



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"Enriching Lives"

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IN REPLY PLEASE

REFER TO FILE: **W-0**

March 1, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 37, ACTON
WATER CREDIT TIME EXTENSION AGREEMENT
SUPERVISORIAL DISTRICT 5
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

As the governing body of the Los Angeles County Waterworks District No. 37, Acton:

Approve and authorize the Chairman to execute the enclosed Memorandum of Understanding (MOU) between the Los Angeles County Waterworks District No. 37, Acton (District); B & C Land and Water, LLC, Brandenburg Agua-Dulce, LLC, Wood Ridge, LLC (Developers); and the Antelope Valley-East Kern Water Agency (AVEK) which extends the time period during which the District will honor the Allocated Water Units (AWUs) approved by your Board on December 19, 1989, as Water Capacity Units (WCUs) in Master Service Agreement (MSA) No. 62324. Those units were created in exchange for the construction of water system improvements.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Developers own parcels that they propose to develop into residential lots in the Acton area of Los Angeles County. The Developer's parcels are within a Community Facilities District (CFD) formed by AVEK to fund the construction of water system improvements. The Developers' parcels are subject to MSA No. 62324, approved by your Board on December 19, 1989. The MSA provides the property owners within the CFD with AWUs in exchange for the construction of water system improvements. An AWU is the right to that portion of the capacity of the water distribution system that will serve a single-family home through a 1-inch water meter. The AWUs are redeemed when a water meter is issued to a parcel within the CFD. At the time the MSA was approved in 1989, it provided 870 AWUs to the property owners within the CFD. Since that time, the property owners have redeemed many of these AWUs as water meters.

Under the MSA, the remaining AWUs will expire on April 23, 2006. The Developers will not be able to complete their development by that time, and therefore, require an extension of time that the District will honor the AWUs applicable to the Developers' parcels. This MOU extends the expiration date of the AWUs by 10 years to April 23, 2016.

The MSA allows the District to extend the current expiration date with respect to the AWUs in special circumstances. The downturn in the economy in the late 1990s prevented the Developers from being able to complete the development process. This is a special circumstance that justifies the extension of time requested by Developers. The extension of time will allow for the completion of the residential development. The MSA requires Board action to validate the requested time extension.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goals of Fiscal Responsibility and Service Excellence as it ensures that the needed water facilities will be economically constructed by an independent contractor to provide adequate water service to County residents in the Acton area.

FISCAL IMPACT/FINANCING

This action will have no impact on the County's General Fund. All funding for the construction of the residential developments will be provided by the Developers.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

This MOU extends the expiration date of the AWUs created under MSA No. 62324. Section 6.6 of the MSA requires the District to honor the AWUs for 10 years from the date of the District's acceptance of the water system facilities constructed. Your Board accepted these facilities on April 23, 1996, Synopsis 36. Thus, the AWUs will expire on April 23, 2006. Section 6.6 of the MSA allows the District to extend the 10 year time period in special circumstances. As set forth above, special circumstances exist which justify an extension. Thus, upon approval by your Board, the District may extend the AWUs from April 23, 2006, to April 23, 2016.

The MOU has been reviewed by County Counsel and approved as to form.

ENVIRONMENTAL DOCUMENTATION

A negative declaration was prepared for the MSA and adopted by your Board on May 21, 1991. The action to extend the expiration date of the AWUs is consistent with the previously approved negative declaration and does not involve any new or increased adverse environmental impacts. Appropriate environmental documentation has or will be prepared for each of the Developers' development projects.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact on current County services or projects during the performance of the recommended action.

The Honorable Board of Supervisors
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CONCLUSION

Please return the approved copies of the MOU marked "District," "Developer 1," "Developer 2," "Developer 3," and "AVEK" along with an adopted copy of this letter to Public Works. The copy of the MOU marked "County" is for your files.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

GMP:nm
BDL2151a

Enc.

cc: Chief Administrative Officer
County Counsel

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered into by and between Los Angeles County Waterworks District No. 37, a public waterworks district formed pursuant to Division 16 of the California Water Code (hereinafter referred to as "District"); B & C Land and Water, LLC, a California limited liability company, Brandenburg Agua-Dulce, LLC, a California limited liability company, and Wood Ridge, LLC, a California limited liability company (hereinafter collectively referred to as "Developers"); and the Antelope Valley East-Kern Water Agency (hereinafter referred to as "AVEK") with reference to the following facts:

(a) District and certain parties who are not parties to this Memorandum of Understanding entered into a Master Service Agreement in 1989, which provided, among other things, that District would supervise construction of, and subsequently accept ownership of, a new 24-inch-diameter water line (hereinafter referred to as "Acton III"). Acton III extends from District's Vincent Hill Pump Station to 1,600 feet east of Red Rover Mine Road.

(b) AVEK formed a Community Facilities District (CFD) pursuant to which the landowners and the original developers voted to subject their properties to taxes to secure bonds to fund the construction of Acton III and other water system improvements. Those bonds have not been paid in full.

(c) Developers purchased land they propose to develop into 564 single-family residential lots, which land is located in the CFD and is listed as follows: west of Red Rover Mine Road and north of the Antelope Valley Freeway, the Pratty property with 387 lots and Parcel 7A with 61 lots for a total of 448 lots; east of Red Rover Mine Road and north of the Antelope Valley Freeway, the Alon property with 86 lots and Parcel 1 property with 30 lots for a total of 116 lots. AVEK and District acknowledge that Developers are entitled to 564 Allocated Water Units (AWUs). An AWU is the right to that portion of the capacity of Acton III and that portion of the existing 2,000,000 gallons per day of capacity in AVEK's water treatment and wholesale water distribution system, which will serve a single-family home through a 1-inch water meter.

(d) Because of market conditions, the CFD could not sell all of the bonds required to complete the authorized project. Developers propose to complete a 12" water line for the purposes of serving the above described land.

(e) If Developers purchase additional properties outside the CFD and wish to develop said properties, Developers must acquire sufficient source of supply (water) from AVEK to meet the needs of the proposed development in addition to reimbursing District for any surplus capacity available in Acton III. Financial arrangements for both of these items must be made through either AVEK or District, as appropriate, prior to receiving metered water service from District. Available surplus capacity in Acton III may be acquired by Developers pursuant to that certain Policy Statement of the District adopted by the County of Los Angeles on June 13, 2000 (Policy Statement); or alternatively, at the option of Developers, pursuant to any other policies approved by the District.

(f) Developers obtained a vested tentative tract map for the Pratty property. Development, however, depends upon the construction of a 12-inch-diameter water main from Red Rover Mine Road to Developers Pratty and Parcel 7A properties. Developers are prepared to assume

the expense of such construction but only if it is clear that the 564 AWUs will be valid until April 23, 2016. The purpose of this Memorandum of Understanding is to memorialize that all parties are in agreement as to the facts and to provide assurances from District and AVEK that Developers will have a right to 564 AWUs to be used in connection with the above described developments, plus the right in common with the public to acquire additional capacity, if available, in Acton III as provided herein.

NOW, THEREFORE, the parties agree as follows:

1. The foregoing recitals are true and correct to the best knowledge of the parties to this Memorandum of Understanding.
2. District recognizes that Developers' properties are entitled to 564 AWUs, so long as AVEK approves the rights of each of those property owners to one (or more) of the 564 AWUs, and provided the water mains, tanks, pumping stations and distribution facilities necessary to provide water service have been built to District's specifications at no cost to District and have been properly dedicated to District.
3. All parties agree that Developers' 564 AWUs can be used to service property located within the boundaries of the CFD and the District. To the extent that AVEK identifies AWUs held by Developers that have been fully paid for and are not security for the CFD's bonds, the parties agree that those AWUs can be used by Developers outside of the CFD, but within the boundaries of the District north of the Antelope Valley freeway. Developers, however, will have to pay all costs associated with providing water to their properties at their own expense, in accordance with District standards whether AWUs are used inside or outside the CFD boundaries.
4. The 564 AWUs will expire on April 23, 2006. District hereby extends the life of the 564 AWUs to April 23, 2016, pursuant to the Master Service Agreement. Any of the 564 AWUs allocable to lots shown on a final tract or final parcel map recorded before April 23, 2016 do not expire even though metered water service has yet to be provided to the lot associated with the AWU. Upon recordation of any such final tract or final parcel map, this MOU shall expire in respect to the lots and the AWUs covered by such map.
5. In order for District to provide water service to Developers' Pratty property, and Parcel 7A, which account for 448 AWUs, Developers must extend a 12-inch-diameter water main from District's existing water system (including Acton III) in Sierra Highway at Red Rover Mine Road to these properties.
6. Developers may acquire available surplus capacity in Acton III for use within the boundaries of the District as provided in the Policy Statement, or alternatively, at the option of Developers, pursuant to any other policies approved by the District, by obtaining a Verification of Payment Certificate from AVEK, provided Developers obtain the appropriate water supply from AVEK or from water well collection systems.
7. Several other issues were raised by Developers. This paragraph is to specify that District is not involved with those issues identified as:

(a) the requirements for a sewer system;

(b) any issues that must be determined by the Los Angeles County Regional Planning Department; and

(c) any other issues that have to be resolved by the Los Angeles County Department of Public Works or other departments or agencies of the County of Los Angeles.

8. The provisions of this Memorandum of Understanding are intended to bind and benefit only the signatories or assignees approved in writing by District which approval will not be unreasonably withheld, and are not intended to benefit or be enforceable by any non-signatory or assignee not approved by District.

9. Notwithstanding paragraph 8, Developer's rights under this Memorandum of Understanding may be assigned without the approval of District or AVEK to purchasers of multiple lots of the properties identified in Recital C, *supra*. Thereafter such rights will be applicable to the lots sold to such purchasers and Developers shall no longer have such rights with respect to those lots.

10. In the case of any inconsistency between the terms of this Memorandum of Understanding and the terms of the Policy Statement, the terms of this Memorandum of Understanding shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their respective officers, duly authorized by Los Angeles County Waterworks District No. 37, Acton, on _____, 2003, by B & C Land and Water, LLC, on _____, 2004, by Brandenburg Agua-Dulce, LLC, on _____, 2004, by Wood Ridge, LLC, on _____, 2004, and by the Antelope Valley-East Kern Water Agency on FEBRUARY 24, 2004.

AVEK:

ANTELOPE VALLEY-EAST KERN
WATER AGENCY

By Andy D. Rutledge
President

rf

APPROVED AS TO FORM:

By Michael T Riddell

ATTEST:

By May L. Mcb

DEVELOPERS:

B & C LAND AND WATER, LLC
(A California Limited Liability Company)

By Nicholas J. Coussoulis
Nicholas J. Coussoulis
Its: Member

By Lu H. Berrada
Member

BRANDENBURG AGUA-DULCE, LLC
(A California Limited Liability Company)

By Lu H. Berrada
Its: Member

By _____
Member

WOOD RIDGE, LLC
(A California Limited Liability Company)

By Nicholas J. Coussoulis
Its: Member

By _____
Its: Member

APPROVED AS TO FORM:

By Bruce D. Varner
Bruce D. Varner, Attorney

ATTEST:

By _____

DISTRICT:

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 37, ACTON

By _____
Chair, Board of Supervisors of the County
of Los Angeles as governing body thereof

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer of the Board
of Supervisors of the County of
Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By Franklin E. Scott
Deputy