

Recording Requested By

County of Tulare

When Recorded Mail To:

**County of Tulare
Resource Management Agency
5961 South Mooney Blvd.
Visalia, CA 93277-9394**

(Space Above This Line for Recorder's Use)

EXTRA-TERRITORIAL SEWER SERVICE AGREEMENT

THIS EXTRA-TERRITORIAL SEWER SERVICE AGREEMENT ("Agreement") is made and entered into _____, 2019, by and between Setton Pistachios of Terra Bella, Inc. ("Owner") and the Terra Bella Sewer Maintenance District ("TBSMD"), a special district within the state of California established under the Sewer Maintenance District Act, Health and Safety Code Section 4860 et seq. Owner and TBSMD are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

A. Owner owns certain real property located in Tulare County, California and comprising approximately 54+/- acres and having an Assessor's Parcel Number 320-130 -005, -011, -015, -024, -025, and 320-355-032 as of April 29, 2019 and more particularly described in Exhibit 'A' & 'B' which is attached hereto and made a part hereof ("Owner's Property"), which includes a pistachio processing plant with auxiliary structures; and

B. TBSMD operates a sewer system and wastewater treatment plant for property owners within its jurisdictional boundaries (the "System"); and

C. The County of Tulare operates the TBSMD and County of Tulare officials, officers, and employees serve as the officials, officers and employees of TBSMD; and

D. Owner's Property is located near and/or adjacent to the jurisdictional boundary for TBSMD; and

E. Owner has requested municipal sewer service for Owner's Property from TBSMD and TBSMD has conveyance and treatment capacity to connect Owner's Property to TBSMD's system; and

F. Parties have agreed to enter into this agreement to connect Owner's Property to the System upon the terms and conditions set forth therein.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **Connection to TBSMD Sewer System.** The Owner represent and warrant to TBSMD that:

Upon Owner's full and complete performance of all obligations and responsibilities under this Agreement, the TBSMD agrees to provide Owner's Property with sewer service. The TBSMD's obligation to provide Owner's Property with sewer service is conditioned upon obtaining the consent of all applicable governmental agencies including, without limitation, approval of this Agreement by Tulare LAFCo and obtaining all consents from the County of Tulare (the "County"), including, without limitation obtaining the necessary encroachment permits from the County to install a sewer pipeline and related fixtures within County Right-of-Way.

2. **Construction and Installation of Sewer Service to Owners' Property.** Owner shall, at Owner's sole cost and expense, construct and install the sewer pipeline and related fixtures necessary to convey wastewater from the Owner's Property to TBSMD's municipal sewer system (the "New Sewer System"). For the New Sewer System, Owner shall construct and install new sewer lines, manholes, and appurtenances as depicted in **Exhibit 'C'**, which is attached hereto and made a part hereof. Owner shall submit plans and specifications to TBSMD for review and approval prior to construction.

Owner shall recognize the Tulare County Resource Management Agency ("RMA") as authorities in regards to design and construction inspection of the New Sewer System and shall construct the line to RMA's satisfaction, including correcting any and all deficiencies identified by RMA staff. This shall not relieve Owner for the obligations assumed under the provision of the required County Encroachment Permit.

3. **Service Fee and Service Capacity.** Owner agrees to pay a monthly service fee of \$1,260 to TBSMD. This service fee was calculated based upon an average annual flow rate of approximately 12,300 gallons per day, which is approximately equivalent to sixty (60) equivalent dwelling units (EDUs), and a monthly fee of \$21.00 per EDU as of April 11, 2019. The monthly service fee is subject to change from time to time in accordance with the ordinances of TBSMD and applicable law, including Proposition 218. Owner may need to pay an increased service fee for use of system capacity in excess of 12,300 gallons per day.

4. **Connection Fee.** Owner agrees to pay TBSMD a Connection Fee of \$30,000 for use of an annual average flow of 12,300 gallons per day (GPD) of domestic wastewater into the TBSMD sewer system and wastewater treatment plant and for any fees related to the future annexation of Owner's Property into TBSMD. Payment of this fee shall not excuse Owner of other financial obligations owed to TBSMD. Owner will need to pay an additional connection fee for use of system capacity in excess of 12,300 gallons per day.

4. **Continuing Obligations and Responsibilities of Owners.** Owner agrees to pay to the TBSMD any and all fees for the sewer service supplied by TBSMD to Owner's Property. Owner agrees to maintain Owner's account with the TBSMD in a current status. Owner acknowledges and agrees that should Owner's sewer service account with the TBSMD become delinquent, TBSMD may impose penalties for delinquency in accordance with TBSMD's ordinances. Further, TBSMD shall have the right to place any delinquent sewer service fees, delinquent penalties, and related Auditor's collection charges onto the Tulare County Tax Rolls in accordance with TBSMD's ordinances.

Owner further agrees to limit discharge of wastewater into the TBSMD system to a maximum of 79 gallons per minute (GPM).

Owner further agrees to limit discharge of wastewater into the TBSMD system to domestic wastewater, which may include wastewater from the employee restrooms and break rooms. Owner agrees not to discharge wastewater of a different kind or quality into the TBSMD system.

5. **Consent to Annexation.** In further consideration of the TBSMD's agreement to provide sewer service to Owner's Property in accordance with the provisions of this Agreement, Owner agrees not to oppose or protest, in any way, the annexation of Owner's Property into TBSMD. TBSMD agrees to annex Owner's Property into TBSMD's jurisdictional boundaries within one year of the date of this agreement.

6. **Dedication of New Sewer System.** In further consideration of the TBSMD's agreement to provide sewer service to Owner's Property in accordance with the provisions of this Agreement, Owner agrees, at no cost to TBSMD, to dedicate all portions of the New Sewer System within the County Right-of-Way to TBSMD upon successful completion of construction of the New Sewer System.

7. **Covenants Running with the Land.** Owner acknowledges and agrees that all of Owner's covenants, agreements, promises, representations and warranties as set forth in this Agreement are covenants running with Owner's Property as defined in the applicable provisions of Sections 1457, et seq. of the California Civil Code. Owner's covenants, agreements, promises, representations and warranties as contained in this Agreement, shall run with Owner's Property and shall be binding on Owner and Owner's successors and assigns and all parties and persons claiming under them.

8. **Successors and Assigns.** The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto. Owner may not assign its rights and/or obligations under this Agreement without the prior written consent of the TBSMD, which consent shall not be unreasonably withheld. Any such consent by the TBSMD shall not, in any way, relieve Owner of its obligations and responsibilities under this Agreement.

9. **Entire Agreement Represented.** This Agreement represents the entire agreement between Owner and TBSMD as to its subject matter and no prior oral or written

understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

10. **Conflict with Laws or Regulations/Severability.** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, the Agreement may be terminated at the option of the affected Party. In all other cases the remainder of the Agreement shall continue in full force and effect.

11. **Amendment.** No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

12. **Governing Law.** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

13. **Indemnification.** To the fullest extent permitted by law, OWNER must indemnify, defend protect and hold harmless TBSMD, all subsidiaries, divisions and affiliated agencies of TBSMD, and all of its representatives, partners, designees, officers, directors, employees, consultants, agents, successors and as-signs, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and TBSMD general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of TBSMD with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of TBSMD, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

[The remainder of this page is intentionally left blank, with signature pages to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

"TBSMD"

Terra Bella Sewer Maintenance District
A Special District in the State of California

APPROVED AS TO FORM:
COUNTY COUNSEL

By:  2019/11
Deputy

By: _____
Kuyler Crocker, Chairman
Governing Board of Terra Bella Sewer
Maintenance District

"OWNER"

Setton Pistachios of Terra Bella, Inc.

By: 
Name: Joshua Setton
Title: President

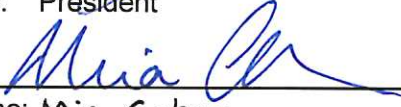
By: 
Name: Mia Cohen
Title: Chief Operating Officer

EXHIBIT 'A'

SEWER DISTRICT ANNEXATION

All that real property located in the unincorporated community of Terra Bella, County of Tulare, State of California, described as follows:

A portion of Parcel 6 of that certain parcel map entitled "Parcel Map No. 5211", filed October 30, 2017 in Book 53 of Parcel Maps, at Page 18, and all of Lot 220 and a portion of Lots 213, 214, 219, 245, and 246 of that certain map entitled "Subdivision No. 7 of Terra Bella Lands", recorded July 16, 1909 in Volume 9 of Maps, at Page 5, both of Tulare County Records, more particularly described as follows:

BEGINNING at the northwest corner of said Parcel 6; thence from said **POINT OF BEGINNING**, along the northerly lines of said Parcel 6 the following three (3) courses:

1. North 89°59'44" East, a distance of 765.89 feet;
2. South 00°20'25" West, a distance of 52.96 feet;
3. North 89°59'44" East, a distance of 275.26 feet to the centerline of Clemens Road as said centerline is shown on said Parcel Map;

Thence along said centerline and along the easterly line of said Parcel 6 and the northerly and southerly prolongations thereof, South 00°21'21" West, a distance of 853.55 feet to the southerly line of said Parcel 6;

Thence along the southerly line of said Parcel 6, South 89°34'15" West, a distance of 520.04 feet to the southwest corner thereof;

Thence along the northerly and westerly lines of Parcel 5 of said Parcel Map, the following six (6) courses:

1. South 89°34'15" West, a distance of 30.52 feet;
2. South 00°27'19" West, a distance of 65.83 feet;
3. North 89°41'03" West, a distance of 104.06 feet;
4. South 00°22'17" West, a distance of 24.98 feet;
5. North 88°41'38" West, a distance of 54.91 feet;
6. South 00°22'17" West, a distance of 605.48 feet to the northerly right of way line of Avenue 92 and the southerly line of said Lot 213;

Thence along said northerly right of way line and said southerly line of Lot 213, North 89°41'03" West, a distance of 329.54 feet to the southwest corner of said Lot 213;

Thence North 89°41'26" West, a distance of 60.00 feet to the southeast corner of said Lot 220;

Thence along the southerly lines of said Lots 220 and 245 respectively, North 89°41'48" West, a distance of 1,104.62 feet to the easterly line of that certain Grant Deed recorded August 30, 1963 in Volume 2439 of Official Records, at Page 551, Tulare County Records;

Thence along the last said easterly line the following two (2) courses:

1. North 00°17'46" East, a distance of 665.78 feet;

2. North $04^{\circ}41'35''$ East, a distance of 374.21 feet to a line being parallel with and 251.11 feet, as measured at right angles, southerly of the northerly lines of said Lots 246 and 219;

Thence along said parallel line and the easterly prolongation thereof, North $89^{\circ}41'48''$ East, a distance of 1,135.86 feet to the westerly line of said Lot 214;

Thence along the westerly lines of said Lot 214 and said Parcel 6 respectively, North $00^{\circ}17'32''$ East, a distance of 557.19 feet to the **POINT OF BEGINNING**.

Containing 54 acres, more or less.

See Exhibit 'B', attached hereto and made a part hereof.

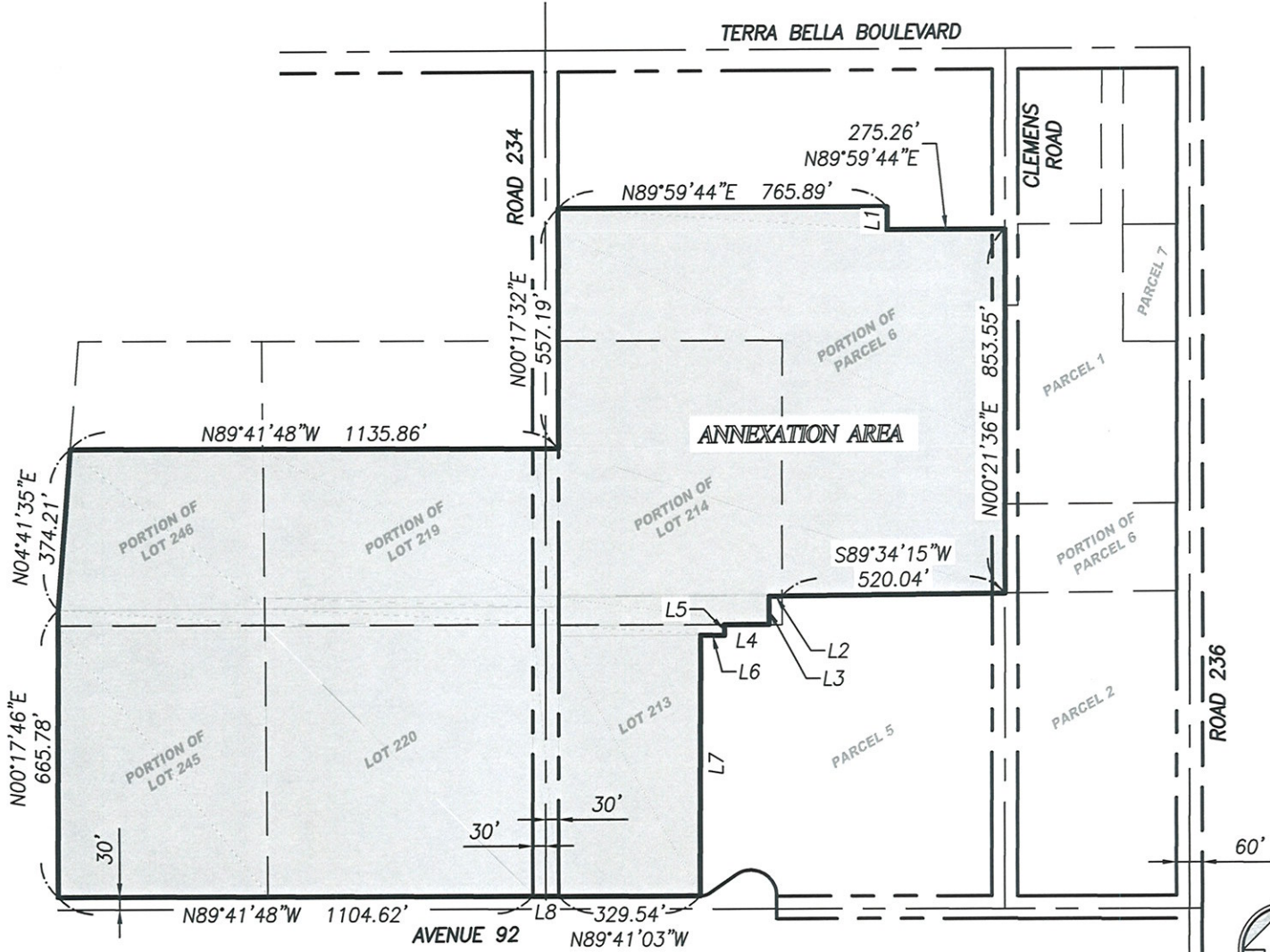


L:\PROJECTS\2018\180310\ACAD\EXHIBITS\180310 ANNEX EXHIBIT.DWG 4/29/2019 3:27 PM

Line Table		
Line #	Length	Direction
L1	52.96'	S00°20'25"W
L2	30.52'	S89°34'15"W
L3	65.83'	S00°27'19"W
L4	104.06'	N89°41'03"W
L5	24.98'	S00°22'17"W
L6	54.91'	N88°41'38"W
L7	605.48'	S00°22'17"W
L8	60.00'	N89°41'26"W



HIGHWAY 65



LEGEND

PROPOSED AREA OF ANNEXATION CONTAINING 54 ACRES, MORE OR LESS



0' 60' 400'
SCALE: 1" = 400'

PROJECT NO.: 180310
DRAWN BY: AC
QA/QC BY: AW
SCALE: 1" = 400'
SHEET NO.: 1 OF 1

EXHIBIT 'B'

SEWER DISTRICT ANNEXATION

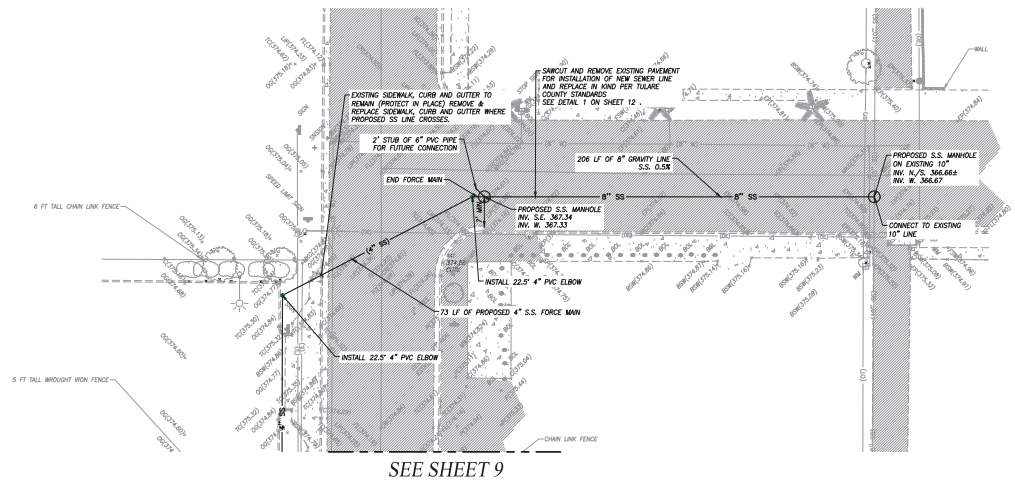
A PORTION OF PARCEL 6 PER PM 53/18. ALL OF LOT 220, AND PORTIONS OF LOTS 213, 214, 219, 245, AND 246 PER SM 9/5

901 EAST MAIN STREET
VISALIA, CA 93292

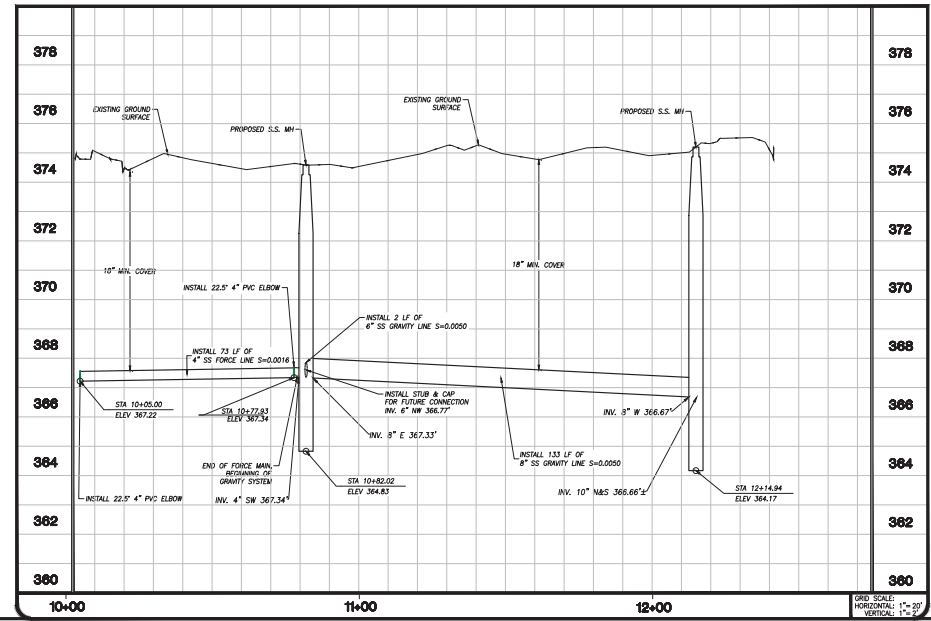
TEL: (559) 733-0440
WWW.QKINC.COM

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EXHIBIT 'C'



SEE SHEET 9



GRID SCALE:
HORIZONTAL: 1" = 20'
VERTICAL: 1" = 2'

C:\PROJECTS\2014\180310-SETON FARMS SEPTIC SYSTEM IMPROVEMENTS\180310-SEP-18-14\DWG-4-25-2019-848.dwg

NO.	DATE	BY	DESCRIPTION



APPROVED BY:
[Signature]
DATE: 1/17/19
PROJECT: SETON FARMS SEPTIC SYSTEM IMPROVEMENTS

PROJECT NO: 180310
DRAWN BY: [Name]
CHECKED BY: [Name]
SCALE: AS SHOWN
SHEET NO: 10 OF 12

DAYCO CONSTRUCTION, INC.
100 WEST BAYVIEW AVENUE
PORTLAND, OR 97207
(503) 782-2669

OK
James Winton and Associates
a OK Company
100 WEST BAYVIEW AVENUE
PORTLAND, OR 97207
(503) 782-2700

SETON FARMS SEPTIC SYSTEM IMPROVEMENTS PLAN AND PROFILE

PROJECT NO: 180310
DRAWN BY: [Name]
CHECKED BY: [Name]
SCALE: AS SHOWN
SHEET NO: 10 OF 12