

Agenda
Rio Linda / Elverta Community Water District
Planning Committee

Sacramento Metro Fire Dept.
6609 Rio Linda Blvd.
Rio Linda, CA 95673

Friday, September 7, 2018
2:00 pm

Public documents relating to any open session items listed on this agenda that are distributed to the Committee members less than 72 hours before the meeting are available for public inspection on the counter of the District Office.

The public may address the Committee concerning any item of interest. Persons who wish to comment on either agenda or non-agenda items should fill out the Comment Card and give it to the General Manager. The Committee Chair will call for comments at the appropriate time. Comments will be subject to reasonable time limits (3 minutes).

In compliance with the Americans with Disabilities Act, if you have a disability, and you need a disability-related modification or accommodation to participate in this meeting, please contact the District office at (916) 991-1000. Requests must be made as early as possible and at least one full business day before the start of the meeting.

Call to Order

Public Comment

This is an opportunity for the public to comment on non-agenda items with the subject matter jurisdiction of the Committee. Comments are limited to 2 minutes.

Items for Discussion and Action

1. Discuss the draft resolution to adopt the recently updated Integrated Regional Water Management Plan (IRWMP).
2. Status report on discussions with Elverta Specific Plan Owners Group.
3. Status report on Property Donation Agreement with Elverta Associates LLC.
4. Review and discuss policies and practices for Legal Counsel work on Elverta Specific plan development issues.
5. Well #10 and Well #16 projects update.

Items Requested for Next Month's Committee Agenda

Adjournment

Next Scheduled Planning Committee Meeting: Friday, October 5, 2018



Planning Committee

Agenda Item: 1

Date: September 7, 2018

Subject: Discuss the attached draft resolution regarding the recently updated Integrated Regional Water Management Plan (IRWMP).

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

Review the included draft resolution to adopt the updated Integrated Regional Water Management Plan (IRWMP) for the American River Basin.

Current Background and Justification:

As stated in the included email from Regional Water Authority (RWA), adoption of the updated IRWMP by resolution is required to maintain the District's eligibility for Dept. of Water Resources Proposition 1 grant funds.

Adopting the resolution does not make the District responsible for implementing the plan. Adopting the resolution simply conveys that the District shares in the plan's vision, principles and objectives.

Staff recommendation:

I recommend the Planning Committee forward the draft resolution onto the Board agenda for September 17th.

RESOLUTION NO. 2018-08
ADOPTION OF AMERICAN RIVER BASIN INTEGRATED
REGIONAL WATER MANAGEMENT PLAN

WHEREAS, the stakeholders of the American River Basin (ARB) support a vision of responsibly managing water resources for the lasting health of the region's community, economy, and environment;

WHEREAS, the stakeholders of the American River Basin recognize the development and implementation of an Integrated Regional Water Management Plan (IRWMP) will support realization of this vision;

WHEREAS, RWA was designated in November 2009 by the California Department of Water Resources as the Regional Water Management Group (RWMG) authorized to prepare and implement an IRWMP within the ARB planning area;

WHEREAS, since November 2009, RWA has collaborated extensively with regional stakeholders to develop a vision, principles, goals, and objectives to support the ARB IRWMP;

WHEREAS, the ARB IRWMP is not a legally binding document on the stakeholders adopting the plan, but rather serves as a framework for coordinated planning in the region;

WHEREAS, the ARB IRWMP is a living document, with defined processes for updating plan components;

WHEREAS, RWA, serving as the RWMG, adopted an update to the ARB IRWMP at a public meeting held on July 12, 2018.

THEREFORE, BE IT RESOLVED, that Rio Linda/Elverta Community Water District hereby adopts the ARB IRWMP that provides a broadly supported vision, principles, goals, and objectives to help ensure sustainable water resources in the region. Rio Linda/Elverta Community Water District will strive to ensure that projects it submits into the ARB IRWMP have considered opportunities for achieving integrated benefits. Furthermore, Rio Linda/Elverta Community Water District will update information on any of its projects included in the ARB IRWMP on at least an annual basis.

APPROVED AND ADOPTED by the Board of Directors of the Rio Linda / Elverta Community Water District on this 17th day of September 2018. By the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

ATTEST:

Mary Harris
President, Board of Directors

Timothy R. Shaw
Secretary of the Board of Directors

DRAFT



Planning Committee Agenda Item: 2

Date: September 7, 2018

Subject: Elverta Specific Plan Owners Group Discussions (ESPOG).

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

Review the recent written correspondence between the District and ESPOG, then discuss ways to address the concerns expressed by both parties.

Current Background and Justification:

Among other topics, the August 13th letter from ESPOG and the August 29th response from the District mutually embrace the method of holding workshops between the developers and the RLECWD Planning Committee as a means for addressing unresolved differences.

Staff recommendation:

I recommend the Planning Committee review the written correspondence and engage the ESPOG representatives (anticipated to be in attendance) in dialog regarding ways we could move forward.



August 13, 2018

Mary R. Harris, President RLECWD
Brent Dills, Director RLECWD
Rio Linda Elverta Community Water District (RLECWD) Planning Committee
730 L Street
Rio Linda, CA 95673

SUBJECT: Follow-up to 8/3/18 Planning Committee meeting

Dear President Harris and Director Dills:

On behalf of the Elverta Specific Plan Owners Group (ESPOG), thank you for the opportunity to discuss important water and infrastructure issues at your recent Planning Committee meeting.

As you are aware, we have been working for the past several years, most recently with District General Manager Tim Shaw and District Counsel Barbara Brenner, toward the development and adoption of a Water Services Agreement ("Agreement") to provide water for future homes within the 1,744-acre Elverta Specific Plan ("ESP") area. Adoption of this agreement will memorialize the District's commitment to serve ESP, as well as affirm the obligation of ESP developers to install the necessary groundwater facilities to serve the ESP area until the Rio Linda Elverta Community Water District ("District") is able to deliver surface water to the District's customers.

Over the last few years we have worked extensively with the District Board and Staff to develop the water supply program for ESP. During that time the District Board took four equally important actions relating to water supply for ESP:

1. Approval of the District's Water Supply Master Plan (April 2014),
2. Approval of the Elverta Specific Plan Water Supply Strategy (January 2016),
3. Approval of the Water Supply Assessment for the Elverta Specific Plan (January 2016),
and
4. Adoption of the Water Service Connection Fee Ordinance No. 2016-01 (September 2016).

The Water Service Connection Fee adopted by your Board consists of four major components:

1. Groundwater Supply, Treatment and Storage	\$ 4,470±/DU (±45.6%)
2. Surface Water Supply, Treatment and Transmission	\$ 6,936±/DU (±53.1%)
3. Transmission & Distribution System	\$ 1,489±/DU (±11.4%)
4. District Wide Facilities (Incl. Capacity Buy-In)	\$ 170±/DU (±01.3%)
Total Connection Fee	\$ 13,065±/DU (100.0%)

In 2016, Sacramento Ground Water Authority ("SGA") on August 11th and the Sacramento County Board of Supervisors ("County Board") on September 27th reviewed and approved the Elverta Specific Plan Water Supply Strategy as complying with PF-8 of the Elverta Community

Plan, demonstrating how the proposed water supply program would provide a long-term conjunctive water supply for ESP. In combination, as approved by SGA and the County Board, in August 2016 and September 2016, respectively, these actions document ESP's compliance with PF-8 and clearly sets forth a plan to provide groundwater in the early years while the District works towards the implementation of its surface water supply program. Further, that ground water supply was demonstrated to be sufficient for the approximately 3,500 units planned for ESP Phase One development and Northborough.

As you will recall, two critical requirements of PF-8 that were fulfilled (as explained above) were the existence of:

1. An approved groundwater management plan. The SGA adoption of a Groundwater Management Plan fulfilled this requirement.
2. A Finance Plan for the delivery of surface water. The District adoption of the Water Service Connection Fee fulfilled this requirement.

Moving forward, the implementation of the surface water program should be our collective focus. ESPOG is committed to working with your Board in the coming weeks to develop an implementation plan for surface water. The surface water portion of the Connection Fee (\$6,936±/DU) will generate approximately \$24.1 million from the development of ESP Phase One and Northborough. Over time, these fees will build a significant war chest for the District to plan, entitle, and provide funds for the first phase of the surface water program.

We believe that the fees collected from ESP, along with fees collected from other new development within the District, will be adequate to initiate surface water deliveries to the District. At the discretion of the District Board, these funds can be used to further the District's efforts to develop a standalone surface water project or to participate in the proposed RiverArc project. Both options are worthy of further consideration by the District.

Notwithstanding the RiverArc option, we believe the standalone option studied in the Water Supply Strategy should be independently pursued by the District in parallel with the proposed RiverArc project in the chance that the RiverArc program does not come to fruition. As a reminder, the standalone project was fully funded in the Water Supply Connection Fee Program in the amount of \$188.5 million.

Alternative surface water supply options may also be viable and worthy of District consideration. For example, connection to the PCWA system in western Placer County might be an interim solution. Additionally, connection to the Sac Suburban "Super Pipeline" may be a prudent interim option as the District is already within the PCWA Place of Use and the pipeline was constructed with sufficient capacity to serve the District's needs, or at least a portion thereof.

Depending on the actual configuration of the surface water supply program developed and implemented over time, the costs thereof will likely be different than those forecasted in the District's Water Master Plan and Water Service Connection Fee Program. As needed, the Water Service Connection Fee program can be adjusted over time to account for changes in the total cost of the surface water program, as well to provide cost escalation adjustments in the fee itself to keep up with inflation.

While the ESPOG has elected to pause on the advanced funding of the River Arc project while the District assesses other surface water options, we fully intend to work with the District to find the best solution for long-term surface water needs. As such, we should develop a public-private partnership approach to solving this issue.

It is our desire to establish a series of workshops with the District's Planning and Finance Committees and work towards the development of a Surface Water Implementation Plan and a

Water Services Agreement which satisfies the needs of all parties. We look forward to meeting with the Planning Committee at its next regularly scheduled meeting on September 7th.

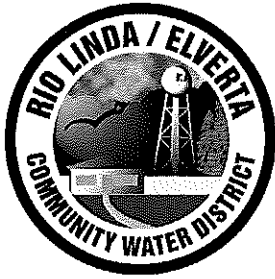
Please feel free to contact me in the meantime if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Smith".

Rob Smith, RCH Group
ESPOG Project Manager

Cc: Mary Henrici, Vice President RLECWD
Paul R. Green Jr., Director RLECWD
John Ridilla, Director RLECWD
Tim Shaw, General Manager RLECWD
Simon Gray, Coleman Engineering, RLECWD District Engineer
Barbara Brenner, Churchwell White LLP, RLECWD Legal Counsel
Jeff Pemstein, RCH Group, ESPOG Project Manager
Ken Giberson, MacKay & Somps Civil Engineers, Inc.
Elverta Specific Plan Owners Group (ESPOG)



RIO LINDA/ELVERTA COMMUNITY WATER DISTRICT

P. O. BOX 400 730 L STREET
RIO LINDA, CALIFORNIA 95673 Phone: 916-991-1000

August 29, 2018

Rob Smith
Elverta Specific Plan Owners Group
11060 White Rock Road, Suite 150-A
Rancho Cordova, CA 95670

**Re. Rio Linda Elverta Community Water District's Response to Elverta
Specific Plan Owners Group's Letter, dated August 13, 2018**

Dear Mr. Smith:

Thank you for the letter dated August 13, 2018, which summarizes the substantive milestones that have been addressed thus far in the development of the Elverta Specific Plan project. The subject line of your letter indicates it is a follow up to the 8/3/2018 Planning Committee meeting, which you attended. Unfortunately, your letter does not address some of the key issues the Planning Committee reiterated at the 8/3/2018 meeting.

To wit, you did not address the bulleted items in the June 18, 2018 letter from Rio Linda Elverta Community Water District ("District" or "RLECWD") to the Elverta Specific Plan Owners Group ("ESPOG") related to providing treated surface water for the Elverta Specific Plan development. Such response was specifically requested, and the District's interest in that response was clearly communicated at the 8/3/2018 Planning Committee meeting. The bulleted items are shown below for convenience and clarity:

RLECWD now requests that ESPOG propose a reasonable and feasible solution relevant to providing treated surface water for the Elverta Specific Plan development. The ESPOG submittal to RLECWD should address the following minimum elements:

- A comparison of surface water options and the estimated cost per million gallons for each option evaluated. This includes detailed technical analysis from objective, recognized subject matter experts to contrast and compare surface water development via the regional approach versus a standalone District water supply project. Developer funding may need to be provided to allow independent review of the ESPOG submittal.
- An evaluation of the municipal financing and funding for the surface water development required for the Elverta Specific Plan focusing on the RLECWD interests. This includes ESPOG funding engagement of a municipal financing consultant for RLECWD.
- A comprehensive plan of the public works infrastructure milestones and financial elements. The comprehensive plan should define all the aspects needed to get from where we are today to opening a plant effluent valve at a new surface water facility. The comprehensive plan should include a residential development correlation with the proposed timeline.

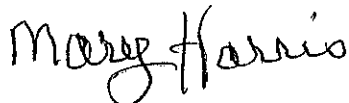
The District acknowledges that you may believe the long-term financing for surface water facilities is sufficiently addressed by the inclusion of surface water infrastructure funding components in the RLECWD's currently adopted capacity fee. However, the District does not agree that simply accounting for the estimated costs under the assumed scenarios, in and of itself, satisfies the requirements of PF-8 in the Rio Linda Elverta Community Plan. This key divergence in our perspectives is a crucial area that must be resolved to move forward.

RLECWD and ESPOG seem to agree that further evaluation of independent vs. regional approaches for surface water require additional analysis. However, we disagree regarding whom should be responsible for funding such analysis. This point of disagreement will also need to be addressed to ensure that the Elverta Specific Plan development can continue.

The area where the District and ESPOG are most aligned, as stated in the conclusions and objectives in your August 13th letter, is a commitment and means for moving forward. The District looks forward to your participation at the Planning Committee's series of workshops to discuss the Elverta Specific Plan, in pursuit of middle ground and path into the future.

Please contact General Manager, Timothy R. Shaw if you have any questions or concerns or would like to discuss the project further.

Sincerely,



Mary Harris
President
RLECWD Board of Directors

Cc: Jeff Pemstein, ESPOG (via email)
Ken Giberson, ESPOG (via email)

Board of Directors

Mary Harris Mary Henrici Brent Dills Paul Green John Ridilla



Planning Committee

Agenda Item: 3

Date: September 7, 2018
Subject: Elverta Associates LLC Property Donation Agreement Discussions.
Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

Forward the draft Property Donation Agreement onto the Board agenda for the September 17th meeting.

Current Background and Justification:

The District and Elverta Associates LLC have exchanged proposed revisions iteratively to reach a document that is satisfactory to the Legal Counsels for both parties (RLECWD and Elverta Associates LLC).

In email correspondence last week, I requested Elverta Associates LLC print an executable copy, sign and scan the document, then send it to the District for consideration at the September 17th Board meeting.

Executions of the Property Donation Agreement and the signed irrevocable offer of dedication for the Well #16 property is necessary to continue the Well #16 project.

Staff recommendation:

I recommend the Planning Committee review the draft Property Donation Agreement and forward the agreement onto the Board agenda for September 17th.

PROPERTY DEDICATION AGREEMENT

This Property Dedication Agreement (“Agreement”) is entered into on this ____ day of _____, 2018 (“Effective Date”), by and between Rio Linda/Elverta Community Water District, a California special district (the “District”), and Elverta Associates, LLC, a California limited liability company (“Owner”). District and Owner may individually be referred to herein as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

RECITALS

A. Owner is the owner of certain real property located in Sacramento County, California, commonly identified by the assessor parcel number (“APN”) 202-0170-024 and as more fully described in the Irrevocable Offer of Dedication and Grant Deed (“Deed”), attached and incorporated hereto as **Exhibit A**.

B. A roughly one-acre portion of the Property, as described in the Deed, is proposed to be dedicated by Owner to the District and developed as a well site (“Well Site”), on terms and conditions set forth in this Agreement and as modeled in the Well 16 Production Well, Reservoir and Pump Station Modification Site Plan attached and incorporated hereto as **Exhibit B** (“Well Site Plan”).

C. Owner desires to dedicate the Well Site to District on the terms and conditions of this Agreement.

D. District intends to acquire the Well Site to develop water infrastructure to serve planned development in the District and to implement the District’s long-term operational objectives.

NOW, THEREFORE, in reliance on the above and in consideration of the mutual covenants and benefits that accrue to each, the Parties agree as follows:

AGREEMENT

Section 1. Land Dedication. Owner agrees to dedicate and convey ownership of the Well Site to District, and District agrees to accept ownership of the Well Site, on the terms and conditions set forth herein.

Section 2. Conditions Precedent and Contingencies. Subject to the terms and conditions of this Agreement, Owner and District agree to use good faith efforts to satisfy the conditions set forth in this Agreement and shall submit evidence satisfactory to the other, as appropriate, that the conditions have been satisfied, if such evidence is required.

Section 3. Well Site Improvements. District shall design, construct, install and maintain improvements on the Well Site in substantial conformance with the proposed improvements depicted on the Well Site Plan, attached as **Exhibit B**. District shall construct and be responsible for the cost of the design, construction and maintenance of all Well Site improvements plus the above grade improvements, including: (1) a six foot sidewalk along “U” Street with a six inch

concrete curb; (2) an eight foot wrought iron fence with pedestrian and vehicle gate; (3) a twenty foot driveway and an eight foot high by one foot thick sound wall along the back and east end of the site, as depicted in the Well Site Plan, as well as the related below grade improvements associated therewith. Further, the District shall be responsible for its fair share on and off-site improvements as required by the County of Sacramento and other agencies as applicable.

3.1 Landscaping. District shall design, construct, install and maintain landscaping on the Well Site frontage located along “U” Street in substantial conformance with the landscaping depicted on the Well 16 Production Well, Reservoir and Pump Station Proposed Site Plan 3D Rendition, incorporated and attached hereto as **Exhibit C**.

3.2 Reservoir Restriction. District shall not construct, design, or install a reservoir on the Well Site. This restriction does not apply to a backwash tank or any other closed water storage infrastructure that may be required for water treatment.

3.3 Architecture & Equipment. District agrees to coordinate with and gain Owner’s approval of all architectural details of the Well Site (including colors, texture and materials of masonry walls, wrought iron fencing, landscaping, control building and roofs, wells, treatment equipment and tanks) prior to construction. Additionally, District shall obtain approval of Owner of the standby generator, including enclosure and muffler, prior to ordering and/or installing same. Said approvals by Owner shall not be unreasonably withheld.

Section 4. Due Diligence. District shall perform all due diligence investigations related to the Well Site, which may include an appraisal, environmental review, environmental assessment (“ESA Phase 1 or Phase 2”), and a preliminary title report. Owner shall provide District with a copy of any environmental review, ESA Phase 1 or Phase 2, or other testing of the Well Site conducted in the past fifteen (15) years.

Section 5 Termination. In the event the District is not satisfied in District’s sole discretion with (i) the physical condition and nature of the Well Site, including all environmental conditions thereof; (ii) all information concerning the Well Site made available by Owner to District; (iii) the status of title of the Well Site; and (iv) all other physical, environmental, legal, or other aspects of the Well Site (collectively, the “Conditions”), District shall have the option at any time before commencement of construction of the Well Site to choose one of the following as its sole and exclusive remedy by sending written notice to the Owner: (i) the Well Site is not acceptable to the District and that District has disapproved the Well Site, and neither Party hereto shall have any further rights or obligations hereunder; or (ii) District waives any Conditions and intends to consummate this transaction. If District does not send any such written notice, then District shall be deemed to have elected subsection (ii) and waives any of the Conditions.

Notwithstanding any other provisions of this Agreement, should District decide not to consummate this transaction and/or construct the well improvements on this Well Site, then District shall, at its own costs and expense, restore the property to the same condition in which it was prior to District’s entry onto the site, including the destruction of any monitoring, test or production wells constructed by District, in compliance with the well destruction requirements established by section 6.28.040 of the Sacramento County Code.

Section 6. Indemnification. District agrees to indemnify, defend, assume all liability for and hold harmless Owner from all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims or injuries to persons, which may be caused by the District's negligence or gross negligence arising out of or in connection with the improvements on the Well Site.

Section 7. Compliance with Laws/Permits. In all activities undertaken pursuant to this Agreement, District and its contractors, agents and employees, shall comply with all applicable federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. District, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for completing the improvements to the Well Site pursuant to this Agreement.

Section 8. Access. This Agreement shall in no way restrict Owner's access to the property, provided that the Owner and any of its representatives or invitees to the property shall not act in such a way as to interfere with the installation of the improvements at the Well Site.

Section 9. Cooperation of District and Owner. Owner shall cooperate with District in District's efforts to obtain any and all approvals of other agencies as required for improvements at the Well Site. Owner further agrees to cooperate with District in District's efforts to clear all liens, encumbrances, encroachments and special assessments levied or assessed against the Well Site prior to the dedication of the Well Site to the District, as contemplated in Section 1 of this Agreement.

Section 10. General Provisions.

(a) *Integration.* This is an integrated agreement and therefore contains all of the terms, considerations, understandings and promises between the Parties related to improvements at the Well Site and the dedication of the Well Site to the District. This Agreement may be modified, changed or rescinded only by written agreement executed by the Parties.

(b) *Exhibits.* All exhibits referred to herein are incorporated into this Agreement. Failure to comply with the provisions or requirements of any exhibit shall constitute grounds for breach of this Agreement by either Party.

(c) *Waiver.* A waiver by any Party to this Agreement or a breach of any provision shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing

(d) *Necessary Acts.* The Parties shall at their own cost and expense execute and deliver further documentation and shall take other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

(e) *Successor and Assigns – Covenant Running with the Land.* This Agreement and all covenants and restrictions contained herein shall, to the fullest extent permitted by law and equity,

be deemed a covenant running with the land of the property and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

(f) *Attorney's Fees and Costs.* In any action at law or in equity, including action for declaratory relief, brought by any Party to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees, costs of court and reasonable expense of litigation, in addition to any other relief which such party may be entitled.

(g) *Governing Law.* This Agreement shall be governed and construed in accordance with the laws of the State of California.

(h) *Venue.* Any action arising out of this Agreement shall be brought in Sacramento County, California, regardless of where venue may lie.

(i) *Binding Agreement.* This Agreement shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of the Parties.

(j) *Severability.* Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected and the illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be part of this Agreement.

(k) *Notices.* Any notice or communication required hereunder between the Parties must be in writing and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices of communications shall be given to the Parties at their addresses set forth below:

If to District: Rio Linda/Elverta Community Water District
730 L Street
Rio Linda, CA 95673
Attn: General Manager

With copies to: Churchwell White LLP
1414 K Street, Third Floor
Sacramento, CA 95814
Attn: Barbara A. Brenner, Esq.

If to Owner: Elverta Associates, LLC
2082 Michelson Drive, Suite 400
Irvine CA 92612
Attn: Tim Kihm

With copies to: Nancy Dubonnet, Esq.
2082 Michelson Drive, Suite 450
Irvine CA 92612

(l) *Authority.* All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any persons, states, firms or other legal entities represented or purported to be represented by such persons, states, firms or other legal entities.

(m) *Counterparts.* This Agreement may be executed in one or more counterparts and all so executed shall be binding upon the Parties, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

(n) *Recitals.* The recitals set forth above are incorporated herein by this reference and made a part of this Agreement. In the event of any inconsistencies between the recitals and Sections 1 through 10 of this Agreement, Sections 1 through 10 shall control.

(o) *Modification.* No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

(p) *Fees and Other Expenses.* Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

(q) *Headings.* The headings used herein are for purposes of convenience only and shall not be used to construe, expand or limit the meaning of the language of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

Rio Linda/Elverta Community Water District, a California special district

Elverta Associates, LLC, a California limited liability company

By: _____
Timothy R. Shaw, General Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Barbara A. Brenner, General Counsel

DRAFT

EXHIBIT A

Irrevocable Offer of Dedication

DRAFT

EXHIBIT B

Well 16 Production Well, Reservoir and Pump Station Modification Site Plan

DRAFT

EXHIBIT C

Well 16 Production Well, Reservoir and Pump State Proposed Site Plan 3D Rendition

DRAFT

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3.3 Architecture & Equipment. District agrees to coordinate with and gain Owner’s approval of all architectural details of the Well Site (including colors, texture and materials of masonry walls, wrought iron fencing, landscaping, control building and roofs, wells, treatment equipment and tanks) prior to construction. Additionally, District shall obtain approval of Owner of the standby generator, including enclosure and muffler, prior to ordering and/or installing same. Said approvals by Owner shall not be unreasonably withheld.

Section 4. Due Diligence. District shall perform all due diligence investigations related to the Well Site, which may include an appraisal, environmental review, environmental assessment (“ESA Phase 1 or Phase 2”), and a preliminary title report. Owner shall provide District with a copy of any environmental review, ESA Phase 1 or Phase 2, or other testing of the Well Site conducted in the past fifteen (15) years.

Section 5 Termination. In the event the District is not satisfied in District’s sole discretion with (i) the physical condition and nature of the Well Site, including all environmental conditions thereof; (ii) all information concerning the Well Site made available by Owner to District; (iii) the status of title of the Well Site; and (iv) all other physical, environmental, legal, or other aspects of the Well Site (collectively, the “Conditions”), District shall have the option at any time before ~~completion~~ commencement of construction of the Well Site to choose one of the following as its sole and exclusive remedy by sending written notice to the Owner: (i) the Well Site is not acceptable to the District and that District has disapproved the Well Site, and neither Party hereto shall have any further rights or obligations hereunder; or (ii) District waives any Conditions and intends to consummate this transaction. If District does not send any such written notice, then District shall be deemed to have elected subsection (ii) and waives any of the Conditions.

Notwithstanding any other provisions of this Agreement, should District decide not to consummate this transaction and/or construct the well improvements on this Well Site, then District shall, at its own costs and expense, restore the property to the same condition in which it was prior to District’s entry onto the site, including the destruction of any monitoring, test or production wells constructed by District, in compliance with the well destruction requirements established by section 6.28.040 of the Sacramento County Code.

Commented [DG1]: 8 foot high ?

Commented [KG2]: Tim, this should be a “one foot thick sound wall”

Commented [KG3]: Tim, did you agree to construct the frontage improvements?

Commented [KG4]: Tim, this deletion probably has no significance since the District has already constructed the well proper, however, if they fail to complete the well site in a timely fashion it could be an eye sore for your project and your second point of supply will not exist. You need to keep some provision in this agreement that keeps the District’s feet to the fire with regard to completing the well site improvements.

Commented [TK5]: This is part of the larger water supply agreement for the overall Specific Plan.

Section 6. Indemnification. District agrees to indemnify, defend, assume all liability for and hold harmless Owner from all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims or injuries to persons, which may be caused by the District's negligence or gross negligence arising out of or in connection with the improvements on the Well Site.

Section 7. Compliance with Laws/Permits. In all activities undertaken pursuant to this Agreement, District and its contractors, agents and employees, shall comply with all applicable federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. District, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for completing the improvements to the Well Site pursuant to this Agreement.

Section 8. Access. This Agreement shall in no way restrict Owner's access to the property, provided that the Owner and any of its representatives or invitees to the property shall not act in such a way as to interfere with the installation of the improvements at the Well Site.

Section 9. Cooperation of District and Owner. Owner shall cooperate with District in District's efforts to obtain any and all approvals of other agencies as required for improvements at the Well Site. Owner further agrees to cooperate with District in District's efforts to clear all liens, encumbrances, encroachments and special assessments levied or assessed against the Well Site prior to the dedication of the Well Site to the District, as contemplated in Section 1 of this Agreement.

Section 10. General Provisions.

(a) *Integration.* This is an integrated agreement and therefore contains all of the terms, considerations, understandings and promises between the Parties related to improvements at the Well Site and the dedication of the Well Site to the District. This Agreement may be modified, changed or rescinded only by written agreement executed by the Parties.

(b) *Exhibits.* All exhibits referred to herein are incorporated into this Agreement. Failure to comply with the provisions or requirements of any exhibit shall constitute grounds for breach of this Agreement by either Party.

(c) *Waiver.* A waiver by any Party to this Agreement or a breach of any provision shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing

(d) *Necessary Acts.* The Parties shall at their own cost and expense execute and deliver further documentation and shall take other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

(e) *Successor and Assigns – Covenant Running with the Land.* This Agreement and all covenants and restrictions contained herein shall, to the fullest extent permitted by law and equity,

be deemed a covenant running with the land of the property and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

(f) *Attorney's Fees and Costs.* In any action at law or in equity, including action for declaratory relief, brought by any Party to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees, costs of court and reasonable expense of litigation, in addition to any other relief which such party may be entitled.

(g) *Governing Law.* This Agreement shall be governed and construed in accordance with the laws of the State of California.

(h) *Venue.* Any action arising out of this Agreement shall be brought in Sacramento County, California, regardless of where venue may lie.

(i) *Binding Agreement.* This Agreement shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of the Parties.

(j) *Severability.* Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected and the illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be part of this Agreement.

(k) *Notices.* Any notice or communication required hereunder between the Parties must be in writing and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices of communications shall be given to the Parties at their addresses set forth below:

If to District: Rio Linda/Elverta Community Water District
730 L Street
Rio Linda, CA 95673
Attn: General Manager

With copies to: Churchwell White LLP
1414 K Street, Third Floor
Sacramento, CA 95814
Attn: Barbara A. Brenner, Esq.

If to Owner: Elverta Associates, LLC
2082 Michelson Drive, Suite 400
Irvine CA 92612
Attn: Tim Kihm

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With copies to: Nancy Dubonnet, Esq.
2082 Michelson Drive, Suite 450
Irvine CA 92612

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(l) *Authority.* All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any persons, states, firms or other legal entities represented or purported to be represented by such persons, states, firms or other legal entities.

(m) *Counterparts.* This Agreement may be executed in one or more counterparts and all so executed shall be binding upon the Parties, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

(n) *Recitals.* The recitals set forth above are incorporated herein by this reference and made a part of this Agreement. In the event of any inconsistencies between the recitals and Sections 1 through 10 of this Agreement, Sections 1 through 10 shall control.

(o) *Modification.* No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

(p) *Fees and Other Expenses.* Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

(q) *Headings.* The headings used herein are for purposes of convenience only and shall not be used to construe, expand or limit the meaning of the language of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

Rio Linda/Elverta Community Water District, a California special district

Elverta Associates, LLC, a California limited liability company

By: _____
Timothy R. Shaw, General Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Barbara A. Brenner, General Counsel

DRAFT

EXHIBIT A
Irrevocable Offer of Dedication

DRAFT

EXHIBIT B

Well 16 Production Well, Reservoir and Pump Station Modification Site Plan

DRAFT

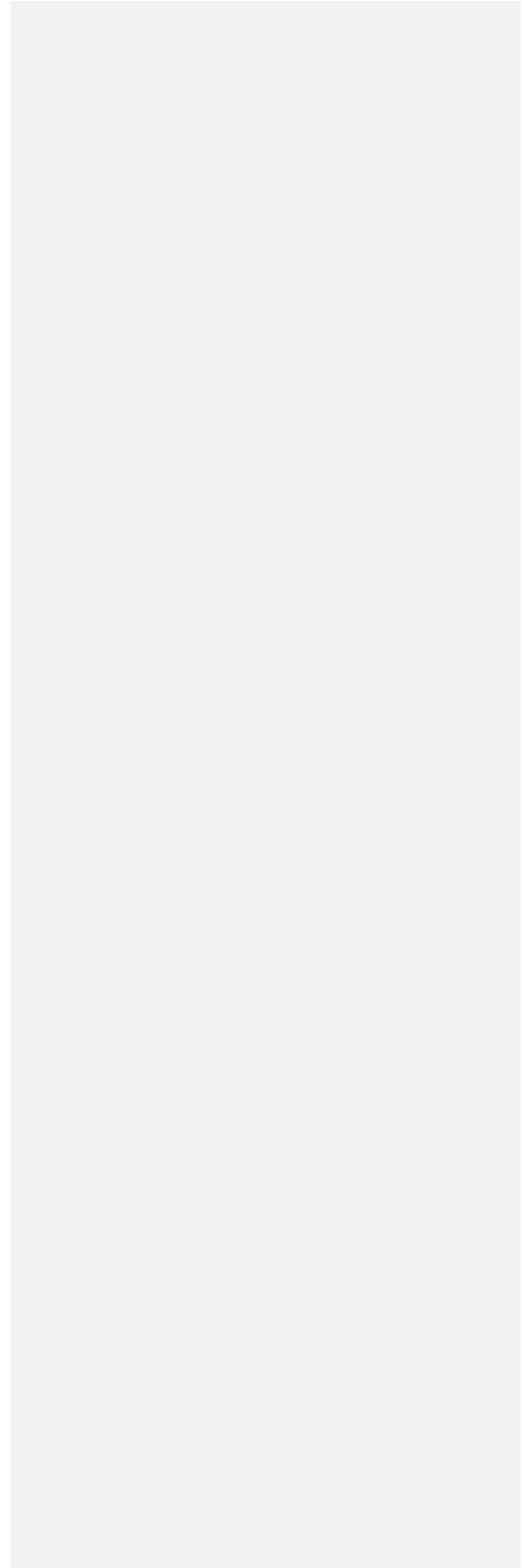


EXHIBIT C

Well 16 Production Well, Reservoir and Pump State Proposed Site Plan 3D Rendition

DRAFT



Planning Committee

Agenda Item: 4

Date: September 7, 2018

Subject: Policies and Practices for funding RLECWD Legal Counsel charges for work on ESPOG projects.

Staff Contact: Timothy R. Shaw, General Manager

Recommended Committee Action:

Review and consider changes to the policies and practices to funding RLECWD Legal Counsel work on ESPOG projects.

Current Background and Justification:

The District has funding agreements and policies in place with developers to ensure the District's current ratepayers do not pay for development costs. The typical mechanism is a developer deposit, whereby the work benefiting the developer cannot move forward unless and until the deposit amount is enough to fund the anticipated charges.

One derivation to the concept was the funding stipulations with the contract District Engineer (then Affinity) and ESPOG. Affinity agreed not to be paid until the Developer paid the District for the invoice(s) from Affinity.

When I first arrived and became somewhat familiar with the routines, I asked Legal Counsel if she had the same payment arrangements as the District Engineer. Legal Counsel conveyed she did not, but that the developer had always been diligent in paying the costs.

Staff has confirmed that the developer does pay, but the delay in paying can be as much as 120-days. The Legal Counsel charges associated with ESPOG for July 2018 alone were more than \$8,800. The proposed methods of working out

the current differences for Elverta Specific Plan development can reasonably be anticipated to generate substantial charges by Legal Counsel.

Staff recommendation:

I recommend the Planning Committee review section 5 of the example executed developer funding agreement included with your committee packets and reconsider the current practices regarding charges by Legal Counsel for work on Elverta Specific Plan development. Thereby establishing a consistent practice of developer funding for development costs

FUNDING AGREEMENT PROCESSING COSTS

THIS FUNDING AGREEMENT (“Agreement”) is effective as of _____, 2017 (the “Effective Date”), by and between RIO LINDA / ELVERTA COMMUNITY WATER DISTRICT (“District”), and GIBSON RANCH, LLC a California limited liability company (“Developer”). District and Developer may be referred to individually as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

RECITALS

A. On August 8, 2007, the Sacramento County Board of Supervisors adopted the Elverta Specific Plan (“Specific Plan”). The Specific Plan provides for the development of a mixed-use community on approximately 1,750 acres including commercial uses, parklands, school sites, a mix of housing types and related infrastructure.

B. Developer is pursuing various subsequent governmental approvals to develop a portion of the Specific Plan area, which is located within District’s service area. The “Project” is currently comprised of approximately 297.8 acres and 1,127 residential units and is depicted in the attached **Exhibit A**.

C. District and Developer desire to enter into an agreement providing for the funding of specific tasks to be performed or overseen by District related to planning, financing and implementing future water service to the Project.

D. To facilitate District’s review of the Project, the Parties are entering this Agreement to set forth Developer’s obligation to fund District costs related to the Project.

NOW, THEREFORE, for valuable consideration and in exchange of the mutual covenants set forth below, the Parties agree as follows:

AGREEMENT

Section 1. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and sections 1 through 17 of this Agreement, sections 1 through 17 shall control.

Section 2. Costs. Developer shall pay, in accordance with this Agreement, all reasonable out of pocket costs, at then current rates, actually incurred by District directly related to negotiating the necessary agreements, and to process entitlements and engineering work related to Developer’s water infrastructure needs for the Project, at the then current rates, including but not limited to: (a) District legal counsel’s time and expenses for reviewing, providing counsel, preparing documents, and appearances at meetings involving the Specific Plan; (b) time and expenses of any third-party consultants, including the District engineer; (c) District staff time at Project meetings, and administrative overhead costs, including printing, mailing and posting of

public notices; and (d) any application fees. The reimbursable costs incurred by District shall be collectively referred to in this Agreement as “Costs”.

Section 3. Consultants. The District General Manager, in consultation with Developer, will determine the third-party consultant expenses of the District required for any work related to the District’s review of the Project and any related environmental or planning documents or studies in advance of commencement of any such work. In addition, the District General Manager shall provide a reasonable “not to exceed” estimate of District staff and legal counsel time that may be required in connection with each scope of work. The General Manager shall have the right to retain consultants as follows:

(a) *Consultant Selection.* District may retain third party consultants, as needed, to assist with processing entitlements and engineering work related to Developer’s water infrastructure needs for the Project. Before entering into any new contract and before incurring any additional services with any third-party consultant, District shall obtain Developer’s prior written approval to the scope of work, timing of completion, and estimated cost for any such work. District will not expand the scope of work or increase the estimated cost of any consultant without first obtaining Developer’s written approval.

(b) *District Agents.* District will retain final discretion in the hiring and termination of any consultant or contractor related to the Project, provided that Developer shall not be required to pay for such work unless Developer has approved such work pursuant to subdivision (a). All consultants retained by District to provide consulting services under this Agreement shall report to District and shall have no duties or obligations of any nature owing to Developer or any other third party in connection with the provision of services under this Agreement. Developer is prohibited from directly or indirectly exercising any supervision or control over the work of consultants engaged by District under this Agreement. This prohibition shall not be construed to preclude Developer, its agents, or representatives from providing information to District or District’s consultants to incorporate into studies required in connection with the Project, nor shall it be construed to preclude District, its agents, employees and consultants from consulting with Developer concerning any matter related to this Agreement.

(c) *Consultant Invoices.* District shall provide detailed, itemized invoices to the Developer for work performed by consultants, District staff and legal counsel in connection with this Agreement. District shall review all invoices and provide them to Developer within thirty (30) calendar days of receipt. Developer shall not be responsible for Costs incurred by District that exceed the authorized scope and budget approved by Developer, in accordance with this Agreement. Developer may dispute (i) consultant expenses that are unauthorized or exceed any scope of service, and (ii) invoices for legal services or staff time that Developer believes are unreasonable or excessive. If Developer disputes such invoices, District and Developer shall meet and confer with District staff within five (5) calendar days’ notice to resolve such dispute. Meetings may take place telephonically. Should the dispute still be outstanding after the meet and confer between the Developer and District staff, the matter shall be referred to the next District Board of Director’s meeting for action. In such case, all District work, including consultant work, shall cease until the dispute is resolved.

Section 4. Time Period for Fees to Accrue. Developer shall fund all Costs as set forth herein, which are actually incurred by District beginning as of the Effective Date, until such time Developer or District terminates this Agreement in accordance with the provisions hereof. Developer shall also fund the costs to develop and negotiate this Agreement, which costs will be incurred prior to the Effective Date.

Section 5. Deposit. Upon execution of this Agreement, Developer shall deposit the amount necessary to bring Developer's account to Ten Thousand Dollars (\$10,000). The initial deposit and any subsequent deposits made pursuant to this Agreement (together, "Deposit") shall be used to reimburse District for Costs incurred by District, as set forth herein. Developer shall also reimburse District for costs incurred to develop and negotiate this Agreement, in addition to the initial deposit. Such costs shall be paid to the District within 30 calendar days of receipt of the detailed invoice.

(a) *Subsequent Deposit.* Whenever payment of District Costs causes Developer's Deposit balance to be less than Five Thousand Dollars (\$5,000), District will notify Developer and, within fifteen (15) calendar days, so long as the scope of work and budget have been approved by Developer as provided for in this Agreement, Developer shall provide payment to District in an amount necessary to return Developer's Deposit balance to Ten Thousand Dollars (\$10,000).

(b) *Deposit Minimum.* If at any point Developer's Deposit balance drops below Two Thousand Five Hundred Dollars (\$2,500), District shall notify Developer and stop all work immediately until payment is made by Developer to return the Deposit to Ten Thousand Dollars (\$10,000). Developer acknowledges that if District stops work due to an insufficient Deposit, Developer may suffer undue delay. Funds deposited pursuant to this Agreement shall be held in a restricted account maintained by District.

Section 6. No Agency Relationship. Neither this Agreement, nor any Deposit payments shall constitute or create any form of association, joint venture, partnership, or cooperative activity of any nature whatever, for any purpose between District and Developer. Neither this Agreement nor the Deposit payments hereunder shall constitute or create a trust, express or implied, for the benefit of Developer or any other person.

Section 7. Recordkeeping. District shall keep and maintain accurate accounting and book keeping records relating to District Costs, including all Deposit payments and all expenses paid from the Deposit. Upon Developer's request, District shall provide a statement accounting for the monies deposited and all expenses paid or reimbursed by District from the Deposit account, and invoices detailing all expenses paid or reimbursed by District from the Deposit for the period reported in such statement. Developer and its accountants, attorneys and agents may review, inspect, copy, and audit these records, including any non-privileged source documents.

Section 8. No District Guarantee of Approval. Developer acknowledges that this Agreement shall have no effect on any agency's discretion to approve or disapprove any entitlements related to the Project. Developer will remain responsible for all Costs regardless if any discretionary approvals are ultimately denied. District agrees to exercise its best efforts to

diligently participate in the development of agreements and improvements related to District requirements under the Project.

Section 9. Insolvency or Receivership. Either the appointment of a receiver to take possession of all or substantially all of the assets of Developer, or a general assignment by Developer for the benefit of creditors, or any action taken or offered by Developer under any insolvency or bankruptcy action, will constitute a breach of this Agreement by Developer.

Section 10. Default by Developer. If Developer is in default of its obligations under this Agreement, District will provide Developer written notice of the default. Immediately upon delivering notice of the default, District may utilize Developer's Deposit to cover all Costs incurred by District since Developer's prior payment. If Developer does not cure such default within fifteen (15) days of District's delivery of the notice of default, District may terminate this Agreement and discontinue any work with the Project on behalf of Developer. District may seek reimbursement for Costs unpaid, by breach of contract or other legal action.

Section 11. Release. Developer may request District to deliver written confirmation that all Costs have been paid ("Release"). District may wait to provide such Release forty-five (45) days after such request, to ensure that no new Costs have been incurred by any consultants. Within sixty (60) days from the date it receives Developer's request for Release, District shall provide Developer a final invoice stating how much Developer must pay to compensate District for any outstanding Costs. Upon payment of such final invoice, District shall provide Developer a Release stating that Developer has satisfied all debts for Costs along with a reimbursement of any Deposit amounts that remain after payment of all outstanding Costs. Developer understands and agrees that District will not pay interest to Developer on the Deposit amount.

Section 12. Term. The term of this Agreement will begin on the Effective Date and shall continue until any of the following occurs first: (a) District provides a Release; (b) the Parties mutually agree in writing to terminate this Agreement; or (c) the Agreement is terminated.

Section 13. Agreement not a Debt of District. This Agreement shall in no way constitute a debt or liability of District. District shall not in any event be liable for any Costs other than to remit payments and to return any excess or unexpended Deposit funds to Developer as set forth herein. District shall in no way be obligated to advance any of its own funds in connection with processing Costs related to the Project. No director of District, or any officer, employee or agent of District shall be personally liable hereunder.

Section 14. Indemnity. Developer shall hold harmless, indemnify, and defend District and its elected and appointed councils, boards, and commissions, officials, employees, agents, representatives and contractors (collectively, "District's Agents") from any and all liability, cost, claim, action, or proceeding against District or District's Agents related to the Project, or any part thereof, or any decision, determination or action made or taken related to improvements or agreements related to the Project except in the case of negligence or intentional misconduct on the part of any agents, officers or employees of the District. This indemnification shall extend and protect District Agent's from any attempt to impose personal liability against District's Agents resulting from their non-negligent/non-intentional misconduct involvement in the Project and against any liability, claim, suit, action or other proceeding for damage of any kind relating

to District actions regarding development of the Project, directly or indirectly, allegedly suffered, incurred, or threatened for personal injury, death, property damage, inverse condemnation, or any combination, regardless whether such liability, claim, or damage was foreseeable by District. Developer's obligation to hold harmless and indemnify District shall apply regardless whether District or District's Agents prepared, supplied, or approved any plans or specification for processing the Project, and regardless whether any insurance policies may be determined to be applicable to any claims. This indemnity does not obligate Developer to defend, indemnify, and hold harmless the District's Agents for claims, actions, or proceedings that result from actions by the District's Agents after termination of this Agreement.

Section 15. Notices. Any notice or communication required hereunder between District and Developer must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) three (3) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to District: Rio Linda / Elverta Community Water District
730 L Street
Rio Linda, CA 95673
Attn: General Manager

and Churchwell White, LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attn: Barbara A. Brenner, Esq.

If to Developer: Gibson Ranch, LLC
Attn: Brian Vail
2410 Fair Oaks Blvd., Suite 110
Sacramento, CA 95825

Thomas Law Group
455 Capitol Mall, Suite 801
Sacramento, CA 95814
Attention: Nick Avdis

Section 16. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, whether by settlement or through a final decision by the reviewing court.

Section 17. General Provisions.

(a) *Governing Law.* The validity, interpretation and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California.

(b) *Venue.* Venue for all legal proceedings shall be in the Superior Court for the County of Sacramento.

(c) *Severability.* If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

(d) *Waiver.* Waiver of any condition, breach or default under this Agreement does not constitute a continuing waiver, or the waiver of a subsequent breach. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(e) *Entire Agreement.* This Agreement and any attachments and exhibits constitute all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the Parties hereto with respect to the subject matter of this Agreement. Unless set forth herein, neither Party shall be liable for any representations made express or implied not specifically set forth herein.

(f) *Amendment.* This Agreement may only be amended by the written, signed mutual agreement of all Parties.

(g) *Captions.* The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

(h) *Mandatory and Permissive.* "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

(i) *Successors and Assigns.* All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the Parties hereto, shall be binding upon an inure to the benefit of such Party, its successors and assigns.

(j) *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original, and together shall constitute one and the same instrument.

(k) *Other Documents.* Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(l) *Time is of the Essence.* Time is of the essence in this Agreement in each covenant and term and condition herein.

(m) *Authority.* All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Agreement had been fully complied with.

(n) *Document Preparation.* This Agreement will be construed as if prepared by all Parties, and the principle that language be construed against the drafting Party shall not apply.

(o) *Advice of Legal Counsel.* Each Party acknowledges that it has freely entered into this Agreement and that each Party has been given the opportunity to review this Agreement with their legal counsel.

(p) *No Fiduciary Duty.* District shall have no fiduciary duty to Developer, or any other persons with respect to the Deposit and District's expenditure of Costs, except for District's fiduciary responsibility to exercise due care and use the Deposit funds for the purposes designated in this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and District as of the day and year first above written.

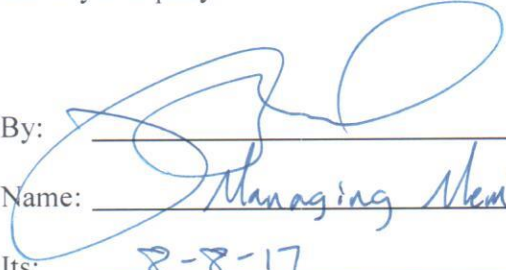
DISTRICT:

RIO LINDA / ELVERTA COMMUNITY
WATER DISTRICT, a county water district

By: _____
Ralph Felix, General Manager

LANDOWNERS:

Gibson Ranch LLC a California limited
liability company

By:  _____
Name: Managing Member
Its: 8-8-17

APPROVED AS TO FORM:

By: _____
Barbara A. Brenner, General Counsel

EXHIBIT A



Planning Committee

Agenda Item: 5

Date: September 7, 2018

Subject: Status Report on Well # 16 and Well #10 Projects.

Staff Contact: Simon Gray, Coleman Engineering

Recommended Committee Action:

Receive a report from the District Engineer on the status of Well #16 and Well #10 projects.

Current Background and Justification:

The District Engineer has been reviewing existing documents and corresponding with materials vendors to assess and confirm the feasibility and timing for the Districts two hexavalent chromium mitigation projects.

Staff recommendation:

Receive the status report from the District Engineer and provide feedback as appropriate.