

RESOLUTION 2021-51

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA
AUTHORIZING THE EXECUTION OF AN “OWNERS COVENANT AGREEMENT
REGARDING ANNEXATION AND UTILITY EXTENSION AGREEMENT”**

WHEREAS, the two parcels APN 019-190-042 and 19-190-041 containing approximately 30.656 acres on Mission Vineyard Road (“Property”) are owned by James P. and Kathleen C. Dassel, Trustees of the of the Dassel Family Revocable Living Trust, U/T/A dated August 31, 1993 (“Owners”); and

WHEREAS, the Property is located outside of the City’s incorporated boundaries, and inside its current Sphere of Influence; and

WHEREAS, the Owners presented the proposed subdivision plans to the City’s Planning Commission July 2, 2019 and received certain development conditions from the City that are incorporated into the approved County Planning Commission Resolution 2020-16, dated November 20, 2020; and

WHEREAS, the County Planning Commission approved the re-zone of the Property from “Agricultural Productive,” (“AP”) to “Agricultural Productive/Planned Unit Development (“AP/PUD”); and

WHEREAS, the County Planning Commission also approved the subdivision of the Property into five-one-acre single family dwelling residential lots, preserving 24-acres of open space, with a dedicated easement to preserve the hillside, as further described in the attached County staff report; and

WHEREAS, the property is located in an area in which annexation to the City is or may become appropriate; and

WHEREAS, the “City” owns and operates a Sanitary Sewer Treatment Facility, sanitary sewer collection system, sanitary sewer lift station and other appurtenance necessary for the purpose of receiving, transmitting, and treating sanitary sewer effluent from properties within the sewer service area of the system; and

WHEREAS, the “City” owns and operates Water Services, for the purpose of obtaining, transmitting, and delivering drinking water to properties within the water service area of the system; and

WHEREAS, the Owners desire to develop the Property and obtain public utility services such as water and possibly sewer services for that Property ("Utility Services"), the extension of which require the approval of the San Benito Local Agency Formation Commission ("LAFCO"); and

WHEREAS, the attached Owners Covenant Agreement and Utility Extension Agreement (“Agreement”), captures all necessary provisions required to execute intent of the above referenced recitals.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED THAT THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA HEREBY RESOLVES AS FOLLOWS:

1. That the recitals in this Resolution and accompanying staff report are true and correct and are hereby made a part of this Resolution.
2. The Owners will consent when called upon to have the Properties annexed to the City.
3. City Council adopts this Resolution and Agreement which includes but are not limited to the five conditions regarding utilities placed upon the Owners as described below;
 - a. That the current and future use of the property remain consistent with the General Plan’s land use designation, unless otherwise approved for a variance; and
 - b. That the owner will adhere to the City’s Uniform Waste Water and Water regulations, as stated in Municipal Code 5-9 (et al), and Municipal Code 6-4-111, and any subsequent amendments to them, at all times before, during and after this water connection is completed and when a sewer connection is warranted.
 - c. The Owners must connect to the sanitary sewer collection system within six months of completion of a sewer main in front of these properties.
 - d. The owner agrees to pay all costs of design, permits, fees, inspections costs, engineering and construction of the lateral extension to the existing water main and if built the future sewer main, which shall be accomplished to City standards and conform to plans approved by the City Engineer, or his/her designee. Costs of plan review and construction inspection shall also be paid by the owner.
 - e. Owners agree to comply with all other conditions as set forth in the attached Agreement.
4. The City Council authorizes the City Manager to execute the attached “Owners Covenant Agreement and Utility Extension Agreement.”
5. That the owner will execute and record on title with the City the attached “Owners Covenant Agreement and Utility Extension Agreement.”

PASSED AND ADOPTED by the City Council of the City of San Juan Bautista on this 19th day of October 2021 by the following vote:

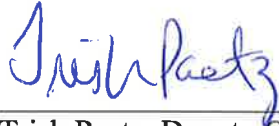
AYES: **Jordan, Flores, Freeman**

NOES: **None**

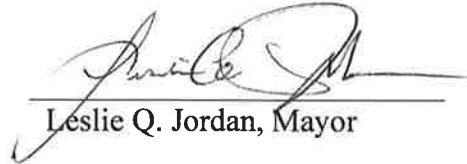
ABSENT: **Edge, Freels**

ABSTAIN: **None**

ATTEST:



Trish Paetz, Deputy City Clerk


Leslie Q. Jordan, Mayor

Attachment A

Record at the Request of and
When Recorded Mail to:

City of San Juan Bautista
P.O. Box 1420
San Juan Bautista, CA 95045

Record at No Fee Pursuant to
Government Code Section 27383

APN 019-190-041&042

THIS SPACE FOR RECORDER'S USE ONLY

OWNER'S COVENANT AND AGREEMENT REGARDING ANNEXATION AND UTILITY EXTENSION AGREEMENT

THIS COVENANT AND AGREEMENT is made and entered by the undersigned owner(s) ("Owners") with respect to the following recitals:

RECITALS:

- A. WHEREAS, certain property is within the City of San Juan Bautista ("City") Sphere of Influence and is identified as Assessor Parcel No(s). 019-190-041 and 019-019-042, and more particularly described in Exhibit "A" ("Property"); and
- B. WHEREAS, the property is located in an area in which annexation to the City is or may become appropriate; and
- C. WHEREAS, the "City" owns and operates a Sanitary Sewer Treatment Facility, sanitary sewer collection system, sanitary sewer lift station and other appurtenance necessary for the purpose of receiving, transmitting, and treating sanitary sewer effluent from properties within the sewer service area of the system, and
- D. WHEREAS, the "City" owns and operates Water Services, for the purpose of obtaining, transmitting, and delivering drinking water to properties within the water service area of the system, and
- E. WHEREAS, Owners desire to develop the Property and obtain public utility services such as water and possibly sewer services for that Property ("Utility Services"), the extension of which require the approval of the San Benito Local Agency Formation Commission ("LAFCO"); and
- F. WHEREAS, Owner agrees to comply with San Juan Bautista Municipal Code Section 6-4-111; and
- G. WHEREAS, it is expressly understood that the City Council of the City of San Juan Bautista and San Benito Local Agency Formation Commission ("LAFCO") are the only authority to permit annexation to the City of San Juan Bautista and this Agreement does not permit annexation to the City or any guarantee that the property will be permitted to annex to the City once any application is made; and
- H. WHEREAS, Owners are willing to consent to have the Property annexed to the City; and
- I. WHEREAS, Owners are willing to consent to connect to the sanitary sewer collection system within six months of completion of a sewer main in front of these properties; and

- J. WHEREAS, Owners desire that LAFCO approve the boundary changes needed to obtain public utility services for the development of the property on the terms and conditions approved or conditionally approved by the City or other applicable service provider(s); and
- K. WHEREAS, as a condition of receiving LAFCO's approval of boundary changes Owners are willing to consent to annexation of the property to the City and to waive their right to protest the annexation of the Property to the City when such becomes legally permissible; and
- L. WHEREAS, the County's General Plan designation of the property is not in conflict with the City General Plan; and
- M. WHEREAS, the current and future Owners will adhere to the City's Uniform Wastewater regulations, as stated in Municipal Code 5-9 (et al) and any subsequent amendments to them, at all times before, during, and after this sewer connection is completed; and
- N. WHEREAS, the current and future Owner consents to the costs of design, engineering, and construction of water service laterals and future sewer service laterals. The current and future owner shall agree to pay all costs of design, permits, fees, inspections costs, engineering, and construction of these service laterals, which shall be accomplished to City standards and conform to plans approved by the City Engineer, or his/her designees. Costs of plan review and construction inspection shall also be paid by current or future owner; and
- O. WHEREAS, before the issuance of building and/or encroachment permits, the owner will execute and record on title with the City a Utility Extension Agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein, the undersigned agree as follows:

- 1. **Recitals Incorporated.** The above recitals are hereby incorporated in and made a part of this Covenant and Agreement as fully set forth verbatim herein.
- 2. **Covenants by Owners.**
 - 2.1. Upon the terms noted, Owners hereby consent and agree to annex their Property to the City.
 - 2.2. Owners waive any rights of protest against and agree to cooperate upon the City's request, including the payment of applicable processing fees, in the annexation of the Property.
 - 2.3. Owners expressly understand that said annexation is not contemplated to occur until this Property is deemed to be annexable by LAFCO, and LAFCO approves the annexation.
 - 2.4. Owners agree that pursuant to City Municipal Code Section 6.4.111, and Condition 39 of the San Benito County Planning Commission Resolution No. 2020-16 approved at the hearing held November 18, 2020, prior to issuance of a building permit the Owners shall apply for, receive approval of, and execute a utility extension agreement for the water service to any lot within the Property. The Owners shall be required to pay the connection fee, all related permit fees, and the cost of constructing the water service connection to the City's current standards.
 - 2.5. Owner or future owners agrees to report to the City any changes to the property which would affect the volume and strength of sanitary sewer effluent discharge into the sanitary sewer collection system for the purposes of determining the monthly sanitary sewer use fees based upon the strength and volumes of discharge.
 - 2.6. Owner or future owner agrees to pay to the City the monthly water user charges for a single-family

house, and if sanitary sewer services are provided in the future to also pay the monthly sewer user charges to the City.

- 2.7. Owners agree that pursuant to Condition 38 of the San Benito County Planning Commission Resolution No. 2020-16 approved at the hearing held November 18, 2020, the Owners agree to connect to the City of San Juan Bautista wastewater system within six months of the City's completion of a future sewer main in front of these properties.
 - 2.8. Dedication of Capital Facilities. The owner shall agree to dedicate all capital facilities constructed as part of the water service lateral and future sewer service lateral (such as water or sewer lines, pump stations, wells, etc.), at no cost to the city, upon the completion of construction, approval, and acceptance by the city.
 - 2.9. Waiver of right to protest the formation of an assessment district that directly benefits the property. If, at the time of execution of the agreement, the city has plans to construct certain improvements that would specially benefit the owner's property, the agreement shall specifically describe the improvement. The owner shall agree to sign a petition for the formation of an assessment district for the specified improvements at the time one is circulated, and to waive his/her right to protest formation of any such special district.
 - 2.10. Development of Property to conform to City Code – Exceptions. The owner shall agree to comply with all requirements of the city's fire codes and those portions of the city building code which are referenced by the fire code, and the city public works standards when developing or redeveloping the property subject to the agreement. The city council may grant exceptions to the requirements contained in this subsection only under the following conditions:
 1. The applicant must demonstrate that the proposed departure from the city's land use standards, zoning code, or public works standards would result in a development which meets the intent of the applicable provisions of the comprehensive plan, zoning code, or public works standards, based upon compliance with all the following criteria:
 - a) That the site of the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping, and other features necessary to ensure compatibility with and not inconsistent with the underlying zoning district;
 - b) That the site for the proposed use relates to streets adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed uses and that adequate public utilities are available to serve the proposal;
 - c) That the proposed use will have no significant adverse effect on existing uses or permitted uses;
 - d) That the establishment, maintenance and/or conducting of the uses for which the utility agreement is sought will not, under the circumstances of the particular case, be detrimental to the public welfare, injurious to the environment, nor shall the use be inconsistent with or injurious to the character of the neighborhood or contrary to its orderly development.
 - 2.11. Termination of Noncompliance. In addition to all other remedies available to the city for the owner's noncompliance with the terms of the agreement, the city shall have the ability to disconnect the utility, and for the purpose may at any time enter upon the property.
3. **Binding Effect.** To the extent allowed by law, this Agreement shall bind and inure to the benefit of the Owners and their respective successors, heirs and assigns, and shall be construed as a covenant and restriction which shall run with the land under and pursuant to California Civil Code section 1468, or its successor provision, if any. This Agreement shall not have any force and affect, nor shall this Agreement or the covenants contained herein create any precedent for any other property other than that described in Exhibit A or other project other than that which is the subject of the annexation pursuant to this agreement.
 4. **Recording.** This Covenant and Agreement shall be recorded forthwith in the office of the San Benito County Recorder by Owners with conformed copies provided to LAFCO and shall be referenced in any

deed or other instruments conveying an interest in said property.

5. General Provisions.

- 5.1. Exhibits. The exhibits attached to this Agreement are incorporated by this reference.
- 5.2. Heading and Titles. The captions of the articles or sections of this Agreement are only to assist the parties in reading this Agreement and shall have no effect upon the construction or interpretation of any part hereof. The agreement shall be executed by the owner of the property, who shall also warrant that he/she is authorized to enter into such agreement.
- 5.3. Construction of Terms; Severability. All parts of this Agreement shall in all cases be construed according to their plain meaning and shall not be construed in favor or against either of the parties. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, the remainder of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. In the event of such invalidity, voidness or unenforceability, the parties hereto agree to enter into supplemental agreements to effectuate the intent of the parties and purposes of this Agreement.
- 5.4. Controlling Law. This Agreement shall be construed in accordance with and governed by the law of the State of California, with venue proper only in the County of San Benito, State of California.
- 5.5. Entire Agreement. This Agreement with its attached exhibits which are incorporated herein by this reference constitutes the entire agreement between the parties pertaining to the Premises and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. This Agreement may be altered, amended or modified only by a supplemental writing executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.
- 5.6. Amendments. No subsequent agreement, representation or promise made by any party hereto, or by or to an employee, officer, agent, or representative of any party shall be of any effect unless it is in writing.
- 5.7. Counterparts and Execution. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original Agreement and all of which taken together shall constitute one (1) agreement, notwithstanding that all of the parties are not signatories to the original or to the same counterpart.

IN WITNESS HEREOF, the Owners have cause this Covenant and Agreement to be executed on this _____ day of _____, _____.

OWNERS:

The undersigned hereby certify to be the owner(s) of real property described in Exhibit A attached hereto and incorporated herein, and the only person(s) whose consent is necessary to pass title to said real property, and to have consented to the annexation of said real property to the City of San Juan Bautista.

James P. Dassel and Kathleen C. Dassel, Trustees of the Dassel Family Revocable Living Trust, U/T/A dated August 31, 1993

Signature: _____
James P. Dassel

Date: _____

Signature: _____
Kathleen C. Dassel

Date: _____

IN WITNESS HEREOF, the Owners have cause this Covenant and Agreement to be executed on this _____ day of _____, _____.

CITY OF SAN JUAN BAUTISTA:

Signature: _____
Don Reynolds, City Manager

Date: _____

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, _____

personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.

Name, Notary Public in and for said

County and State

Principal County of Business: _____ Commission Expires: ____ Commission # of Notary: _____

EXHIBIT "A"

Legal Description of Property to accompany Owner's Covenant and Agreement Regarding Annexation

All that real property situated in the unincorporated territory of the County of San Benito, State of California being more particularly described as follows:

All that real property situated in Section 3, Township 13 South, Range 4 East, Mount Diablo Base and Meridian, San Benito County, California, being a portion of that 30.80-acre parcel as shown on that Map thereof recorded in Book 16 of Maps, at Page 9, San Benito County Records, being more particularly described as follows:

PARCEL 1

Beginning at a point on the southerly line of Mission Vineyard Road at the most northern corner of said

30.80-acre parcel; Thence along the westerly line of said 30.80-acre parcel also being the west line of

Section 3 South 0°00'20" West, 1591.50 feet to the southwestern corner of said 30.80 acre parcel on the northerly line of the land conveyed to Joseph Brutinel by deed from Thomas McMahon et ux, dated May 15, 1907, and recorded in Vol. 38 of Deeds, at Page 244, San Benito County Records; Thence along said northerly line of said land conveyed to Joseph Brutinel North 89°42'06" East, 982.83 feet to the southeastern corner of said 30.80 acre parcel; Thence leaving said northerly line and along the westerly line of Lot 37 of said Township and Range commonly know as "Old Mission Vineyard Tract" also being the easterly line of said 30.80 acre parcel the following courses and distances: North 27°13'37" East,

153.20 feet; Thence North 12°16'51" East, 100.00 feet; Thence North 2°20'27" East, 392.84 feet; Thence North 4°29'06" West, 144.91 feet to the easterly prolongation of the southerly line of Parcel 3 as shown on that Map thereof recorded in Book 6 of Maps, at Page 31, San Benito County Records; Thence leaving said westerly line and along said easterly prolongation of the southern line of Parcels 3 and 4 as shown on that Map thereof recorded in Book 6 of Maps, at Page 31, San Benito County Records, North 72°48'09" West, 6.82 feet to the southeastern corner of said Parcel 3; Thence along said southerly line North 72°48'09" West, 380.84 feet to the southwesterly corner of said Parcel 4; Thence along the westerly prolongation of said line North 72°48'09" West, 473.41 feet; Thence North 5°55'10" West, 500.23 feet to a point on the southerly line of Mission Vineyard Road; Thence along said southerly line of Mission Vineyard Road North 72°48'09" West, 214.16 feet to the point of beginning.

Containing 25.656 acres more or less. (APN 019-190-042, doc#2018-0001833)

PARCEL 2

Beginning at an iron pipe in the southerly line of Mission Vineyard Road at the most northwesterly corner of Parcel 1 as shown on that Map thereof recorded in Book 6 of Maps, at Page 31, San Benito County Records; Thence from said point of beginning along the westerly line of Parcel 1 and Parcel 4 as shown on said Map South 5°55'10" East, 500.23 feet to the southwest corner of said Parcel 4; Thence along the westerly prolongation of the southerly line of Parcel 4, North 72°48'09" West, 473.41 feet; Thence North 5°55'10" West 500.23 feet to a point on the southerly line of Mission Vineyard Road; Thence along said southerly line of Mission Vineyard Road South 72°48'09" East, 473.41 feet to the point of beginning.

Containing 5.00 acres more or less. (APN 019-190-041, doc#2018-001835)