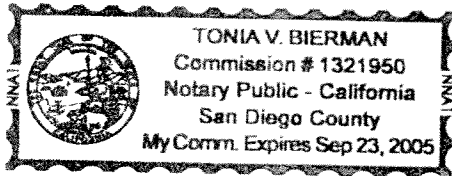
SEE ATTACHED
CALIFORNIA ALL PURPOSE
ACKNOWLEDGEMENT

Tonia V. Bierman

826 Orange Avenue
Coronado, CA 92118

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Diego } ss.

On June 24, 2005 before me, Tonia V. Bierman, Notary Public
Date Name and Title of Officer (e.g., "John Doe, Notary Public")
personally appeared Marilyn Jean Burchill
Name(s) of Signer(s)



☐ personally known to me
☒ 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.

WITNESS my hand and official seal.

Tonia V. Bierman
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement for Annexation Provision for City Utility Services

Document Date: July 15, 2003 Number of Pages: 6

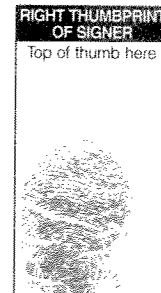
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☒ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



CITY OF REDLANDS



Karl N. Haws, Mayor

Date: August 5, 2003

Attest:


Lorrie Poyzer, City Clerk

Date: August 5, 2003

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) SS
CITY OF REDLANDS)

By the authority granted under Chapter 4, Article 3, Section 1181, of the California Civil Code, and Chapter 2, Division 3, Section 40814, of the California Government Code, on August 5, 2003, before me, Beatrice Sanchez, Deputy City Clerk, on behalf of Lorrie Poyzer, City Clerk of the City of Redlands, California, personally appeared Karl N. Haws and Lorrie Poyzer { X } personally known to me - or - { } proved to me on the basis of satisfactory evidence to be the persons whose names) are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

LORRIE POYZER, CITY CLERK



By: Beatrice Sanchez
Beatrice Sanchez, Deputy City Clerk
(909)798-7531

~ ~ ~ ~ ~
CAPACITY CLAIMED BY SIGNER(S)

- { } **Individual(s) signing for oneself/themselves**
{ } **Corporate Officer(s)**
Title(s) _____
Company _____
{ } **Partner(s)**
Partnership _____
{ } **Attorney-In-Fact**
Principal(s) _____
{ } **Trustee(s)**
Trust _____
{ x } **Other**
Title(s): Mayor and City Clerk
Entity Represented: City of Redlands, a municipal corporation

~ ~ ~ ~ ~
THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
Title or Type of Document: Pre-Annexation Agreement
Date of Document: August 5, 2003
Signer(s) Other Than Named Above: Marilyn Jean Burchill