

### BOARD OF DIRECTORS

September 26, 2023

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#### SUBJECT

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CONSIDER APPROVAL OF AN AMENDMENT TO THE STANDARD SEWER SERVICE AGREEMENT BETWEEN RAINBOW MUNICIPAL WATER DISTRICT (DISTRICT) AND PAPPAS INVESTMENTS FOR THE PALA RANCH (FKA CAMPUS PARK WEST) DEVELOPMENT TO IMPROVE MAJOR SUBDIVISION COUNTY OF SAN DIEGO TRACT NO. 5424-1 (DIVISION 4)

#### BACKGROUND

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The Pala Ranch development, formerly known as (FKA) Campus Park West, is a proposed mixed-use master planned community located along Interstate 15 (I-15) north and south of State Route 76 (SR-76). The proposed development includes 503,500 square feet of commercial space, 120,000 square feet of industrial space, 283 multi-family residential dwellings, and 31 acres of open space biological preserve. The property was part of a larger project by the original owner, Hewlett-Packard Company (HPC), beginning in the 1980s. The initial proposed project was abandoned by HPC, and the property was divided and sold to D.R Horton (Horse Creek Ridge development), Palomar Community College District, Campus Park (Passerelle, LLC), and Pala Ranch (Pappas Investments). The following provides a summary of actions and agreements leading up to the Pala Ranch project:

- In May 1987, the District and HPC executed a Restated Agreement for Water and Sewer Services. Rottman, LLC was the successor-in-interest to HPC under the 1987 Agreement. HPC constructed and completed a main water transmission line, force main sewer line, and gravity main sewer line (\$2,709,129) with contractual rights to 950.57 Equivalent Dwelling Units (EDUs).
- In May 2002, the District and Rottman, LLC entered into an agreement regarding sewer fees, rights and obligations under the 1987 HPC agreement. Passerelle, LLC is the successor-in-interest to Rottman, LLC and complied with the terms of the 1987 agreement.
- In June 2007, Passerelle, LLC assigned 100 Phase I EDUs to Palomar Community College District.
- In December 2012, Passerelle, LLC signed an Amended and Restated Sewer Service Agreement to construct a pump station and infrastructure with 2,250 EDUs of pump station facility's capacity that the District may use to serve and connect other users.
- In December 2012, Passerelle, LLC signed a Memorandum of Understanding (MOU) with the District for water services. Passerelle, LLC had a separate water loop designed to serve the property with adequate fire flows in accordance with Tentative Map 5338 RPL 7 with the point of connection from Stewart Canyon Road to Pala Mesa Bridge (21,100 linear feet). Campus Park West's proposed project planned for development of 750 sewer EDU's and would require a water loop system for adequate fire flows from the 16-inch Pala Mesa Bridge point of connection to the proposed point of connection at SR-76 and Old Highway 395 (7,900 linear feet). The District initially required Campus Park and Campus Park West to install separate water lines to complete respective looped systems to meet fire flow requirements, but hydraulic studies showed that both developments could share Campus Park's planned water loop system.
- In September 2013, the District adopted a resolution to annex Campus Park West.

- In July 2015, the District executed the First Amendment of the Water Service MOU and Amended and Restated Sewer Service Agreement with the District, Passerelle, LLC and D.R. Horton to fulfill remaining obligations. These amendments documented the assignment of EDUs from Passerelle, LLC with 100 EDUs to Palomar College, 754 EDUs to D.R. Horton, and the remaining 96.57 EDUs to Passerelle, LLC.
- In December 2017, Campus Park West was formally annexed into the District through the Local Agency Formation Commission.
- In October 2021, Campus Park West Pre-Plan Check commenced.
- In April 2023, the District quitclaimed a portion of existing easements within the proposed project's boundaries.

The District has been working with the Developer, Pala Ranch through plan checking and coordination of the necessary facility improvements for the development. The District's Sewer Service Agreement binds Pala Ranch to pay the initial 50% of the proposed sewer capacity fees at the execution of said Agreement. The Developer has requested amendments to the District's Sewer Service Agreement presented in the description section. It is worth noting that there are different phases associated with the project. The following is a list of the phases:

PA-2: Residential/Mixed Use

PA-3: Residential

PA-2, PA-4 & PA-5: Commercial

Note: PA-1: Industrial not included.

## **DESCRIPTION**

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Staff requests that the Board authorize the General Manager and Legal Counsel to execute the proposed amendment (attached as Exhibit A) and Sewer Service Agreement on behalf of the District.

The plans have been prepared by the Developer's design engineer, Project Design Consultants, a Bowman Company, which the District reviewed and has approved. The Developer shall be required to execute a construction agreement with the District before starting construction of the facilities pursuant to the Approved Plans that shall comply with the District's standard specifications. The Developer is fully responsible for directing and supervising the design and construction of the facilities described in this Agreement.

The Developer will retain a contractor currently licensed by the State of California with a General Engineering Contractor, "A" license, and shall be experienced in the construction of domestic water supply systems and sewer systems. The entire cost of the construction of such facilities and inspection time shall be paid by the Developer. District personnel shall inspect such construction for conformance with the approved plans and specifications.

The proposed amendment specifies the developer pay 3% of the estimated sewer cap fees, in a non-refundable deposit totaling \$150K. Before the expiration of the thirty-month term, the Developer shall pay the remaining 47% of the sewer capacity fees. Should the Developer fail to do so, the non-refundable deposit becomes the District's, and the entire agreement is voided. Additionally, the earmarked sewer EDU's are returned to the District's available balance sheet and are available for purchase by any developer.

## **POLICY/STRATEGIC PLAN KEY FOCUS AREA**

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Strategic Focus Area Two: Asset Management. The District supports development projects which address future water and sewer demands. Construction of this project will add new customers to the District, ensuring long-term viability.

Strategic Focus Area Five: Customer Service. District to operate and maintain future water and sewer infrastructure as part of the Development in a cost-effective manner.

## **ENVIRONMENTAL**

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In accordance with California Environmental Quality Act (CEQA) guidelines Section 15378, the action before the Board does not constitute a “project” as defined by CEQA, and further environmental review is not required at this time.

## **BOARD OPTIONS/FISCAL IMPACTS**

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Option 1:

- Determine that the action identified herein does not constitute a “project” as defined by CEQA.
- Authorize the General Manager and General Counsel to execute the proposed amendment (attached as Exhibit A) and Sewer Service Agreement on behalf of the District.

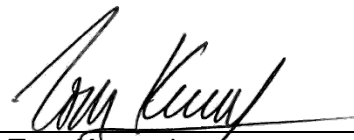
Option 2:

- Provide other direction to staff.

## **STAFF RECOMMENDATION**

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Staff recommends Option 1.

  
\_\_\_\_\_  
Tom Kennedy  
General Manager

09/26/2023



## EXHIBIT "A"

September 15, 2023 *Revision v.2*

Mr. Tom Kennedy  
General Manager  
Rainbow Municipal Water District  
3707 Old Highway 395  
Fallbrook, CA 92028

RE: Sewer Service Agreement Term Sheet Pala Ranch, Tract 5424-1 (FKA Campus Park West)

Dear Mr. Kennedy:

Per our recent discussions, Pala Ranch has prepared the following term sheet outlining the proposed structure of the Sewer Service Agreement ("SSA") between the District and Pala Ranch. The District's total estimated costs of the sewer capacity fees per the approved TM-5424-1 (the "TM") are \$5,678,653.20. This total is based on the commercial density per TM-5424 (503,500sf). The Project's actual built commercial density will be substantially less than what was approved on the TM (Est. 412,600sf). The Project's actual commercial density and the sewer capacity required to serve the entire Project will not be known until its B-Designator Site Plans are approved. Therefore, we must use the TM's density to calculate the Project's sewer capacity needs until the B-Designator Site Plans have been approved. Once the B-Designator Site Plans are approved, we will true-up the Project's required sewer capacity and corresponding fees (the "True-Up").

### TERMS:

- 1. Term** The initial term of the SSA shall be thirty (30) months from the Effective Date, defined below. The term shall automatically be extended provided the Developer pays in full the remaining 47% of sewer capacity for Tract 5424-1 as stated in the District's Sewer Service Agreement attached as Exhibit 1 for reference. (The District's standard approved SSA requires 50% of the sewer capacity fees (CAP) be paid upfront for the agreement to be executed. In doing so, the District reserves 100% of the estimated Equivalent Dwelling Units (EDU's) needed for the project. The Developer must then pay the remaining 50% before building permits are issued.)
- 2. Effective Date** The Effective Date shall be the date upon which the Developer remits the deposit to the District and the District issues the updated and signed County of San Diego Sewer Commitment Letter (PDS Form 400S) for Tract 5424-1 that will be issued, upon Developer's request, once Tract 5424-1's final map has been docketed with the County for its approval (the "**Effective Date**").

3. **Deposit** The Developer shall deposit 3% of the total connection fees for Tract 5424-1 with the District, which equals \$170,359.59 upon the Effective Date (the “**Deposit**”).
  - 3.1. **Applicable and Non-refundable** The Deposit shall apply to the Developer’s sewer capacity fees and non-refundable during the Term. If the Developer does not purchase the remaining 47% sewer capacity in association with Tract 5424-1 before the expiration of the Term, then the Deposit shall be forfeited to the District, and Developer shall have no further right or claim to the Deposit unless the Parties have previously agreed in writing, prior to the expiration of the Term, to revised terms and conditions.
4. **Sewer Capacity** The District shall reserve 100% of the sewer capacity EDU’s necessary to serve all of Tract 5424-1 (the “**Capacity**”).
5. **Reservation Period** The District shall reserve the Capacity from the Effective Date through the expiration of the Term (the “**Reservation Period**”).
6. **B-Designator Site Plan Approval (True-Up)** Upon the County’s approval of Project’s B-Designator Site Plan, the District and Applicant will cooperate to re-calculate and determine the actual sewer capacity required to serve 100% of the Project per the approved B-Designator Site Plan. This new total shall be the true-up total Sewer Capacity (the “**True-Up**”).
7. **Release of Surplus EDU’s** Once the True-Up is complete, and provided a surplus of reserved sewer EDU capacity exists, the Parties will execute an amendment to the SSA to document the surplus and authorize the District to release and sell any or all of the surplus reserved sewer EDU capacity to other customers (the “**Release of Surplus EDU’s**”).
8. **Application of Deposits** The Developer shall notify the District in writing, upon building permit submittals, if the Developer wishes to apply sewer capacity fee deposit credits towards the sewer capacity fees that would otherwise then be due and payable.
9. **Fees Due at Building Permit** Sewer fees due at building permit shall be payable per the then-current District sewer capacity fee schedule.

Sincerely,

Thad Johnson

Pappas Investments

CC: Chad Williams and Kurt Hubbell

**EXHIBIT 1**

**Standard Form of Sewer Service Agreement**







RAINBOW MUNICIPAL WATER DISTRICT
3707 OLD HIGHWAY 395, FALLBROOK, CALIFORNIA 92028
TELEPHONE (760) 728-1178 FAX (760) 728-2575

SEWER SERVICE AGREEMENT
BY AND BETWEEN RAINBOW MUNICIPAL WATER DISTRICT
AND \_\_\_\_\_

PROJECT: \_\_\_\_\_, TM \_\_\_\_\_ / FINAL MAP \_\_\_\_\_
RMWD PROJECT NO. \_\_\_\_\_
CONTRACT NO. \_\_\_\_\_

This sewer service agreement ("Agreement") is made on this \_\_\_ day of \_\_\_\_\_, ("Commencement Date") by and between Rainbow Municipal Water District ("District"), a municipal water district organized under the Municipal Water District Law of 1911, and \_\_\_\_\_ ("Developer"). Each of District and Developer are interchangeably referred to as a "Party" to the Agreement herein, and are collectively referred to as the "Parties".

RECITALS

- A. Developer is the legal owner of real property located in \_\_\_\_\_, in San Diego County, State of California, which real property lies within the jurisdictional service area of the District, identified as Assessor's Parcel Numbers: \_\_\_\_\_ (the "Real Property"), more particularly described as San Diego County TM \_\_\_\_\_ (Final Map \_\_\_\_\_) and depicted in Attachment 1 to this Agreement.
B. District and Developer \_\_\_\_\_
C. In consideration of the Agreement identified in B., above, and in conjunction with the development plans for the Real Property \_\_\_\_\_.
D. Final Map \_\_\_\_\_ was approved by the San Diego County Board of Supervisors on \_\_\_\_\_. The planned development consists of \_\_\_ residential lots and \_\_\_\_\_ dwelling units, \_\_\_\_\_ open space lots and a total of \_\_\_\_\_ acres.
E. District and Developer desire to consolidate, update and memorialize past agreements, applications, and commitments for sewer capacity for the Project through execution of this Sewer Service Agreement. As required by the District's Administrative Code, Section 9.05.
F. District acknowledges that it currently has sufficient capacity to serve the \_\_\_\_\_ (aka \_\_\_\_\_), TM \_\_\_\_\_, and that it is in the best interest of the District for this development to occur.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the District and the Developer agree as follows:

**AGREEMENT**

1. Warranties. The foregoing recitals are true and correct. The undersigned, for themselves and the Party on whose behalf they execute this Agreement, warrant and represent that they have full power and authority to bind said Party to the obligations and benefits set forth in this Agreement.

2. Credit of Sewer Capacity Fees.

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3. Capacity Fees. In accordance with District Administrative Code sections 9.05., Developer shall pay to the District a fee in the amount of 50% of the connection fees required to serve the entire project in order to ensure sewer capacity is available. The amount due upon approval of this Sewer Service Agreement shall be 50% of the total connection fees due at current rates. The calculated balance due for the initial 50% is \_\_\_\_\_. See Exhibit 1 for the breakout of the estimated sewer capacity fees at the current rates. The remaining 50% capacity fees shall be paid in full at the current rates by wire or check prior to issuance of building permits. The Developer shall provide the District record details for each planning phase units and square footage in order to calculate the actual total number of EDUs and sewer capacity fees at the current rates, required to serve the entire project. The District will issue amendment(s) accordingly when the calculations are completed.

4. **Term.** As provided by District Administrative Code Title 9, Section 9.05, this (service commitment) Agreement shall become effective on the date of mutual execution by the Parties, and shall terminate five years from that date. The service commitment may be renewed for one additional five-year term upon application and payment to the District of a fee equal to the difference between fees previously paid and the current fee rates in effect at the time of renewal.

5. Developer’s Obligations.

a. Permittee agrees to hold District harmless from any and all claims, demands, actions, damages, costs, expenses, compensation, causes of action and rights, in law or in equity, in the nature of an administrative procedure or otherwise (known, unknown, contingent, accrued, inchoate, or otherwise) that Permittee may have against the District, related to, arising from and/or pertaining in any way to the payments made to the District for sewer service fees for the \_\_\_\_\_ development project.

b. Permittee further agrees to pay the District the full amount of sewer capacity fees required by the District to serve the \_\_\_\_\_, at the then current rates in effect at the time building permits are issued by the County of San Diego and prior to connecting to the sewer system, unless the District seeks payment after this Agreement expires but before permits are issued as provided herein.

6. Subject to Approval. This Agreement is subject to the approval of the District Board of Directors, and District shall not be bound to any terms of this Agreement absent such approval.
7. Non-Assignment. This Agreement shall not be assigned or transferred, nor shall any of the Developer’s rights hereunder be delegated or subcontracted. Any attempt to assign or delegate this Agreement shall render this Agreement void and of no force or effect.
8. Notice. All notices, demands, payments, requests, consents, or other communications which this Agreement either contemplates, authorizes, requires, or permits any Party to give to the other Party, shall be in writing and shall be personally delivered, sent by registered or certified mail, postage pre-paid, return receipt requested, or by email, addressed to the respective parties as follows:

To District: Rainbow Municipal Water District  
 Attn: General Manager  
 3707 Old Highway 395  
 Fallbrook, California 92028  
 Tel.: (760) 728-1178  
 Email: \_\_\_\_\_

With a Copy to: Alfred Smith, II, General Counsel  
 Nossaman LLP  
 777 South Figueroa Street  
 34th Floor  
 Los Angeles, California 90017  
 Tel.: (213) 612-7831  
 Email: [asmith@nossaman.com](mailto:asmith@nossaman.com)

To Developer: Developer Name  
 Attn: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Email: \_\_\_\_\_

Any party may change its address and contact information by notice to the others as provided herein. Any such change shall be incorporated into this Agreement as if fully set forth herein. Notices shall be deemed effective when delivered if personally served or if sent by mail. If served or sent by email or facsimile, notices shall be deemed effective on the same business day that the notices are sent, or if received after 5:00 p.m., then the notice shall be deemed effective on the next business day.

9. Defense Costs on Third Party Challenge. In the event of a third-party challenge to the Projects, or the implementation and/or administration of any of the Projects, the District shall pay defense costs as a cost of the Projects, and may make calls on Letters of Credit or other security therefor. Notwithstanding the above, litigation regarding rate setting by the District is not a cost of the Projects.
10. Agreement Controlling. With respect to the District’s allocation of fees paid for EDUs/sewer capacity to the Developer, as described within this Agreement, in the event of any conflict or ambiguity between this Agreement, Developer’s Application, the Construction Agreement, or

any other document attached hereto or incorporated by reference herein, this Agreement shall control as between the Parties.

11. Governing Law/Venue. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the State of California. The appropriate venue for any action brought to enforce or declare its terms shall be brought in the appropriate state or federal court in or nearest to the North County Judicial District for the County of San Diego.
12. Severability. Should any provisions herein be found or deemed invalid or in contravention of California law, such provision shall be deemed not a part of this Agreement. All other provisions of this Agreement shall remain valid and enforceable and shall remain in full force and effect.
13. Modification. This Agreement may only be modified by written agreement signed by the Parties.
14. No Third Party Beneficiary. This Agreement shall inure to the benefit of and be binding upon the Parties. This Agreement is not intended to and shall not be for the benefit of third parties who are not expressly included herein.
15. Attorneys' Fees and Costs. In the event any legal action or proceeding to interpret or enforce the terms of, or obligations arising from, this Agreement – including mediation or arbitration – or to recover damages for breach of this Agreement, the Party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees, costs, and expenses incurred by the prevailing Party.
16. Further Assurances. The Parties hereby covenant and agree that the Parties will execute such other and further documents and instruments as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.
17. Headings. The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the scope or interpretation of this Agreement.
18. Entire Agreement. This Agreement, together with all attachments hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are superseded.
19. Attachments. All attachments referred to herein are hereby incorporated by reference into this Agreement as though fully set forth in the body of this Agreement.
20. Waiver. No covenant, term or condition, or the breach thereof, shall be deemed waived except by written consent of the Party against whom the waiver is claimed. Any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition. Acceptance by District of any performance by Developer after such time that the performance is due shall not be deemed a waiver of any preceding breach by Developer other than the failure of performance expressly accepted, regardless of the District's knowledge of such preceding breach at the time of acceptance. No delay or omission by either Party in exercising any relief or power accruing upon non-compliance or failure of performance by the other Party shall

impair or be construed as a waiver thereof, unless an intention to waive is expressly set forth in a writing signed by the waiving Party.

21. Warranties. District and Developer covenant and represent that each respective Party has the full authority to execute, deliver, and perform this Agreement, and that each Party has fully complied with all requirements imposed by law as necessary for the Party to create a lawful and binding Agreement for the term of this Agreement. Each individual signing this Agreement for the District represents and warrants that he or she has the full power and authority, and legal right, to execute this Agreement on behalf of the District, and that the District has taken all necessary actions to authorize the individual signing on behalf of the District's behalf to do. Each individual signing this Agreement on behalf of Developer represents and warrants that he or she has the full power and authority, and the legal right, to execute this Agreement on behalf of Developer, and that Developer has taken all necessary actions to authorize the individual signing on Developer's behalf to do so.
22. Force Majeure. If either Party, except as otherwise herein specifically provided, shall be delayed or prevented from performing any act required hereunder, by reason of strikes, lock-outs, labor problems, inability to procure materials, fire, unusual weather conditions, failure of power or other utilities, applicable governmental laws or regulations (other than those reasonably foreseeable in connection with the uses contemplated by this Agreement), riots, insurrection, war or other reason of a like nature, not the fault of the Party so delayed, then performance of such act shall be excused for the period necessary to accommodate such delay.
23. Understanding. Each Party hereto acknowledges that the Party has reviewed this Agreement and has had an opportunity to consult legal counsel, and that the normal rule of construction that ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any subsequent amendments hereto.
24. Counterparts. This Agreement may be executed in counterparts, which, taken together, shall be construed as a single, complete Agreement.

IN WITNESS WHEREOF, the Parties, for themselves, do hereby agree to the full performance of the covenants herein and have caused this Agreement to be executed on the date first set forth above.

RAINBOW MUNICIPAL WATER  
DISTRICT

DEVELOPER

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: General Manager

Title: \_\_\_\_\_

DISTRICT'S GENERAL COUNSEL

DEVELOPER'S COUNSEL

\_\_\_\_\_

\_\_\_\_\_

Name: Alfred E. Smith, II of Nossaman LLP

Name: \_\_\_\_\_

Title: General Counsel

Title: \_\_\_\_\_

**EXHIBIT 1**

**CAMPUS PARK WEST (TM 5424)  
ESTIMATED SEWER CAPACITY FEES**

Planning Areas	Lots Nos.	Description	Living Area (SqFt)	Equivalent Dwelling Unit	Sewer Capacity Fee	Number of Residences / Other	Total Sewer EDUs	Total Sewer Capacity
PA-2	35	Residential/Mixed Use	1,850	1.0	\$ 14,126	35	35.0	\$ 494,410
PA-3	248	Residential	1,850	1.0	\$ 14,126	248	248.0	\$ 3,503,248
PA-2 , PA-4, PA-5	1	Commercial	503,500	403.6	\$ 14,126	1	403.6	\$ 5,701,254
						284	686.6	\$ 9,698,912

Note 1.	284	Total Homes/Other
	686.6	Total Sewer EDUs
	\$ 9,698,912	Total Sewer Capacity Fees

Note 2.	\$ 4,849,456	50% Connection Fee Required at SSA Execution
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Note 3.	\$ 4,849,456	Remaining 50% sewer capacity fees are due in full when the initial 50% sewer capacity fees have been expended and/or prior to issuance of building permits.
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