

## MEMORANDUM

Date: April 16, 2021

To: Board of Directors

From: Tom Hennig, General Manager

Subject: Revision to Rancho Murieta Country Club Loan Agreement for Reclaimed Water Pump Repair

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### RECOMMENDATION:

Approve the revision to the Rancho Murieta Community Services District/Rancho Murieta Country Club Loan Agreement for Reclaimed Water Pump Repair in the form as presented at this meeting.

### BACKGROUND:

The Board approved a loan to Rancho Murieta Country Club (RMCC) at the January 20, 2021 Board meeting in an amount up to \$115,816 to fund the North Course recycled water the pump station repair/upgrade work. At this Board meeting, Tom Hennig, General Manager, to resolve a potential conflict of interest because three of the Board Members are also members of the Country Club placed the names of the three members (Maybee, Jenco and Pohll) in a cup, and District Secretary, Amelia Wilder pulled the name of one out of the cup. She pulled out Director Jenco, so the other two were muted and not allowed to speak on the topic. We will take this same action when discussing this agreement today. This work was considered necessary as the District disposes of treated reclaimed water at the RMCC golf courses pursuant to the 1988 Agreement for Availability and Use of Reclaimed Wastewater. The District delivers some of the reclaimed water to Bass Lake where RMCC pumps it from the RMCC North Pump Station for irrigation use. The pump station is failing and in need of repair and upgrade. The pump station needs to be ready for the current reclaimed water delivery that began in April. The North Pump Station is a critical component of the reclaimed water system.

Since the Agreement was drafted, the leadership at RMCC has requested a change in the Section 10. Limitation of the Loan Agreement. The original language was:

**10. Limitations.** During the five-year Loan repayment period, Borrower shall not, without prior written consent of Lender (a) pledge, mortgage, or otherwise encumber in any manner whatsoever any of Borrower's present or after acquired property or assets, (b) borrow money or obtain a loan from any person, corporation, or any other source, (c) make or guarantee any advances or loans made to others, or (d) sell or distribute a substantial part, or all, of its assets.

RMCC has requested that the following language be added Section 10 of the Loan Agreement:

*“except, however, that Borrower in the ordinary course of business may lease equipment and maintain and use a bank line of credit as appropriate to operate and maintain its golf courses and related structures and facilities.”*

Section 10 of the final Loan Agreement would read as follows:

**10. Limitations.** During the five-year Loan repayment period, Borrower shall not, without prior written consent of Lender (a) pledge, mortgage, or otherwise encumber in any manner whatsoever any of Borrower's present or after acquired property or assets, (b) borrow money or obtain a loan from any person, corporation, or any other source, (c) make or guarantee any advances or loans made to others, or (d) sell or distribute a substantial part, or all, of its assets; except, however, that Borrower in the ordinary course of business may lease equipment and maintain and use a bank line of credit as appropriate to operate and maintain its golf courses and related structures and facilities.

Staff is bringing this to the Board as there is a substantive change to the agreement that requires Board approval. We recommend approving this new language to allow RMCC to continue with its normal operations unrestricted.

**RANCHO MURIETA COMMUNITY SERVICES DISTRICT/  
RANCHO MURIETA COUNTRY CLUB LOAN AGREEMENT  
FOR RECLAIMED WATER PUMP REPAIR**

THIS AGREEMENT is entered into this April \_\_\_, 2021, by and between Rancho Murieta Community Services District, a local government agency (“Lender”), and Rancho Murieta Country Club, a California nonprofit corporation (“Borrower”), who agree as follows:

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

1.1. Lender provides sewer service to the Rancho Murieta community, including the operation of a wastewater treatment plant that produces reclaimed water. Borrower operates and manages golf courses in Rancho Murieta. Lender and Borrower previously entered into the 1988 Agreement for Availability and Use of Reclaimed Wastewater to provide for the delivery and disposal of reclaimed water to the golf courses. The golf course property is the principal site for Lender to dispose of the reclaimed water produced by its wastewater treatment plant.

1.2. Borrower has installed and operates certain equipment to receive and distribute the reclaimed water for irrigation on the golf course lands. The reclaimed water improvements include the North Pump Station at Bass Lake. The pump station is failing and in need of repair and upgrade.

1.3. The efficient operation of the reclaimed water system requires that the delivery and use of the reclaimed water begin in April when the District begins storing reclaimed water in Bass Lake, which is approaching. It therefore is essential for Borrower to promptly repair and upgrade the pump station in order to be able to receive and distribute the full allotment of reclaimed water delivered by Lender. Borrower pursuit of loan financing through customary commercial lenders and lending practices would require a significant period of time. Borrower may not be able to receive and distribute the full reclaimed water delivery amount while pursuing such a commercial loan. Consequently, in order to expedite the repair work, Borrower has requested a loan from Lender.

1.4. Lender’s wastewater treatment and disposal system is designed for the delivery, storage, and disposal of reclaimed water at Borrower’s golf courses. The inability of the North Pump Station to pump and distribute the reclaimed water for irrigation purposes at the golf courses would adversely affect Lender’s operations and the treatment and disposal of reclaimed water. Consequently, it is in Lender’s best interests to loan funds to Borrower in order to facilitate the prompt repair and upgrade of the pump station.

1.5. Lender has determined that approving Borrower’s loan request would further Lender’s wastewater treatment and disposal needs and objectives. Lender further determines that the loan will directly further Lender’s purposes consistent with the Community Services District Law and that the loan is an authorized and appropriate

expenditure of Lender funds. Lender therefore agrees to provide the loan on and subject to the terms of this Agreement.

1.6. Lender also provides water service to the Rancho Murieta community. Borrower is a customer of Lender for both water and sewer service.

## **2. Loan**

2.1. Lender agrees to loan to Borrower, and Borrower agrees to borrow from Lender, a sum not to exceed \$115,816, subject to the terms and conditions of this Agreement (the "Loan"). Borrower shall use the Loan funds provided by Lender for the purpose described in the recitals and for no other purpose. Borrower may use the Loan funds solely for payment to its pump repair contractor and not for any other Borrower administration or other pump repair related costs. Borrower also shall reimburse Lender for Lender's staff and legal time, fees, and costs in evaluating the Loan request, preparing this Agreement, and administering the Agreement and Loan. The final Loan amount shall be the final sum of the total Loan funds disbursed by Agency under section 3 plus the cost reimbursement amount.

2.2. Borrower accepts the Loan and approves this Agreement evidencing this indebtedness in the original principal amount of \$115,816 (subject to final calculation as provided in section 2.1). Borrower promises to pay to Lender, or order, the Loan with interest at an initial rate of 2% per annum and subject to an interest rate adjustment as provided below.

2.3. Upon completion of the North Pump Station repair/upgrade work, Lender shall calculate, prepare, and provide to Borrower a repayment schedule showing the final Loan sum and monthly principal and interest repayment amounts over a five-year repayment period. The first monthly Loan payment will be due on the first of the month following completion of the work. But, if Borrower delays in completing the pump station repair/upgrade work, the five-year loan repayment period shall commence three months after the first Loan disbursement. Borrower will pay the Loan principal and interest balance in full within the five-year period and in accordance with the repayment schedule. Lender may include the Loan repayment amounts in its monthly utility service billing statement to Borrower, in which case Borrower shall pay the monthly Loan payment together with and as part of its monthly utility bill payment to Lender. Loan payments shall be credited first to accrued interest and then to principal. Borrower may fully repay the principal balance and any accrued interest at any time, without prepayment penalty.

2.4. The final interest rate will be based on the actual rate of interest earned by funds deposited by Lender with the state Local Agency Investment Fund (LAIF) during the five-year Loan repayment period (or such earlier period if Borrower chooses to prepay the Loan), but not less than 2% per annum. At the conclusion of the five-year repayment period, Lender shall calculate the final interest amount based on the LAIF rate and will true-up the final payment amount as compared to the 2% interest rate paid during the Loan term. The final Loan payment amount will be adjusted to reflect the actual LAIF rate over the five-year term (but not less than 2%).

**3. Disbursement of Funds.** Lender shall disburse Loan funds to Borrower based on the invoices to be submitted to Borrower by its pump repair contractor, which will be: 50% due upon Borrower's approval of the repair contract; 40% due upon contractor's installation of the pump station; and, 10% due 30 days after job completion. Borrower shall submit such contractor invoices to Lender and Lender will disburse the Loan funds to Borrower within 15 days from receipt of the invoice. Interest will begin accruing on the loaned funds upon disbursement to Borrower.

**4. Pump Repair Work.** Upon approval and execution of this Agreement, Borrower promptly and diligently shall proceed to repair and upgrade its North Pump Station.

**5. Public Works Requirement.** The parties acknowledge that Lender is a local government agency and that Lender payment of the pump station repair/upgrade costs makes the work a California public works project within the meaning of the California Labor Code. Consequently, Borrower and its contractor and any subcontractors shall comply with California statutes and regulations applicable to public works projects, including the following requirements: payment of prevailing wage rates; employment of apprentices; hours of labor limitations and overtime; keeping of proper payroll records; workers' compensation insurance; payment/labor and materials bond; non-discrimination laws; contractors' state license requirements; and, contractor registration with the State Department of Industrial Relations.

**6. Recordkeeping.** Borrower shall keep and maintain accurate bookkeeping records, accounts, and documentation pertaining to the receipt, disbursement, and use of the Loan proceeds to pay contractors who perform the pump station repair/upgrade work, including all invoices, receipts, canceled checks, contracts, purchase orders, and other source documents. These records shall be retained for a period of not less than three years from the final Loan disbursement date. These records shall be accessible and available for inspection or audit by Lender, or by its employees, accountants, attorneys, or agents, at reasonable times and upon reasonable notice. This Agreement, and performance and payments under this Agreement, also are subject to examination and audit by the State Auditor General for three years following final disbursement (as required by Government Code section 8546.7).

**7. Indemnification.** Borrower shall indemnify, defend, protect, and hold harmless Lender, and its officers, employees, and agents from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including but not limited to, attorney, expert witness and consultant fees and litigation costs) of every nature arising out of Borrower's performance of the Loan-funded work and caused by the negligent or willful act or omission of Borrower or its contractors or subcontractors or their employees, agents, and subcontractors, except where caused by the active negligence, sole negligence or willful misconduct of Lender or as otherwise provided or limited by law.

**8. Representation and Warranties.** Borrower makes the following representations and warranties:

8.1. There are no legal actions, lawsuits, or proceedings pending or, to the knowledge of Borrower, threatened against Borrower.

8.2. Borrower is not in default of any obligation, judgment, bond, note or other evidence of indebtedness.

8.3. No outstanding tax liability has been asserted against Borrower by the federal Internal Revenue Service, California Franchise Tax Board, or any other taxing authority.

## **9. Default**

9.1. At the option of the Lender, the occurrence of any of the following events shall constitute a default:

A. Borrower fails to make any payment of principal or interest or any other amounts due Lender when due and such failure shall continue for five days after notice from Lender to Borrower.

B. Any material representation or warranty made by Borrower is breached, false, or misleading in any material respect.

C. Any material provision of this Agreement ceases to be valid and binding, or Borrower contests any such provision or denies that it has any or further liability under this Agreement.

D. Borrower fails to perform any covenant or condition set forth in this Agreement, and such failure continues for a period of 30 days after notice from Lender to Borrower (which notice shall specify in reasonable detail the nature of the failure).

E. Borrower becomes insolvent or unable to pay its debts as they mature or makes an assignment for the benefit of creditors, or there shall occur a material adverse change in the financial condition of Borrower.

F. Borrower files or there is filed against Borrower a petition to have Borrower adjudicated a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Borrower, the same is dismissed or stayed within 60 days.

G. Borrower applies for or consents to the appointment of a receiver, trustee or conservator for any portion of Borrower's property, or such appointment is made without Borrower's consent and is not vacated within 60 days.

9.2. In the event of default, Lender may immediately call the Loan due and payable and enforce its remedies as provided by law. As an additional or alternate remedy in the event of a default, Lender may terminate water service to Lender and its property and facilities pending Loan repayment in full.

**10. Limitations.** During the five-year Loan repayment period, Borrower shall not, without prior written consent of Lender (a) pledge, mortgage, or otherwise encumber in any manner whatsoever any of Borrower's present or after acquired property or assets,

(b) borrow money or obtain a loan from any person, corporation, or any other source, (c) make or guarantee any advances or loans made to others, or (d) sell or distribute a substantial part, or all, of its assets; except, however, that Borrower in the ordinary course of business may lease equipment and maintain and use a bank line of credit as appropriate to operate and maintain its golf courses and related structures and facilities.

## **11. General Provisions**

11.1. Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of 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.

11.2. Construction and Interpretation. The parties 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 shall not apply in construing or interpreting this Agreement.

11.3. 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 shall not be deemed a waiver with respect to any subsequent default or matter.

11.4. Successors and Assignment. This Agreement shall bind and inure to the benefit of the respective successors, assigns, heirs, devisees, and personal representatives of the parties.

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

11.6. Governing Law and Venue. Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of Sacramento will be the venue for any state court litigation and the Eastern District of California will be the venue for any federal court litigation concerning the enforcement or construction of this Agreement.

11.7. Attorney Fees. In the event any legal action is brought to enforce or construe this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, expert witness and consultant fees, litigation costs, and costs of suit.

11.8. Notices. Any notice, consent, approval, or other communication (collectively "Notice") required or permitted to be given under this Agreement shall be in writing and delivered or sent either (a) in person, (b) by prepaid, first class U.S. mail, (c) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or (d) by email with a confirmed receipt. Any Notice so delivered or sent will be deemed given (a) when delivered in person, (b) three days after

deposited in prepaid, first class U.S. mail, (c) on the date of delivery as shown on the overnight courier service receipt, or (d) upon the sender's receipt of an email from the other party confirming the receipt of the emailed Notice. Notices required or permitted to be given under this Agreement shall be addressed as follows:

<b>Lender:</b>  General Manager Rancho Murieta Community Services District 15160 Jackson Road Rancho Murieta, CA 95683 thennig@rmcsd.com	<b>Borrower:</b>
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Any party may change its contact information by notifying the other party of the change in the manner provided above.

RANCHO MURIETA COMMUNITY  
SERVICES DISTRICT

RANCHO MURIETA COUNTRY CLUB

By: \_\_\_\_\_  
Tom Hennig  
General Manager

By: \_\_\_\_\_  
Bill Armstrong  
President

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\_\_\_\_\_  
\_\_\_\_\_ [name]  
\_\_\_\_\_ [title]