

Heber Public Utility District

REPORT TO BOARD OF DIRECTORS

MEETING DATE: May 19, 2016

FROM: Laura Fischer, General Manager

SUBJECT: Adopt Resolution 2016-6 Approving Agreement between the City of El Centro and the Heber Public Utility District Authorizing the Heber Public Utility District to provide potable water service to McCabe Cove and Magnolia Gate Subdivisions.

ISSUE:

Shall the Board of Directors adopt Resolution 2016-6 approving an Agreement with the City of El Centro authorizing the HPUD to provide potable water service to McCabe Cove and Magnolia Gate Subdivision?

GENERAL MANAGER'S RECOMMENDATION:

It is recommended that the Board of Directors approve Resolution 2016-6 approving the Agreement with the City of El Centro authorizing HPUD to provide potable water services to McCabe Cove and Magnolia Gate. .

FISCAL IMPACT:

NONE.

BACKGROUND:

McCabe Cove and Magnolia Gate are situated in the City of El Centro Sphere of Influence, and are not within the Service Area of the HPUD. When the subdivisions were approved and constructed the LAFCO approved via Resolution that the HPUD would provide potable water services to the two subdivisions. At the time, the two subdivisions were too great of a distance from the City of El Centro and could not be annexed. In order for the projects to move forward the developer entered into an agreement with HPUD to provide water services on an interim basis. The interim basis was until such time that the City of El Centro was willing and capable of providing water services.

DISCUSSION:

Recently, several parties who own property in the two subdivisions requested water services from HPUD. However, since it is feasible for the City of El Centro to annex the project areas to the City, and to obtain water services from the City, LAFCO denied the request.

After meeting with the residents and the City of El Centro it was determined that there was no desire to be annexed into the City of El Centro. The property owners wanted to continue to obtain water services from HPUD. LAFCO approved the request to have HPUD continue to provide water services to the two subdivisions, and the Agreement

was drafted between the City of El Centro and HPUD. The Agreement has been reviewed by both legal counsels.

CONCLUSION:

Staff recommends that the Board of Directors approve Resolution 2016-6 approving an Agreement between the City of El Centro and the HPUD to provide water services to McCabe Cove and Magnolia Gate Subdivisions.

ALTERNATIVES:

1. Do not approve Resolution 2016-6 approving the Agreement between the City of El Centro and HPUD.
2. Approve the Resolution 2016-6 with modifications.
3. Provide Alternate Direction to Staff.

Respectfully Submitted,

Laura Fischer,
General Manager

Attachment: Resolution 2016-6
Agreement Between City of El Centro and HPUD

RESOLUTION 2016-6

**APPROVING AN AGREEMENT BETWEEN THE CITY OF EL
CENTO AND THE HEBER PUBLIC UTILITY DISTRICT
AUTHORIZING THE HEBER PUBLIC UTILITY DISTRICT TO
PROVIDE POTABLE WATER SERVICE TO THE MCCABE COVE
AND MAGNOLIA GATE SUBDIVISIONS**

WHEREAS, the McCabe Cove and Magnolia Gate Subdivisions are within the City of El Centro's Sphere of Influence; and

WHEREAS, the McCabe Cove and Magnolia Gate Subdivisions are outside of the Service Area of the Heber Public Utility District; and

WHEREAS, the Heber Public Utility District (HPUD) currently provides potable water service to both subdivisions pursuant to separate agreements between the HPUD and DESCO Development Company, and between the City of El Centro and Developer; and

WHEREAS, the Heber Public Utility District finds that approving an Agreement between the City of El Centro and the Heber Public Utility District authorizing the HPUD provide water service to the McCabe Cove and Magnolia Gate Subdivision is in the best interest of the HPUD.

NOW, THEREFORE BE IT RESOVLED BY THE BOARD OF DIRECTORS OF THE HEBER PUBLIC UTILITY DISTRICT THE FOLLOWING:

1. That the above statements are true and correct.
2. That the Heber Public Utility District does hereby approve the Agreement with the City of El Centro and the Heber Public Utility District to provide potable water service to the McCabe Cove and Magnolia Gate subdivisions.
3. That the General Manager is hereby authorized to sign the Agreement, a copy of which is on file in the Office of the Clerk of the Board.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Board of Directors of the Heber Public Utility District conducted on the 19th day of May, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tony Sandoval, President
Heber Public Utility District

I, Raquel Carrillo, Secretary of the Board of the Heber Public Utility District, DO HEREBY CERTIFY that the foregoing resolution was duly passed, approved, and adopted by the Heber Public Utility District Board of Directors at a regular meeting thereof held on the 19th day of May, 2016.

ATTEST:

Raquel Carrillo, Secretary of the Board,
Heber Public Utility District

AGREEMENT

This Agreement is entered into on the date set forth below by and between Heber Public Utility District ("District"), and the City of El Centro ("City") authorizing Heber Public Utility District to provide potable water service to the McCabe Cove and Magnolia Gate subdivisions.

RECITALS

1. The McCabe Cove and Magnolia Gate subdivisions ("the Properties") are within the City's sphere of influence. A map of the McCabe Cove and Magnolia Gate subdivision is attached hereto as Exhibit A.
2. The District currently provides potable water service to both subdivisions pursuant to separate agreements between District and DESCO Development Company ("Developer"), and between City and Developer, copies of which are attached hereto respectively as Exhibit B and Exhibit C.
3. District and City wish to formalize this arrangement for the provision of Potable water service in order to comply with a resolution of the Local Agency Formation Commission ("LAFCO") of the County of Imperial, State of California, namely Resolution No. 2015-09, a copy of which is attached hereto as Exhibit D.

NOW, THEREFORE, District and City agrees as follows:

- A. District is authorized to and shall continue providing potable water service, at the rates and charges in effect during the term of this agreement, to the McCabe Cove and Magnolia Gate subdivisions. District shall supply no other utility service to either subdivision without the approval of LAFCO.
- B. District and City agree that the sphere of influence for City shall remain as currently in effect, with McCabe Road being the Southern boundary. District and City further agree that the sphere of influence for District shall overlap and include both McCabe Cove and Magnolia Gate for the express purpose of District's provision of water service only. Any fees or costs that may be levied by another public agency to effectuate the purpose of this agreement or amend a sphere of influence shall be borne by Developer or City.
- C. Either District or City may initiate annexation proceedings for the Properties. District agrees not to oppose any such annexation proceeding by City, and City agrees not to oppose any annexation proceeding by District, including

one undertaken solely to allow District's sphere of influence to overlap City's sphere of influence for the provision of potable water service only. Nothing in this agreement prohibits District from continuing to provide potable water to the properties even if annexed to City in the future.

- D. District and City agree that the provision of potable water service to the property may transition from District to City at such a time that both agencies agree. Until such time, District agrees to maintain the waterline in accordance with its existing utility service policy.
- E. In the event of a successful annexation proceeding by City for the properties, District agrees to apply to LAFCO to amend its sphere of influence, and District boundary if applicable, back to McCabe Road as the Northern boundary. Conversely, in the event of a successful annexation by District for the properties, City agrees to apply to LAFCO to amend its sphere of influence, and City boundary, as may be required.
- F. This Agreement is effective when approved by the Board of Directors of District, and the City Council for City, after prior review by the Executive Officer of LAFCO.

Heber Public Utility District

Dated: _____

By: _____
Laura Fischer, General Manager

City of El Centro

Dated: _____

By: _____
Ruben A. Duran, City Manager

EXHIBIT I A

Magnolia Gate and McCabe Cove Developments

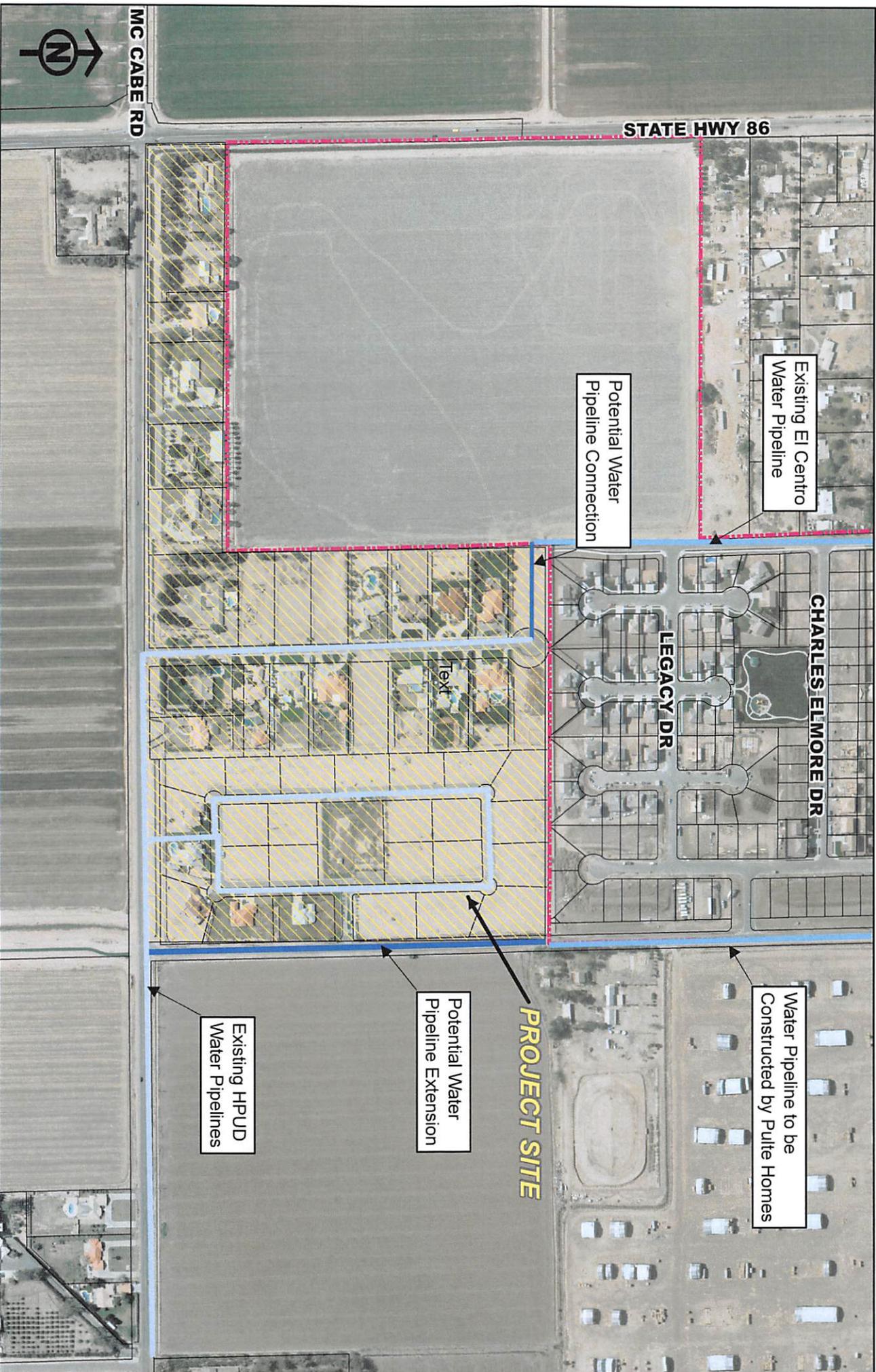


EXHIBIT B

RECEIVED
SEP - 6 1996

DESCO WATER LINE AGREEMENT

H.P.U.D.

This agreement is made on the date set forth below by and between the Heber Public Utility District, (hereinafter referred to as "HPUD") and Desco Development Company, a partnership (hereinafter referred to as "Desco"), collectively referred to herein as the parties.

WHEREAS, HPUD is a Public Utility District organized and existing under the laws of the State of California; and

WHEREAS, Desco desires to obtain potable water from HPUD for developments commonly known as McCabe Cove and Magnolia Gate,

NOW, therefore, HPUD and Desco agree as follows:

1. Desco will construct at its sole expense a water line to connect to existing HPUD facilities on McCabe Road for the purpose of providing water to developments commonly known as McCabe Cove and Magnolia Gate. Said construction will conform with all engineering and technical requirements of HPUD and local, state, and federal laws, rules and regulations.

2. Desco agrees to dedicate to HPUD all title in fee simple to the water line constructed pursuant to this agreement. Desco shall be responsible for procuring all permits, rights of way, or any other property interest necessary to effect the construction and installation of the water line.

3. Desco agrees to comply with all terms and conditions of the Local Agency Formation Commission, resolution HB1-96 (Desco Development), a copy of which is attached hereto as Exhibit "A", incorporated by reference and made a part hereof.

4. Desco agrees to install, at its sole expense, a detector check valve pursuant to plans and specifications approved by HPUD. The purpose of the detector check valve is to monitor water flow to the lots in each development. Desco agrees to insert language in any homeowners agreement to ensure that the homeowners association to be formed will pay the difference between the water delivered to the check valve and the total amount of water registered on the meters on individuals lots.

5. Desco understands that the connection fees for this project are the sum of \$2,400.00 per connection, and represents that the total number of homes to be constructed in McCabe Cove and Magnolia Gate is thirty-seven (37). Desco agrees to pay to HPUD connection fees of \$2,400.00 per connection. Said fees are payable as follows:

EXHIBIT B

a. One half of said sum within fifteen (15) days after permits are issued for construction of the water line, in the amount of \$44,400.00.

b. The balance upon the issuance of the building permit for the twelfth unit to be constructed.

6. Desco further agrees to pay to HPUD a sum as and for reimbursement under the Trentham Water Line agreement. This sum is presently \$454.00 per connection. This sum will increase at the rate of \$25.00 per connection for each calendar year commencing on January 1, 1997, and annually on that date thereafter.

7. Desco understands that its developments are outside the HPUD service boundaries and that the water service to be provided will be charged at a rate that is twice the existing rate which is applicable to water users within District boundaries.

8. Desco understands that if the developments and property to be serviced by the water line are annexed, in the future, by the City of El Centro, or water service is otherwise made available by the City of El Centro, Desco, homeowners and the homeowners association to be formed agree to pay or reimburse HPUD for all costs and expenses incurred or associated with the disconnection of HPUD service to the developments.

9. Desco agrees to grant HPUD permission, and to execute any documents reasonably necessary, for HPUD to have access and egress to Magnolia Gate and McCabe Cove for reading, replacement, and repair of on site water meters. Future homeowners and/or the homeowners association to be formed will be responsible for maintenance and repair of all on site water pipe and appurtenances except as expressly set forth herein.

10. Once dedicated to and accepted by HPUD, HPUD agrees to maintain and repair the water line, up to and including the check valve and the water meters. HPUD will not be responsible for maintenance and/or repair of on site water pipe and appurtenances, (i.e., downstream of check valve) which responsibility shall remain with Desco, future property owners, and the homeowner's association to be formed.

11. Allowing this project to connect to HPUD facilities and the provision of water hereunder is expressly conditioned on the water being used only for domestic cooking and sanitary purposes within dwellings. No water supplied by HPUD may be used for any other purpose including, without limitation, irrigation, washing vehicles, watering animals or vegetation, or outside maintenance of the premises. This provision shall be a covenant running with the land.

EXHIBIT B

12. Desco warrants the design, construction and installation of the water line and appurtenances to be free of material defects in workmanship for a period of one (1) year from the date of acceptance by HPUD.

13. Desco agrees to indemnify, hold harmless, and defend HPUD from and against all liabilities, lawsuits, expenses, claims, demands, judgments, suits, actions, of every kind or nature whatsoever that may arise by reason of any act or omission of Desco or its agents or employees, or any of Desco's contractors or sub-contractors arising out of or in manner connected with the construction, installation, repair, replacement and maintenance of the water line to the extent that such duty or responsibility rests with Desco.

14. In the event of any action or proceeding to interpret or enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs of suit in addition to any other relief in law or equity.

15. Desco represents it is a partnership duly organized and validly existing in good standing under the laws of the State of California which has the power and authority to enter into this agreement and to consummate the transactions contemplated hereby. Desco, and its specific, individual parties signing this agreement on behalf of Desco represent and warrant that the parties signing this agreement on behalf of Desco have the full legal power, authority and right to execute and deliver this agreement.

16. This agreement shall be binding upon and inure to the benefit of the assigns, heirs, and successors in interest of each party. Except as expressly set forth herein, this agreement is a sole and only agreement between the parties, and may not be modified other than by a subsequent written agreement.

Heber Public Utility District

Dated: 10/4/96

By: *Rosemarie Silva Kubis*

Desco Development Company

Dated: 9/19/96

By: *[Signature]* General Partner

EXHIBIT B



RECEIVED
SEP 26 1996
H.P.U.D.

STATE OF CALIFORNIA)
COUNTY OF Imperial) ss

On September 19, 1996 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Charles C. Dessert

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Jana Mendivil
NOTARY PUBLIC



STATE OF CALIFORNIA)
COUNTY OF _____) ss

On _____ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

Title or Type of Document: Water Line Agreement w/ # P.U.D.

Date of Document: 9-6-96

Other Signer(s) than Named Above:

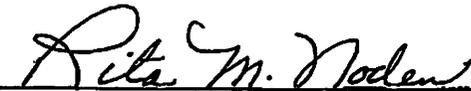
EXHIBIT B

BOOK 1880 PAGE 479

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss.
CITY OF EL CENTRO)

On January 31, 1997, before me, Rita M. Noden, City Clerk of the City of El Centro, California, personally appeared Abdel Salem, City Manager of the City of El Centro, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal



Rita M. Noden, CMC/AAE
City Clerk
(seal)



EXHIBIT C

97004534 BOOK 1880 PAGE 474

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

DOLORES PROVENCIO

COUNTY RECORDER
BOOK 1880 PAGE 474

'97 FEB 25 PM 4 03

OFFICIAL RECORDS
IMPERIAL COUNTY, CA

TL\$	21
RG	81
RF	6
MC	1
IX	1
TF	3
NL	
PY	
PR	

City Clerk
City of El Centro
P.O. Box 4450
El Centro, California 92244-4450

AGREEMENT FOR WATER CONNECTION AND ANNEXATION
FOR TENTATIVE TRACT MAP NO. 914 (MCCABE COVE)

THIS AGREEMENT made and entered into this 17th day of January, 1997, by and between the CITY OF EL CENTRO, a Municipal Corporation, (hereinafter referred to as "City"), and DESCO DEVELOPMENT COMPANY, a California general partnership, (hereinafter referred to as the "Owner").

WHEREAS, Owner owns and is presently engaged in developing single family residential development constituting a tentative map on certain real property in the unincorporated area of the County of Imperial, California, more particularly described on Exhibit "A" which is attached hereto and made a part hereof as though fully set forth. The project (which is referred to as "Tentative Tract Map No. 914 (McCabe Cove) consists of the subject property and another tentative map which the County of Imperial has approved called Magnolia Gate Subdivision Tract No. 904.

WHEREAS, in order for Owner to obtain approval of the Final Maps for the project, it is necessary that it demonstrate that it has obtained adequate potable water service to the property assured into the indefinite future.

WHEREAS, while Owner desires to have the properties annexed to the City with said water to be provided by the City, City does not presently possess the ability to provide that service to the property.

WHEREAS, Heber Public Utility District has agreed to temporarily (but not permanently) furnish said water services to the property.

WHEREAS, the subject property is neither located within the jurisdiction of HPUD, nor within the Sphere Of Influence of the City of El Centro. However, the City of El Centro has an application pending before the Local Agency Formation Commission (LAFCO) to amend the boundaries of its approved Sphere Of Influence to, among other things, include the subject property and project.

WHEREAS, under State law, OWNER and HPUD must first obtain authorization from LAFCO before HPUD may legitimately provide services to the property as well as the entire project.

EXHIBIT C

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WHEREAS, LAFCO has required as a precondition to its granting its consent to HPUD's providing said service to the project, that OWNER obtain the consent of the City to HPUD's providing such service, and Owner has made such a request of the City.

WHEREAS, the parties agree that it will be a matter of years before the City of El Centro will be able to provide water services to the subject property and project.

WHEREAS, the City of El Centro, California, has a policy that as a prerequisite to the issuance of an agreement to provide water connections to properties located outside the boundaries of the City of El Centro, the Owner of such property shall enter into an Agreement with the City whereby, among other things, the Owner agrees to the annexation into the City of El Centro of the subject property pursuant to the terms of said Agreement.

WHEREAS, City and the Owner desire, by this Agreement, to additionally address necessary prerequisites to the City's having the subject property become part of the City's Sphere Of Influence with ultimate annexation into the City of El Centro and obligation on the City to provide municipal services to the project.

WHEREAS, the City Council of the City of El Centro, California, finds that this Agreement will be in the best interest of the City of El Centro and the Owner agrees that this Agreement will be in its best interest.

NOW, THEREFORE, IT IS HEREBY AGREED AND COVENANTED AS FOLLOWS:

1. Approval of Recitals. The foregoing recitals are true and correct and adopted by the parties hereto.

2. Consent to Connect to HPUD Water Lines. City hereby consents to OWNER's connecting the subject property to HPUD's water lines.

3. OWNER's Consent To Property's Inclusion In City's Sphere Of Influence. OWNER, for itself, its heirs, successors, and assigns, hereby irrevocably consents to LAFCO's approval of the City's application to change the City's designated Sphere Of Influence to include the subject property with a "Urban Area" designation for General Plan purposes.

4. Construction of Water System To City Standards. OWNER agrees to construct the water system within said property to City's standards. OWNER shall provide City with confirmation that the County of Imperial will require the water systems on the subject property and entire project site to meet City's standards as though such properties were located in a County designated "Urban Area".

EXHIBIT C

BOOK 1880 PAGE 476

5. Compliance with City's Development Standards. The development of this site shall be subject to all applicable City of El Centro development standards, codes, ordinances and resolutions for any proposed use as though the property were currently designate "Urban Area" in the County of Imperial's applicable General Plan and other development regulations.

6. OWNER'S Consent To Payment of Applicable Fees Upon Annexation. OWNER consents and agrees for itself, its heirs, successors, and assigns, that at the time any portion of the subject property is annexed into the City, the City shall be paid by the applicable owner(s) of such property all applicable annexation, sewer and water capacity fees and to otherwise comply with all then applicable conditions of annexation.

7. Development Impact Fees. Owner hereby agrees for itself, its heirs, successors and assigns, to pay applicable Development Impact Fees pursuant to City Code for any undeveloped lots annexed to the City at such time as development is proposed on such lots.

8. Interpretation. Nothing herein shall be interpreted as in anyway disqualifying the property from future annexation into the City.

9. Covenants Running with the Land. The covenants, conditions and restrictions set forth herein shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described land or any part thereof, and shall inure to the benefit of such owner, and is imposed upon said interest and every part thereof as a servitude in favor of the City of El Centro, California. This Agreement shall run with the land and be for the benefit of and be enforceable by the City of El Centro, California. This Agreement shall be valid for a period of fifty (50) years from the date this Agreement is recorded, unless earlier terminated as set forth below.

10. Binding Upon Heirs, Successors and Assigns. The provisions of this Agreement shall be binding upon the parties, their heirs, successors and assigns.

11. Recordation of Agreement. The parties agree that this document shall be recorded in the Office of the County Recorder of Imperial County, California. When the Owner has fully satisfied the terms of this Agreement, City agrees to record an appropriate document acknowledging such fact.

12. Attorney's Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover, from the losing party, reasonable attorneys' fees and costs of suit.

EXHIBIT C

BOOK 1880 PAGE 477

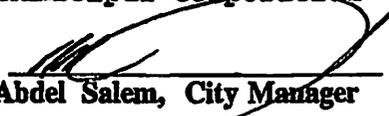
13. Independent Relationship. Nothing in this Agreement shall be interpreted as creating any form of partnership, joint venture or other relationship between the parties with reference to the ownership, design, development, financing or operations of the project.

14. Hold Harmless and Indemnification. Owner agrees to indemnify and hold City, its agents, officers, and employees, harmless from any liability arising from damage or loss due to repairs or maintenance of the water line inside the property (including any dedicated public easements or rights-of-way) which said maintenance and repair is the responsibility of Owner, its successors and assigns pursuant to any permit or map therefor approved by the County of Imperial or the City of El Centro.

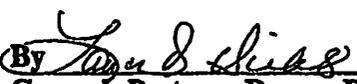
15. LAFCO Approval. OWNER agrees that this Agreement shall be made part of LAFCO'S proceedings to approve said connection to HPUD evidencing City's conditional consent to OWNER'S request to have HPUD provide water service to the property.

IN WITNESS WHEREOF, the undersigned has executed this Agreement this 17th day of January, 1997, in the City of El Centro, California.

CITY OF EL CENTRO
A Municipal Corporation

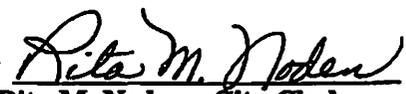
By 
Abdel Salem, City Manager

OWNER

By 
General Partner, Desco Development Co.,
A California Partnership

By 
General Partner, Desco Development Co.,
A California Partnership

ATTEST:

By 
Rita M. Noden, City Clerk

APPROVED AS TO FORM:

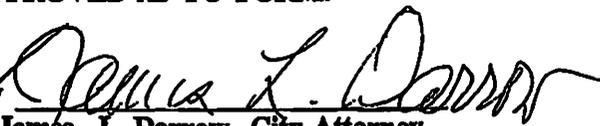
By 
James L. Darrow, City Attorney

EXHIBIT C



STATE OF CALIFORNIA)
COUNTY OF Imperial) ss

On January 17, 1997 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Lance D. Hicks

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



NOTARY PUBLIC



STATE OF CALIFORNIA)
COUNTY OF Imperial) ss

On January 15, 1997 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Charles C. Dessert

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



NOTARY PUBLIC



THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

- Title or Type of Document:
- Date of Document:
- Other Signer(s) than Named Above:

EXHIBIT D

RESOLUTION # 2015-09

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF IMPERIAL MAKING A DETERMINATION AND APPROVING THE AUTHORIZATION FOR THE CITY OF EL CENTRO AND THE HEBER PUBLIC UTILITY DISTRICT TO ENTER INTO AN AGREEMENT FOR PROVIDING WATER SERVICE TO MAGNOLIA GATE AND MCCABE COVE SUBDIVISIONS, SUBJECT TO THE TERMS AND CONDITIONS OF LAFCO

RESOLVED, by the Local Agency Formation Commission of the County of Imperial, State of California, that

WHEREAS, a proposal to extend water service from Heber Public Utility District to McCabe Cove Subdivision and Magnolia Gate Subdivision in the County of Imperial was filed with this Commission and the Executive Officer of this Commission pursuant to Title 5, Division 3, commencing with Section 56133 of the Government Code; and

WHEREAS, the Executive Officer of LAFCO has reviewed and prepared a report on said resolution, including recommendations thereon; and

WHEREAS, it has been determined that the owners of land within the McCabe Cove Subdivision and Magnolia Gate Subdivision have been made aware of the proposed extension for water service agreement by mail and have been given the opportunity to comment and support or oppose.

NOW THEREFORE, BE IT DETERMINED, ORDERED AND RESOLVED as follows:

- a) Subject to the terms and conditions hereinafter set forth, the request is approved for the extension of the Heber Public Utility District's water service to the McCabe Cove and Magnolia Gate Subdivisions .
- b) Leave the SOI for both agencies, but allow the HPUD to overlap into the SOI and potentially in the future into the City limits of El Centro with water service only.
- c). The boundaries are set forth in Exhibit "A" attached hereto
- d). The short form title is:
Heber Public Utility District HPUD 1-15
(McCabe Cove / Magnolia Gate Water Service Extensions)

BE IT FURTHER DETERMINED that the Local Agency Formation Commission does find and impose the conditions as follows:

- A) Approve and authorize the City of El Centro and the Heber Public Utility District to enter into a new agreement for HPUD to continue to provide water service only to both the Magnolia Gate project and the McCabe Cove project, subject to the conditions listed below;
- B) Make the finding that this approval is not subject to CEQA as it is categorically exempt.

EXHIBIT D

- C) Condition this approval to be effective for 120 days for an agreement to be executed, and absent an executed agreement being presented to LAFCO within 150 days this approval is null and void.
- D) The conditions of approval are as follows;
- a. The Sphere of Influence for El Centro shall remain as currently in effect with McCabe Road being the southern boundary.
 - b. The Sphere of Influence for HPUD shall be amended to include both Magnolia Gate and McCabe Cove for the sole authorization of HPUD to provide water service within this area and no other services.
 - c. HPUD may annex these two projects to the District or may continue to provide service as an out of boundary service. HPUD annexing the area to the District does not preclude the area from being annexed to the City of El Centro. It will merely allow a special district to provide a service within an incorporated city.
 - d. HPUD and El Centro, within 150 days shall enter into an agreement to establish the terms and conditions under which the water service by HPUD may be continued to be provided. A draft copy of the agreement shall be submitted to the Executive Officer of LAFCO prior to being approved by either/both agencies. A final recorded copy shall then also be provided to LAFCO. If in the opinion of the Executive Officer the agreement conflicts with the intent of this approval or condition of the CHK, and the EO so advises both agencies the agreement shall not go into effect.
 - e. This approval nor the agreement between the two agencies in no way authorizes or is intended to authorize HPUD to provide any services other than water and certainly no service currently not approved by LAFCO as part of the HPUD approved SAP/MSR.
 - f. The agreement between HPUD and EC shall state a term for the agreement to expire; shall state that HPUD will not oppose the annexation to the City; shall state that EC does not oppose the SOI for HPUD to overlap the City SOI for HPUD to provide water service only; shall state that EC does not oppose HPUD annexing this area to the District; shall state that water service may transition from HPUD to EC at such time that both agencies agree.
 - g. The agreement shall also state that no other service will be provided to the two projects by HPUD unless first approved by LAFCO.
 - h. The agreement once approved by LAFCO and executed by both HPUD and EC shall be sent by certified mail to each parcel of land by HPUD.
 - i. At such time that El Centro does annex this area, and if/when El Centro provides water service, HPUD shall apply to LAFCO to change the SOI and if applicable the District boundary back to McCabe Road.

EXHIBIT D

PASSED, ADOPTED AND APPROVED this **28th** day of **May, 2015** by the Local Agency Formation Commission and the following roll call votes:

AYES: Campbell, Jackson, Menvielle

NAYS:

ABSENT: Kelley, Castillo, West

Jason Jackson, Chairman



Jurg Heuberger, Executive Officer