

MEMORANDUM

Date: February 27, 2019
To: Board of Directors
From: Paul Siebensohn, Director of Field Operations
Subject: Consider Approval of Amending Highway 16 Bore Project Developer Reimbursement Agreement to add North Course Recycled Water Main Connection to Murieta Gardens

RECOMMENDED ACTION

Approve a Facilities Extension & Reimbursement Agreement with Murieta Gardens Developer in an amount not to exceed \$299,377 for project 1a and \$299,975 for project 1b for a revised total of \$599,352.

In the event the Department of Water Resources (DWR) approves this project for Proposition 84 Grant funding, the initial funding is to come 100% from Water Supply Augmentation reserve funds with a 50% reimbursement under the grant. In the event the DWR does not approve grant funding for this project, 100% of project costs will come from Water Supply Augmentation reserve funds.

BACKGROUND

In January 2019, the Board approved a Facilities Extension & Reimbursement Agreement with Developer for project 1a as described below. We are now seeking approval to add project 1b. Project 1b would be to tie a 12" line from the existing north recycled water transmission main that runs to Bass Lake with a 12" "T", install an automated valve in a vault, install SMUD power for the automated valve and future telemetry, two 12" manual isolation valves, and connect 545' of purple 12" C900 piping to the Murieta Gardens project at lot 14. This line would run under Highway 16 in the casing that is installed as project 1a. The cost estimate provided from the developer's engineer is \$299,975 (attached). My previous cost estimate of \$195,000 did not include a pressure reducing station, SMUD service for power, engineering easement documentation, and therefore the difference in cost. The engineer's estimate also has place holders for engineering, permitting, and staking soft costs as well as a 15% contingency.

The cost estimate would be a budgetary place holder as an approval amount not to be exceeded. For reimbursement the District requires detailed invoicing and certified payrolls to be submitted for review. The project description and estimate would also be revised and submitted to the Regional Water Authority who is the Prop 84 Grant administrator for the District. Per a phone call with Regional Water Authority (RWA) they understand the difference and requested the project budget be updated.

After the February 20, 2019 Board meeting discussing reassigning the Proposition 84 grant for water projects, I submitted the project scope, budget, schedule revisions and environmental documentation to the RWA. The RWA is in the process of reassigning our project with the Department of Water Resources and we are hoping the revised amount including this updated amount will be accepted by DWR for grant purposes. This action and table below supersedes the total Proposition 84 grant project amounts discussed and/or approved under Items 15 and 17 of the February 20, 2019 Regular Board Meeting

**RANCHO MURIETA COMMUNITY SERVICES DISTRICT
FACILITIES EXTENSION & FEE REIMBURSEMENT AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of _____, 2019 by and between Rancho Murieta Community Services District, a California special district (“**District**”), and Cosumnes River Land, LLC, a Delaware limited liability company, a property owner in the District (“**Developer**”), who agree as follows:

1. Recitals. This Agreement is made with reference to the following recitals:

1.1. Developer is the owner and developer of the real property described on the attached Exhibit A (the “**Property**”). Developer is developing and constructing a development project on the Property as described in Exhibit A (the “**Project**”).

1.2. District has required that the Project be served with recycled water pipelines for outside irrigation with recycled water. Developer previously installed a recycled water pipeline extending across the Property from a point near Lone Pine Drive and Murieta Drive to a point on Lot 14 of the Project near Highway 16.

1.3. Developer has agreed to install and bore a steel casing under Highway 16 and within that casing install approximately 545 feet of 12” recycled water main, subject to fee reimbursement in accordance with the terms and conditions of this Agreement. The bore casing will begin near the terminus of the existing recycled water pipeline on Lot 14 of the Project extending north across Highway 16 and will be approximately 175 feet in length. The 12” recycled main will be installed from the existing recycled main located north of Highway 16 extending west from the Old Yellow Bridge, south through the Highway 16 bore casing to the already installed recycled water main infrastructure just south of Highway 16 within the Murieta Gardens area on Lot 14. The location of the bore casing and recycled water main to be installed is shown on the attached Exhibit B.

2. Plans and Specifications. Developer, in consultation with District and the District engineer, will design and prepare detailed plans, specifications and drawings for the installation of the bore casing and recycled water main, and will submit them to District for approval. The plans, specifications and drawings must comply with the District Code and all District ordinances, resolutions, rules, regulations, policies, standards and specifications, as well as all other federal, state and local standards and requirements, whichever are most stringent. The plans, specifications, and drawings, when approved in writing by District and its engineer, will become a part of this Agreement. The recycled water bore casing and recycled water main improvements as described on the approved plans, specifications and drawings will be referred to as the “**Work**.” The Developer may modify the plans, specifications and drawings for the Work prior to or during the course of construction, provided that any modification is approved in advance and in writing by District.

3. Construction of Work

3.1. Developer shall furnish, construct and install the Work. The construction and materials must be in accordance with the provisions of this Agreement; the approved plans, specifications and drawings; District Code, ordinances, resolutions, rules, regulations, policies,

standards and specifications; other federal, state and local statutes, regulations, ordinances, codes and other requirements; and standard construction practices.

3.2. Prior to commencing construction of any portion of the Work, Developer or its contractor must submit to District a written list of materials, in a form acceptable to District, showing the particular manufacturer and specifications of all materials proposed to be installed by Developer. The District will either disapprove with reasons or approve the list of materials. Only materials approved in advance by District may be installed on the Work.

4. Licensed Contractor and Public Works Requirements. The contractor constructing and installing the Work (the “Contractor”) must be licensed pursuant to the California Business and Professions Code to do the Work and registered with the California Department of Industrial Relations. No construction can be performed on the Work except by a licensed and registered Contractor approved by District. District may request evidence of qualifications that the Contractor has satisfactorily constructed other projects of like kind and magnitude and comparable difficulty. To the extent required by law, Developer and its Contractor, and any contract entered into by Developer and its Contractor, must comply with California Labor Code provisions concerning payment of prevailing wage rates, penalties, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works projects within the meaning of the Labor Code. (See California Labor Code division 2, part 7, chapter 1 (sections 1720-1861).)

5. Faithful Performance Guarantee. Prior to commencement of construction of any portion of the Work by Developer’s Contractor, Developer must provide District with a faithful performance bond, letter of credit or other financial security satisfactory to District (“Performance Guarantee”) in a sum equal to 100% of the estimated cost of the Work to be constructed in public or private streets or rights-of-way or on public property. The Performance Guarantee will be for the purpose of insuring the proper and timely completion of the Work. In the event of the failure of Developer to complete the Work covered by the Performance Guarantee and District completes construction of the Work or any portion of it, Developer and its surety under the Performance Guarantee will be jointly and severally liable to District for the costs of completion, including, but not limited to, management and administrative costs, and engineering, legal and other costs incurred relating to the completion. District will bill Developer and the surety for the costs, which bill must be paid within thirty days of its date. Interest will accrue on any late payment at the legal rate then prevailing.

6. Time for Performance; Termination

6.1. Developer agrees to commence construction of the Work as soon as possible following execution of this agreement, and it will complete construction of the Work by June 30, 2019. Time is of the essence of this Agreement. Upon a showing of good cause by Developer, District may extend these deadlines. Any extension granted by District may be done without notice to any of Developer’s sureties, and the extension will not relieve any surety’s liability. District also may condition the granting of any extension by requiring acceptable new or amended faithful performance guarantee. If construction of the Work has not been completed and accepted by District within these deadlines, and any extensions, then District may terminate this Agreement at any time thereafter by giving written notice of termination to Developer.

6.2. Developer must give District at least 48 hours advance notice of the commencement of construction and installation of the Work. Any construction performed without notice to and inspection by District will be subject to rejection.

6.3. Developer may terminate this Agreement at any time prior to commencement of construction of any portion of the Work by giving written notice to District. After commencement of Work, Developer may terminate this Agreement only with the written consent of District, which consent may be given subject to reasonable conditions as necessary or appropriate to protect the public health, safety, aesthetics or welfare.

6.4. If the Agreement is terminated, District will have no further obligation under this Agreement and no obligation to provide water, sewer, drainage, or recycled water service to the Project or the Property. Upon termination, District will refund any advances made by Developer that exceed District's costs at the date of termination.

7. Inspections. District, may, at its option, inspect and test all or part of the construction or material being used in construction of the Work and Developer will provide reasonable assistance in performing all inspection and testing. The inspection and testing of the Work will not relieve Developer of its obligation to construct the Work in accordance with the approved plans, specifications and drawings. If all or any portion of the Work, or any materials used in connection with the Work, are found to be defective, substandard or nonconforming, then the Developer must replace, repair or otherwise remedy the Work to the satisfaction of District, notwithstanding that the Work and materials may have been previously overlooked or inspected by District. Developer must pay for the costs of inspection and testing by District and District's engineer.

8. Final Inspection. Upon completion of construction of the Work, Developer agrees to notify District and request a final inspection of the Work. District will inspect and test the Work to determine whether it meets the requirements of this Agreement. District will not accept any Work that does not satisfy District inspection and testing requirements. Pursuant to section 3, Developer must pay the costs of inspections and tests by District and District's engineer. Developer also will be responsible for all costs incurred in the testing of the Work as needed or required by other governmental agencies having jurisdiction.

9. Permits, Licenses and Easements. Developer must obtain, maintain and comply with all federal, state, county and other permits, licenses, approvals, and entitlements, including the California Department of Transportation encroachment permit for the Highway 16 undercrossing, that are necessary or appropriate for the Work. The Department of Transportation encroachment permit shall be obtained in the name of District. Developer must give all notices required by and comply with all federal, state, county and other laws, statutes, regulations, codes, ordinances, rules, regulations and policies relating to the construction of the Work. Developer agrees to obtain all real property and permanent and temporary easements of a width as determined by District to be necessary for the Work and for ingress and egress to and from the facilities for the purpose of construction, installation, operation, maintenance, repair, removal, replacement and improvement of the Work facilities. All completed Work-related easements and bills of sale must be in a form approved by District.

10. Transfer of Property and Easements. After District has finally inspected and approved the Work and as a condition precedent to District's acceptance of the Work, Developer must deliver a bill of sale and easements (for that portion of the Work located outside the Highway

16 right-of-way) satisfactory in form and content as necessary and appropriate to transfer absolute and unencumbered ownership of the completed Work to District. Title to the completed Work and the easement interests must be good, clear and marketable title and free and clear of all encumbrances, liens or charges. Developer will obtain and pay any costs of title insurance deemed necessary by District. With or without separate conveyance documents, all right, title and interest of Developer in and to the completed Work shall transfer to District upon District's written notice of acceptance of Work.

11. Maintenance Guarantee

11.1. Prior to District's acceptance of the work, Developer must provide District with a maintenance bond, letter of credit or other financial security satisfactory to District ("**Maintenance Guarantee**") in a sum equal to 50% of the cost of the Work to be transferred to District. The Maintenance Guarantee is for the purpose of warranting all materials and workmanship furnished pursuant to this Agreement for one year from the date of District's notice of acceptance of the Work.

11.2. Developer and/or its surety under the Maintenance Guarantee must repair or replace to the satisfaction of District all or any portion of the Work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other Work or facilities which may be damaged or displaced in so doing.

11.3. In the event of failure to comply with the above-stated conditions within a reasonable time, District is authorized to have the defect repaired and made good. Developer and its surety under the Maintenance Guarantee will be jointly and severally liable to District for the costs of repair, including, but not limited to, management and administrative costs, and engineering, legal and other costs incurred relating to the repair. District will bill Developer and the surety for the costs, which bill must be paid within 30 days of its date. Interest will accrue on any late payment at the legal rate then prevailing.

12. Conditions Precedent to Notice of Acceptance. District will not provide a written notice of acceptance of the Work until the following have occurred:

12.1. The Work has been completed, and finally inspected, tested and approved by District;

12.2. All costs, charges and fees required by this Agreement or District ordinances, resolutions and regulations to be paid to District by Developer have been so paid in full;

12.3. The completed Work bill of sale and easements have been conveyed to, and accepted by District, in accordance with sections 10 and 11;

12.4. Developer has provided to District in satisfactory form and content the following items:

(a) As-built (also known as record) drawings of the completed Work, satisfactory to District, together with a copy of the specifications and any contract documents used for the construction of the Work;

(b) An accounting, satisfactory to District, of the amounts expended for the construction and installation of the Work, with values applicable to the various components

of the Work, together with a list of any other materials and equipment, and their values, being transferred; and,

(c) Operating manuals and instructions and warranties, if any, received by Developer or its Contractor in connection with any of the facilities made a part of the Work; and,

12.5. Developer has submitted an acceptable Maintenance Guarantee in accordance with section 12.

Upon District's determination that these conditions have been met, the District Board of Directors will accept the Work and provide notice of acceptance to Developer.

13. Developer Assistance. Developer, both before and after District's acceptance of the Work, will cooperate with District and secure and provide any information, documents or data reasonably requested by District to accept the ownership, operation and maintenance of the Work and implement the transfer of the Work.

14. Ownership and Operation and Maintenance Responsibilities. After acceptance of the completed Work by the District, the Work shall become the property of District on the date that the Work is accepted by District Board. Upon such date, Developer will be deemed to have conveyed and transferred all of its right, title and interest in and to the completed Work to District. District thereafter will own and be free in every respect to operate, maintain, repair, replace, manage, expand, and improve the Work, as it deems appropriate. District assumes no obligation as to operation and maintenance of the Work until such time as it accepts the Work.

15. Risk of Loss. Until the date of District's acceptance of the Work, all risk of loss or injury, damage or destruction to the Work shall be upon Developer. After the date of the District's acceptance, and except as provided by the Maintenance Guarantee and any applicable guarantee, insurance, or indemnification obligation, all risk of loss or injury or destruction to the Work shall be upon District.

16. Fee Reimbursement

16.1. Development on the Project is and will be subject to payment of the District Water Supply Augmentation Fee (the "Fee"). Developer shall pay the Fees and other applicable District development-related fees for each Project building and structure in accordance with the requirements of the District Code. The Fee amount shall be at the then-prevailing applicable rate at the time of payment.

16.2. The Work is one of the public improvements listed in the District Water Supply Augmentation Fee and Facilities Capital Improvement Fee Study Update dated November 8, 2017 as referred to in District Code Chapter 8 and planned to be funded by revenue from the Fee. Within the Fee Study Update, the Project is identified as a component of the "Northwest Recycled Water Transmission Main (CIP 17-5-05)." As such, since Developer will be designing and constructing the Work at its cost, the parties agree that Developer will be entitled to reimbursement from the Fee fund in the amount of the cost to design and construct the Work as calculated and applied under this section.

16.3. The Fee reimbursement will be calculated based on (and limited to) Developer's actual, direct, necessary, reasonable and substantiated costs to design, procure materials for, and construct the Work. Developer will verify and substantiate its costs of construction by preparing a cost substantiation certificate (the "**Certificate**") and providing it to District upon completion of the Work. The Certificate must (a) describe the type and amount of all costs, (b) describe the competitive or other process utilized by Developer to obtain the prices, (c) substantiate that each cost item was actually incurred and paid by including appropriate documentation of each expense (e.g., copies of invoices, bills, canceled checks, credit card statements, timesheets, expense reports, receipts or other proof of payment), and (d) certify that the costs were actually and directly incurred and paid by Developer in the design and construction of the Work. The documentation must be in a format reasonably acceptable to District and include reasonably detailed information supporting each expense. Developer's costs for Fee reimbursement purposes will not include any mark-up for profit, administration, overhead, or other reason.

16.4. Upon receipt of a complete Certificate, District will evaluate it and determine whether Developer's costs are actual, direct, necessary, reasonable and substantiated. The actual, direct, necessary, reasonable and substantiated costs of the Work as approved by District in writing will be the "**Fee Reimbursement Amount.**" The Fee Reimbursement Amount shall not exceed \$599,352. District shall pay the Fee Reimbursement Amount to developer within 30 days after District's approval of the Fee Reimbursement Amount. See Exhibits C & D for Bore/Bore Casing and 12" Recycled Water Main respective components.

17. Indemnification and Hold Harmless. Developer agrees to indemnify, protect, defend and hold harmless District and its officers, employees, engineers, and agents, from any and all claims, demands or charges and from any loss or liability, including all costs, expenses, attorney's fees, litigation costs, penalties, and other fees arising out of or in any way connected with the construction of the Work or the performance or failure to perform under this Agreement by Developer or its officers, employees, contractors, subcontractors or agents. The parties agree and acknowledge that Developer's duties under this section extend to claims, lawsuits and liability of or against District resulting from the alleged failure to comply with any provision of California Labor Code division 2, part 7, chapter 1 (sections 1720-1861) in connection with the construction of the Work by Developer's contractor.

18. Insurance

18.1. Developer or its Contractor at their sole cost and expense must procure and maintain for the duration of this Agreement the following types and limits of insurance:

Type:	Limits No Less Than:	Scope:
Commercial general liability	\$5,000,000/occurrence	at least as broad as ISO occurrence form CG 0001
Commercial general liability (for subcontractors)		at least as broad as CG 20 38 04 13
Automobile liability	\$5,000,000/accident for bodily injury and property damage	at least as broad as ISO CA 0001 (code 1, any auto)
Workers' compensation	statutory limits	
Employers' liability	\$1,000,000 per accident for bodily injury or disease	
Professional liability	\$2,000,000 per occurrence or claim; \$2,000,000 policy aggregate	For the engineer who prepares the Work plans, specifications and drawings
Contractors' pollution liability	\$1,000,000 per occurrence or claim; \$2,000,000 policy aggregate	

18.2. The general and automobile liability policy(ies) must be endorsed (consistent with Insurance Code section 11580.04) to name District, its officers, employees and agents as additional insureds regarding liability arising out of the Work. Developer's coverage will be primary and will apply separately to each insurer subject to a claim or lawsuit, except with respect to the limits of the insurer's liability. District's insurance, if any, will be excess and shall not contribute with Developer's insurance.

18.3. Insurance must be placed with insurers with a current A.M. Best's rating of A-VII or better unless otherwise acceptable to District.

18.4. Developer or its Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein and Developer or its Contractor will ensure that District is an additional insured on insurance required from subcontractors.

18.5. Prior to commencing the Work, Developer must provide to District the following proof of insurance: (a) certificate(s) of insurance on ACORD Form 25-S (or insurer's equivalent) evidencing the required insurance coverages; and (b) endorsement(s) on ISO Form CG 2010 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf the insurer(s), certifying the additional insured coverages.

19. General Provisions

19.1. Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

19.2. Construction and Interpretation. The parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and

fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

19.3. Waiver. The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Agreement will not be deemed a waiver with respect to any subsequent default or matter.

19.4. Remedies Not Exclusive. The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by either party of any remedy under this Agreement will be without prejudice to the enforcement of any other remedy.

19.5. Severability. The invalidity, illegality or unenforceability of any provision of this Agreement will not render the other provisions unenforceable, invalid or illegal.

19.6. Personal Obligation; Successors and Assigns. Developer's obligations under this Agreement are personal obligations of Developer and they do not automatically "run with" the Property. Developer cannot assign its obligations under this Agreement to any transferee of all or any part of the Property or any other third party without the express written consent of District, which consent will not be withheld unreasonably.

19.7. Relationship of Parties. Developer and its contractors and agents are not agents of District in connection with the Work or performance of Developer's obligations under this Agreement.

19.8. Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved and executed by both parties.

19.9. Governing Law and Venue. Except as otherwise required by law, (a) this Agreement will be interpreted, governed by, and construed under the laws of the State of California, and (b) Sacramento County shall be venue for any state court lawsuit and the Eastern District of California shall be venue for any federal court lawsuit seeking to enforce or construe this Agreement.

19.10. Notices. Any notice, invoice or other communication required or permitted to be given under this Agreement must be in writing and either served personally or sent by prepaid, first class U.S. mail and addressed as follows:

District: General Manager Rancho Murieta Community Services District P.O. Box 1050 Rancho Murieta, CA 95683	Developer: Manager Cosumnes River Land, LLC 14670 Cantova Way, Ste. 220 Rancho Murieta, CA 95683
--	--

Any party may change its address by notifying the other parties in writing of the change of address.

**RANCHO MURIETA COMMUNITY
SERVICES DISTRICT**

COSUMNES RIVER LAND, LLC

By: _____
Mark Martin
General Manager

By: _____
John M. Sullivan
Manager

EXHIBIT A

MURIETA GARDENS I & II PROJECT AREA

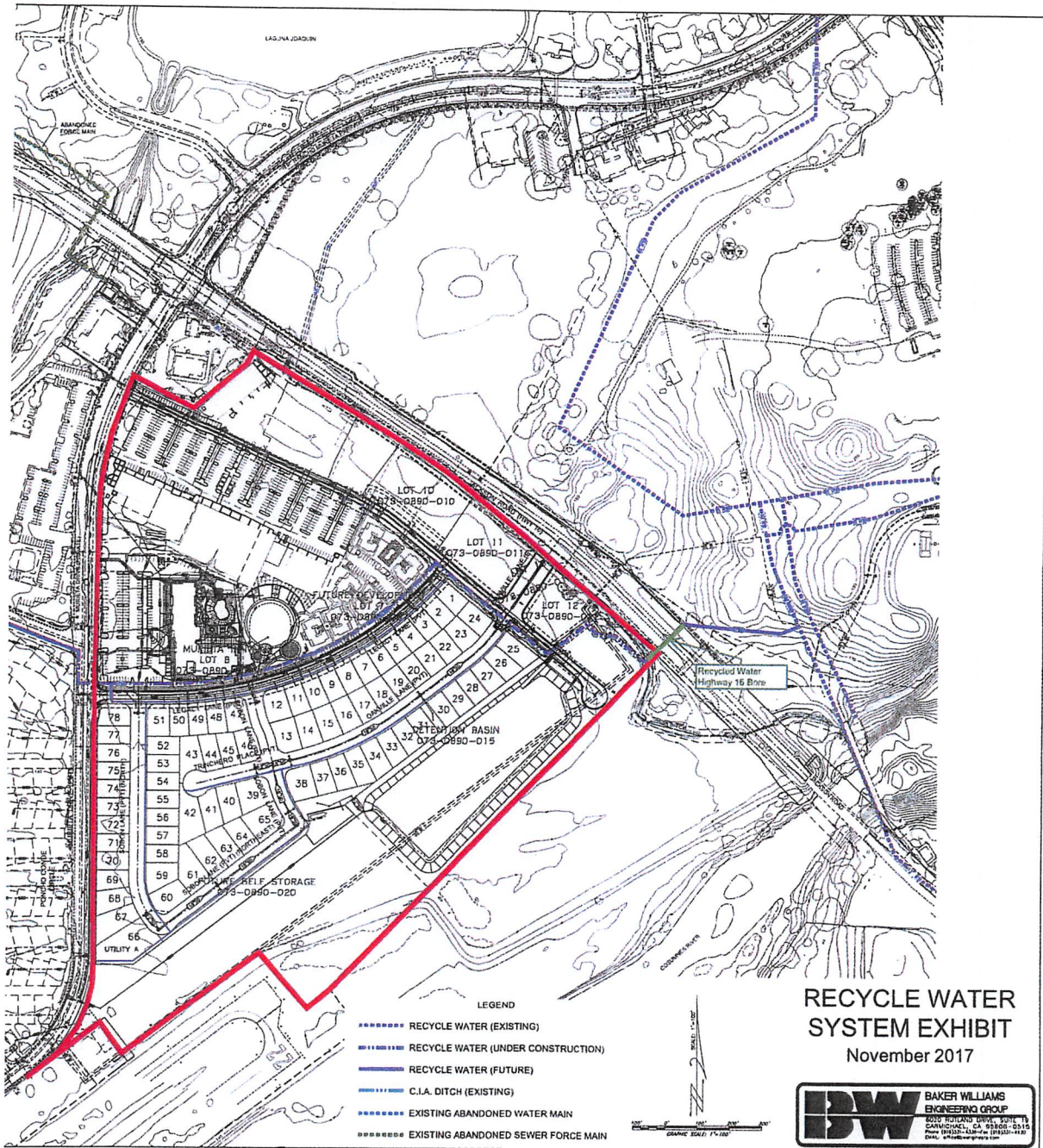


EXHIBIT B

LOCATION OF HIGHWAY 16 BORE/CASING AND 12' RECYCLED WATER LINE

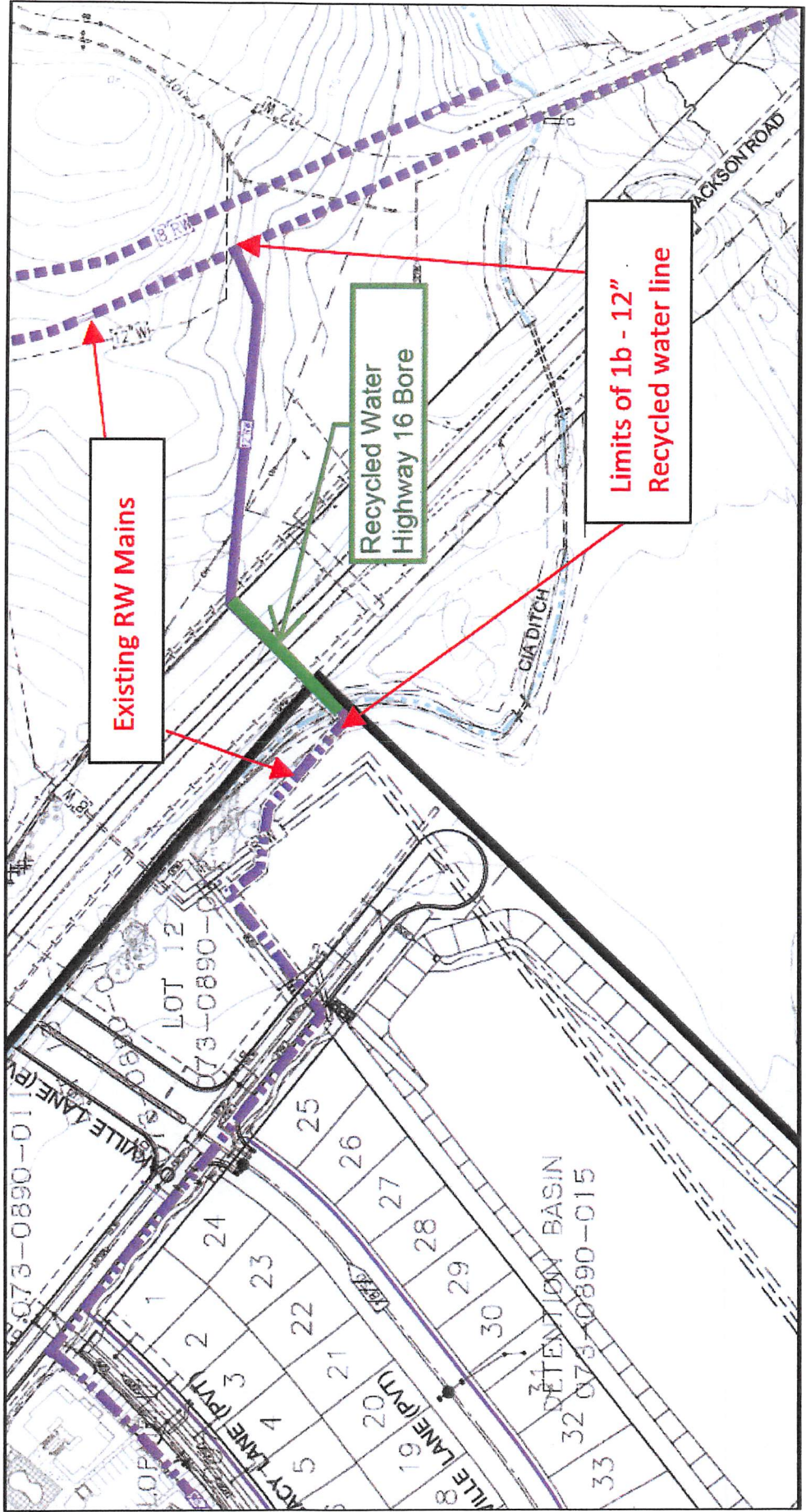


EXHIBIT D

BAKER-WILLIAMS ENGINEERING GROUP

6020 Rutland Drive Suite 19

Carmichael, Ca 95628

(916)-331-4336 Fax (916)-331-4430

12" RECYCLED WATER MAIN

COST ESTIMATE

DRAFT

February 27, 2019

John M. Sullivan
Cosumnes River Land, LLC
P.O. Box 1230
Rancho Murieta, CA 95683

Subject: Murieta Gardens- Additional Recycle Water Facilities Cost Estimate
Item 1B of Reimbursement Agreement
Our File No. 11-01-001

Dear John

The following is the estimated cost for future recycled water line from Murieta Gardens Lot 14 to the existing recycle water line north of the Yellow Bridge.

The cost include a 15% contingency and a 15% engineering, permitting, and staking soft cost.

BORE STEEL CASING UNDER HWY 16 FOR FUTURE RECYCLE WATER LINE				
ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT
1	12" REC WATER - OFF PAVEMENT	370 LF	\$100.00	\$37,000.00
2	CONNECT TO EX 12" REC WATER (YELLOW BRIDGE) Auto valves in vault, GV, tee	1 EA	\$50,000.00	\$50,000.00
3	12" PRS (PRESSURE REDUCING STATION)	1 EA	\$100,000.00	\$100,000.00
4	12" REC WATER IN 22" CASING (AT BORE)	175 LF	\$50.00	\$8,750.00
5	CONNECT TO EX 12" REC WATER @ LOT 14	1 EA	\$5,000.00	\$5,000.00
6	ELECTRIC SERVICE BUDGET	1 EA	\$25,000.00	\$25,000.00
7	ENGINEERING EASEMENT DOCUMENT	1 EA	\$5,000.00	\$5,000.00
SUB TOTAL				\$230,750.00
Engineering, Permitting, and Staking Soft Costs at 15%				\$34,612.50
Contingencies at 15%				\$34,612.50
TOTAL ITEM				\$299,975.00

Note:

- 1 This estimate is based on unapproved plans subject to change from field conditions.
- 2 The unit prices shown are prevailing wage estimated and subject to contractors bid prices.

If you have any questions or need additional information, please call.

BAKER-WILLIAMS ENGINEERING GROUP

Michael Robertson