

Lake Don Pedro Community Services District

Regular Meeting of August 21, 2017

AGENDA SUPPORTING DATA

5. DISCUSSION AND ACTION ITEMS

- b. Adoption of a resolution approving a Plan Check and Inspection Agreement for the water system improvements to serve the Dollar General store planned for construction on Las Palmas Way at Hwy 132 - CD DG La Grange, LLC
- c. Adoption of a resolution approving a Plan Check and Inspection Agreement for the water system improvements to serve the Lake Don Pedro Storage, planned for construction on 14444 Las Palmas Way – Donald Clanton, Sole Proprietor

Recommended Action

Staff recommends the following motion:

I move to adopt a resolution approving a Plan Check and Inspection Agreement for the water system improvements to serve the Dollar General store planned for construction on Las Palmas Way at Hwy 132 - CD DG La Grange, LLC.

I move to adopt a resolution approving a Plan Check and Inspection Agreement for the water system improvements to serve the lake Don Pedro Storage, 14444 Las Palmas Way – Don Clayton

Background

The District requires the execution of an agreement when new construction work involves the extension of district infrastructure. Both of the above projects require main extensions, which will be completed by the project developer, under CSD inspection. The agreement places all costs on the developer for design, construction and district inspection.

Upon completion of the main extensions, the Board will be asked to adopt a resolution accepting the dedication of the completed facilities. The attached agreements and their adopting resolutions provide additional specifics.

**LAKE DON PEDRO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITY CONSTRUCTION
PLAN CHECK AND INSPECTION AGREEMENT
[Project Name]**

THIS AGREEMENT is made this 16th day of 2017, by and between the Lake Don Pedro Community Services District, hereinafter referred to as "District", and CD DG La Grange, LLC, a California Corporation [California Corporation, LLC, individual, sole proprietorship, etc) hereinafter referred to as "Applicant" or "Owner" in reference to the following recitals.

RECITALS:

- A. Pursuant to an Agreement [Annexation, Reimbursement or other Agreement if applicable], and in accordance with the District's Plan Check and Inspection Agreement, Applicant is required to construct and provide water service to Our Dollar General project [project name, AP number, annexation area or other].
- B. Applicant proposes to design and construct the following facilities that are referred to as the "Project" in this Agreement:
1. Develop and construct water main extensions, install fire hydrants, valves and other appurtenances; and
 2. Construct inter-tie facilities to connect the water services [new water mains, etc] to the District's water system located within APN: 075-030-13 [street, area, AP number].
- C. The District is willing to accept the transfer, operation and maintenance of the Project and to provide service therefrom through the District's water system, on the terms and conditions hereinafter provided.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Construction
 - (a) The applicant, at its sole cost and expense, shall design, prepare plans and specifications, develop and construct/install the Project. Applicant agrees to construct the Project in accordance with District's Engineering Standards. The Project shall be constructed by a contractor who is licensed under the Business and Professions Code of the State of California to do the type of work called for in the approved Plans and Specifications. Prior to the start of construction, District shall

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approve the plans and specifications and Applicant shall deposit with the District:

1. Two complete sets of the approved plans;
 2. A copy of the contractor's license; and
 3. A copy of the Applicant's contract with the contractor.
 4. Proof of insurance, as required by Paragraph 14, below.
- (b) Applicant shall be responsible for determining whether the construction of the Project requires the payment of prevailing wages and if so, Applicant shall to the extent required by the California Labor Code, pay no less than the applicable prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the wage determination are on file at the District's office or are otherwise available on the Web at www.csib.ca.gov.
- (c) Applicant shall be responsible for determining whether the construction of the Project requires the Applicant's contractor to be registered with the Department of Industrial Relations as a Public Works Contractor, and meeting all associated Labor Code requirements.

2. Deposit for District Services

At the time of execution of this Agreement, Applicant shall advance to the District the sum of \$3000.00 for engineering, legal and administrative services in connection with plan review, inspection of construction, and other costs incurred by the District in the performance of its duties under this Agreement. The Applicant authorizes District to withdraw from the deposit to pay for services pursuant to this Agreement as they are incurred by District.

District will notify Applicant whenever the deposit is reduced to \$1,000.00 or less. Within 15 days after such notification is mailed, Applicant will make an additional deposit in the same amount as the initial one as follows:

- (a) Request for additional deposit received by the 1st day of the month shall be deposited with District by the 15th day of that month; and
- (b) Request for additional deposit received by District by the 15th day of the month shall be deposited by the 30th day of that month.

Upon completion of construction and acceptance of the Project by the District, any funds so deposited by the Applicant in excess of the District's actual costs shall be refunded to the Applicant.

3. Permits

Applicant, at its sole cost, shall obtain all necessary local, County and State permits and approvals, including but not limited to County Encroachments Permits, and shall comply with all requirements thereof.

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4. Project Completion

The Applicant agrees to complete the Project to the satisfaction of the District within two (2) years from the date of this agreement. If not completed by this time, another Plan Check and Inspection Fee and Agreement shall be required.

5. Right of Entry

Permission is hereby granted by the Applicant to the District, or its authorized agent, to enter upon the land which is the subject of the Project for the purpose of inspecting the improvements to be constructed under this agreement.

6. Final Inspection and Testing

Upon completion of construction of the Project and prior to District acceptance, Applicant shall notify the District thereof and request a final inspection of the Project. All facilities in the Project shall be tested to meet District requirements as required by District Standards and Specifications. The Applicant shall supply and pay for the necessary equipment, services and devices to inspect and test the improvements installed. This shall include TV inspection of sewer lines, pressure testing equipment, cleaning devices, etc.

7. Notice of Acceptance

The District shall not provide service and a written notice of acceptance of the Project until all of the following have occurred:

- (a) The Project is finally inspected, tested and approved by the District as provided in Paragraph 6, above;
- (b) An engineer's certification that the Project is constructed in substantial conformance with the plans and specifications submitted to the District;
- (c) All real property, easements required to provide service through the Project, rights-of-way, permits, licenses, and other approvals to be obtained and delivered to the District have been so obtained and delivered to the District;
- (d) The record drawings (reproducible as-builts), specifications, accounting, operation manuals and instructions, CAD disk and warranties have been provided to the District;
- (e) Applicant has paid the District all applicable fees and charges of the District, all in accordance with the rules and regulations for the District;
- (f) A detailed accounting of amounts expended for improvements; and
- (g) A list of assessor parcel numbers and service addresses to be served by the Project.
- (h) Applicant provides the District with a "Maintenance Guarantee" as provided in Section 12(b) below.

8. Transfer of the Project

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Upon receipt of the notice of acceptance from the District, the Applicant shall deliver conveyance documents satisfactory in form and content to the District, transferring absolute and unencumbered ownership of the completed Project to the District (Offer of Dedication). The transfer shall not be completed until the conveyance documents transferring the Project have been formally accepted by the District Board of Directors.

9. Risk of Loss/Ownership

- (a) Upon transfer pursuant to Paragraph 8, above, the Project shall become the property of the District. The District shall own and be free in every respect to operate, manage, expand, and improve the Project as it deems appropriate.
- (b) Prior to the date of the transfer of the Project pursuant to paragraph 8, above, all risk of loss or injury or destruction to the Project and related facilities shall be solely upon the Applicant.

10. District Service

The District shall not provide service through the Project until the transfer has been completed in accordance with Paragraph 8, above. All such service shall be supplied in accordance with the District's rates, ordinances, rules and regulations as the same may be amended from time-to-time. The applicant shall not allow any person to use or commence operation of any part of the Project prior to District's acceptance of the transfer without the express written consent of the District.

11. Maintenance of Facilities

The District assumes no obligation as to maintenance and operation of the Project until such time as the transfer has been completed pursuant to Paragraph 8, above.

12. Applicant's Guaranty

- (a) Maintenance: Applicant warrants and guaranties all materials and workmanship furnished pursuant to this Agreement for a one (1) year period from the date of the transfer of the Project, as provided in Paragraph 8, above. This guarantee does not excuse the Applicant or Applicant's agents from breaches of contract causing defects that occur or are discovered more than one year after the transfer of the Project.

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- (b) Maintenance Guarantee: Prior to the notice of acceptance of the Project, Applicant shall provide the District with a letter of credit or other financial security satisfactory to the District ("Maintenance Guarantee") in a sum equal to ten percent (10%) of the cost of the Project, or such agreement satisfactory to the District whereby the Contractor's one-year warranty for all material and workmanship in the Project is assigned to the District and fully binding between the Contractor and the District, for the purpose of warranting all materials and workmanship furnished pursuant to this Agreement for one (1) year from the date of the District notice of acceptance of the Project. This guarantee does not excuse the Applicant from breaches of contract causing defects that occur or are discovered more than one year after the notice of acceptance.

The Applicant and/or its surety under the Maintenance Guarantee shall repair or replace to the satisfaction of the District any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing.

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

13. Changes in the Project.

If Applicant proposes to change the approved plans and specifications for the Project, it shall first obtain the written approval of the District for any such change, which approval may be on such terms and conditions as required by the District.

14. Insurance

Applicant or any Contractor carrying out the construction of the Project shall procure and maintain in insurance companies authorized to do business in the State of California with an A.M. Best's rating of not less than A-(IX), "on an occurrence basis", commercial general and automobile *liability* insurance. The insurance shall include but shall not be limited to protection against claims arising from death, bodily or personal injury, or damage to property resulting from operations, equipment or products of Applicant or its Contractor or by their employees, agents, consultants, or anyone directly or indirectly employed by any of the foregoing. The amount of insurance shall not be less than ONE MILLION DOLLARS (\$1,000,000.00) single *limit* coverage applying to bodily and personal injury and property damage, or a combination of both.

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Such insurance shall be primary insurance as respects the interest of the District, and any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder. The insurance shall specifically name the District, its directors, officers, and employees as additional insureds, and shall contain an endorsement providing that written notice shall be given to the District at least thirty (30) days prior to termination, cancellation, or reduction of coverage in the policies. The commercial general and automobile liability insurance coverage shall also furnish the District with certificates of insurance as satisfactory proof that Applicant or Applicant's Contractor carries worker's compensation insurance as required by law and liability insurance in compliance with these requirements.

15. Indemnification and Hold Harmless.

The Applicant recognizes and hereby agrees that the District and its directors, officers, employees and agents shall not be liable for any injury or death to any person or damage to any property arising from the performance of any work required hereunder by the Applicant, its officers, employees, independent contractors or agents. The Applicant shall protect, indemnify and hold the District harmless from any and all claims, causes of action, demands or charges and from any loss or liability, including all costs, penalties, expenses, attorney's fees, litigation costs, and other fees arising out of or in any way connected with the performance or with the failure to perform under this Agreement by Applicant, its officers, employees, independent contractors or agents, including, but not limited to, the construction of the Project. In addition, if the District, its directors, officers, employees or agents should be sued as a result of such performance, the District may notify the Applicant which then shall have the duty to defend the District, its directors, officers, employees or agents, or, at the District's option, pay for such defense including, but not limited to, payment of all reasonable attorney's fees and expenses incurred by the District, its directors, officers, employees or agents. This Indemnity and hold harmless shall survive the transfer of the Project.

16. Waiver of Rights.

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

17. Amendment

Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Applicant and the District.

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18. Notices.

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

District

Lake Don Pedro Community Services District
9751 Merced Falls Rd.
La Grange, CA 95329

Applicant

CD DG La Grange, LLC

4336 Marsh Ridge Road

Carrolton, Texas 75010

19. Venue

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in [Tuolumne/Mariposa] County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

20. Interpretation of this Agreement.

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered

by any party in connection with the transactions contemplated by this Agreement.

21. Agreement Binding

This Agreement shall apply to and be binding upon the successors, grantees, and assigns of the respective parties, provided, however, that Applicant may not assign any of its rights or obligations under this Agreement without the prior written consent of District.

22. Headings.

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

23. Recitals.

The recitals at page 1 of this Agreement are incorporated herein by this reference and made a part hereof.

24. Representations and Warranties of Applicant:

- (a) Applicant represents and warrants that: (a) it is duly organized and legally existing under the laws of the State of California and is duly qualified to do business in the State of California; (b) this Agreement will constitute, legal, valid and binding obligations of Applicant enforceable in accordance with its terms; and (c) the execution and delivery of this Agreement is within Applicant's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite action and are not in contravention of Applicant's contracts, charter, bylaws and/or other organizational documents.
- (b) Applicant Indemnity. Applicant and the undersigned jointly and severally agree to defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of subsection (a) above.

25. Days.

Unless otherwise specified to the contrary, "days" in this Agreement shall mean calendar, not business, days.

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Dated _____

Danny Johnson
President, Board of Directors

ATTEST

Syndie Marchesiello
Board Secretary

Approved as to Form

Raymond Carlson
District General Counsel

Dated: _____

[Applicant Name]
[Applicant Title]

RESOLUTION 2017 - ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
LAKE DON PEDRO COMMUNITY SERVICES DISTRICT
APPROVING A PLAN CHECK AND INSPECTION AGREEMENT TO SERVE THE
DOLLAR STORE – CD DG LA GRANGE LLC

WHEREAS, the Lake Don Pedro Community Services District (herein referred to as District) is a local government agency formed and operating in accordance with Section §61000 et seq. of the California Government Code; and

WHEREAS, the District is authorized pursuant to California Government Code Section 61100 (a) to provide water service for beneficial uses within its boundaries; and

WHEREAS, CD DG La Grange LLC has requested application for water service to serve the Dollar General store to be constructed on Las Palmas Way at Hwy 132; and

WHEREAS, as the sole provider of public water supply to the project site, the District has agreed to provide such water service in accordance with its water rules and regulations and with the construction and dedication of certain water system improvements; and

WHEREAS, the requires the execution of a Plan Check and Inspection Agreement in advance of conducting any engineering review of main extension projects, and to set forth the terms and conditions of the arrangement between the developer and District; such Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LAKE DON PEDRO COMMUNITY SERVICES DISTRICT that the proposal and agreement with CD DG La Grange, LLC included herein as Exhibit A, shall be approved and effective immediately.

WHEREFORE, this Resolution is passed and adopted by the Board of Directors of the Lake Don Pedro Community Services District on August 21, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Danny Johnson, President, Board of Directors

ATTEST:

Syndie Marchesiello,
Secretary
CERTIFICATE
OF SECRETARY
(STATE OF
CALIFORNIA) (COUNTY
OF MARIPOSA)

I, Syndie Marchesiello, the duly appointed and Secretary of the Board of Directors of the Lake Don Pedro Community Services District, do hereby declare that the foregoing Resolution was duly passed and adopted at a Regular Meeting of the Board of Directors of the Lake Don Pedro Community Services District duly called and held at the District office at 9751 Merced Falls Road, La Grange, CA 95239, on August 21, 2017

**LAKE DON PEDRO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITY CONSTRUCTION
PLAN CHECK AND INSPECTION AGREEMENT
LAKE DON PEDRO STORAGE MAIN EXTENTION**

THIS AGREEMENT is made this 8/17 day of 2017, by and between the Lake Don Pedro Community Services District, hereinafter referred to as "District", and DONALD CLANTON, a SOLE PROPRIETOR hereinafter referred to as "Applicant" or "Owner" in reference to the following recitals.

RECITALS:

- A. In accordance with this Plan Check and Inspection Agreement, Applicant is required to construct and provide water service to 14444 Las Palmas Way in accordance with County and District requirements.
- B. Applicant proposes to design and construct the following facilities that are referred to as the "Project" in this Agreement:
1. Develop and construct water main extensions, install fire hydrants, valves and other appurtenances; and
 2. Construct inter-tie facilities to connect the NEW WATER MAIN to the District's water system; and
 3. Dedicate the easements and rights of way necessary for operation and maintenance of the system
- C. The District is willing to accept the transfer, operation and maintenance of the Project and to provide service therefrom through the District's water system, on the terms and conditions hereinafter provided.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Construction
 - (a) The applicant, at its sole cost and expense, shall design, prepare plans and specifications, develop and construct/install the Project. Applicant agrees to construct the Project in accordance with District's Engineering Standards. The Project shall be constructed by a contractor who is licensed under the Business and Professions Code of the State of California to do the type of work called for in the approved Plans and Specifications. Prior to the start of construction, District shall

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approve the plans and specifications and Applicant shall deposit with the District:

1. Two complete sets of the approved plans;
 2. A copy of the contractor's license; and
 3. A copy of the Applicant's contract with the contractor.
 4. Proof of insurance, as required by Paragraph 14, below.
- (b) Applicant shall be responsible for determining whether the construction of the Project requires the payment of prevailing wages and if so, Applicant shall to the extent required by the California Labor Code, pay no less than the applicable prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the wage determination are on file at the District's office or are otherwise available on the Web at www.csib.ca.gov.
- (c) Applicant shall be responsible for determining whether the construction of the Project requires the Applicant's contractor to be registered with the Department of Industrial Relations as a Public Works Contractor, and meeting all associated Labor Code requirements.

2. Deposit for District Services

At the time of execution of this Agreement, Applicant shall advance to the District the sum of \$3000.00 for engineering, legal and administrative services in connection with plan review, inspection of construction, and other costs incurred by the District in the performance of its duties under this Agreement. The Applicant authorizes District to withdraw from the deposit to pay for services pursuant to this Agreement as they are incurred by District.

District will notify Applicant whenever the deposit is reduced to \$1,000.00 or less. Within 15 days after such notification is mailed, Applicant will make an additional deposit in the same amount as the initial one as follows:

- (a) Request for additional deposit received by the 1st day of the month shall be deposited with District by the 15th day of that month; and
- (b) Request for additional deposit received by District by the 15th day of the month shall be deposited by the 30th day of that month.

Upon completion of construction and acceptance of the Project by the District, any funds so deposited by the Applicant in excess of the District's actual costs shall be refunded to the Applicant.

3. Permits

Applicant, at its sole cost, shall obtain all necessary local, County and State permits and approvals, including but not limited to County Encroachments Permits, and shall comply with all requirements thereof.

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4. Project Completion

The Applicant agrees to complete the Project to the satisfaction of the District within two (2) years from the date of this agreement. If not completed by this time, another Plan Check and Inspection Fee and Agreement shall be required.

5. Right of Entry

Permission is hereby granted by the Applicant to the District, or its authorized agent, to enter upon the land which is the subject of the Project for the purpose of inspecting the improvements to be constructed under this agreement.

6. Final Inspection and Testing

Upon completion of construction of the Project and prior to District acceptance, Applicant shall notify the District thereof and request a final inspection of the Project. All facilities in the Project shall be tested to meet District requirements as required by District Standards and Specifications. The Applicant shall supply and pay for the necessary equipment, services and devices to inspect and test the improvements installed. This shall include TV inspection of sewer lines, pressure testing equipment, cleaning devices, etc.

7. Notice of Acceptance

The District shall not provide service and a written notice of acceptance of the Project until all of the following have occurred:

- (a) The Project is finally inspected, tested and approved by the District as provided in Paragraph 6, above;
- (b) An engineer's certification that the Project is constructed in substantial conformance with the plans and specifications submitted to the District;
- (c) All real property, easements required to provide service through the Project, rights-of-way, permits, licenses, and other approvals to be obtained and delivered to the District have been so obtained and delivered to the District;
- (d) The record drawings (reproducible as-builts), specifications, accounting, operation manuals and instructions, CAD disk and warranties have been provided to the District;
- (e) Applicant has paid the District all applicable fees and charges of the District, all in accordance with the rules and regulations for the District;
- (f) A detailed accounting of amounts expended for improvements; and
- (g) A list of assessor parcel numbers and service addresses to be served by the Project.
- (h) Applicant provides the District with a "Maintenance Guarantee" as provided in Section 12(b) below.

8. Transfer of the Project

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Upon receipt of the notice of acceptance from the District, the Applicant shall deliver conveyance documents satisfactory in form and content to the District, transferring absolute and unencumbered ownership of the completed Project to the District (Offer of Dedication). The transfer shall not be completed until the conveyance documents transferring the Project have been formally accepted by the District Board of Directors.

9. Risk of Loss/Ownership

- (a) Upon transfer pursuant to Paragraph 8, above, the Project shall become the property of the District. The District shall own and be free in every respect to operate, manage, expand, and improve the Project as it deems appropriate.
- (b) Prior to the date of the transfer of the Project pursuant to paragraph 8, above, all risk of loss or injury or destruction to the Project and related facilities shall be solely upon the Applicant.

10. District Service

The District shall not provide service through the Project until the transfer has been completed in accordance with Paragraph 8, above. All such service shall be supplied in accordance with the District's rates, ordinances, rules and regulations as the same may be amended from time-to-time. The applicant shall not allow any person to use or commence operation of any part of the Project prior to District's acceptance of the transfer without the express written consent of the District.

11. Maintenance of Facilities

The District assumes no obligation as to maintenance and operation of the Project until such time as the transfer has been completed pursuant to Paragraph 8, above.

12. Applicant's Guaranty

- (a) Maintenance: Applicant warrants and guaranties all materials and workmanship furnished pursuant to this Agreement for a one (1) year period from the date of the transfer of the Project, as provided in Paragraph 8, above. This guarantee does not excuse the Applicant or Applicant's agents from breaches of contract causing defects that occur or are discovered more than one year after the transfer of the Project.

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- (b) Maintenance Guarantee: Prior to the notice of acceptance of the Project, Applicant shall provide the District with a letter of credit or other financial security satisfactory to the District ("Maintenance Guarantee") in a sum equal to ten percent (10%) of the cost of the Project, or such agreement satisfactory to the District whereby the Contractor's one-year warranty for all material and workmanship in the Project is assigned to the District and fully binding between the Contractor and the District, for the purpose of warranting all materials and workmanship furnished pursuant to this Agreement for one (1) year from the date of the District notice of acceptance of the Project. This guarantee does not excuse the Applicant from breaches of contract causing defects that occur or are discovered more than one year after the notice of acceptance.

The Applicant and/or its surety under the Maintenance Guarantee shall repair or replace to the satisfaction of the District any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing.

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

13. Changes in the Project.

If Applicant proposes to change the approved plans and specifications for the Project, it shall first obtain the written approval of the District for any such change, which approval may be on such terms and conditions as required by the District.

14. Insurance

Applicant or any Contractor carrying out the construction of the Project shall procure and maintain in insurance companies authorized to do business in the State of California with an A.M. Best's rating of not less than A-(IX), "on an occurrence basis", commercial general and automobile *liability* insurance. The insurance shall include but shall not be limited to protection against claims arising from death, bodily or personal injury, or damage to property resulting from operations, equipment or products of Applicant or its Contractor or by their employees, agents, consultants, or anyone directly or indirectly employed by any of the foregoing. The amount of insurance shall not be less than ONE MILLION DOLLARS (\$1,000,000.00) single *limit* coverage applying to bodily and personal injury and property damage, or a combination of both.

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Such insurance shall be primary insurance as respects the interest of the District, and any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder. The insurance shall specifically name the District, its directors, officers, and employees as additional insureds, and shall contain an endorsement providing that written notice shall be given to the District at least thirty (30) days prior to termination, cancellation, or reduction of coverage in the policies. The commercial general and automobile liability insurance coverage shall also furnish the District with certificates of insurance as satisfactory proof that Applicant or Applicant's Contractor carries worker's compensation insurance as required by law and liability insurance in compliance with these requirements.

15. Indemnification and Hold Harmless.

The Applicant recognizes and hereby agrees that the District and its directors, officers, employees and agents shall not be liable for any injury or death to any person or damage to any property arising from the performance of any work required hereunder by the Applicant, its officers, employees, independent contractors or agents. The Applicant shall protect, indemnify and hold the District harmless from any and all claims, causes of action, demands or charges and from any loss or liability, including all costs, penalties, expenses, attorney's fees, litigation costs, and other fees arising out of or in any way connected with the performance or with the failure to perform under this Agreement by Applicant, its officers, employees, independent contractors or agents, including, but not limited to, the construction of the Project. In addition, if the District, its directors, officers, employees or agents should be sued as a result of such performance, the District may notify the Applicant which then shall have the duty to defend the District, its directors, officers, employees or agents, or, at the District's option, pay for such defense including, but not limited to, payment of all reasonable attorney's fees and expenses incurred by the District, its directors, officers, employees or agents. This Indemnity and hold harmless shall survive the transfer of the Project.

16. Waiver of Rights.

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

17. Amendment

Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Applicant and the District.

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ORIGINAL FOR SIGNATURE

18. Notices.

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

District

Lake Don Pedro Community Services District
9751 Merced Falls Rd.
La Grange, CA 95329

Applicant

LAKE DON PEDRO STORAGE

DONALD G. CLANTON, 14447 Las Moras St., La Grange

Mail: PO BOX 24188, SAN JOSE, CA 95154

19. Venue

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in [Tuolumne/Mariposa] County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

20. Interpretation of this Agreement.

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered

by any party in connection with the transactions contemplated by this Agreement.

21. Agreement Binding

This Agreement shall apply to and be binding upon the successors, grantees, and assigns of the respective parties, provided, however, that Applicant may not assign any of its rights or obligations under this Agreement without the prior written consent of District.

22. Headings.

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

23. Recitals.

The recitals at page 1 of this Agreement are incorporated herein by this reference and made a part hereof.

24. Representations and Warranties of Applicant:

- (a) Applicant represents and warrants that: (a) it is duly organized and legally existing under the laws of the State of California and is duly qualified to do business in the State of California; (b) this Agreement will constitute, legal, valid and binding obligations of Applicant enforceable in accordance with its terms; and (c) the execution and delivery of this Agreement is within Applicant's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite action and are not in contravention of Applicant's contracts, charter, bylaws and/or other organizational documents.
- (b) Applicant Indemnity. Applicant and the undersigned jointly and severally agree to defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of subsection (a) above.

25. Days.

Unless otherwise specified to the contrary, "days" in this Agreement shall mean calendar, not business, days.

LAKE DON PEDRO COMMUNITY SERVICES
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ORIGINAL FOR SIGNATURE

Dated _____

Danny Johnson
President, Board of Directors

ATTEST

Syndie Marchesiello
Board Secretary

Approved as to Form

Raymond Carlson
District General Counsel

Dated: August 17, 2017


Donald G. Clanton, Owner

[Applicant Name]

[Applicant Title]

RESOLUTION 2017 - ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
LAKE DON PEDRO COMMUNITY SERVICES DISTRICT
APPROVING A PLAN CHECK AND INSPECTION AGREEMENT TO SERVE THE
LAKE DON PEDRO STORAGE, 14444 Las Palmas Way – Don Clayton

WHEREAS, the Lake Don Pedro Community Services District (herein referred to as District) is a local government agency formed and operating in accordance with Section §61000 et seq. of the California Government Code; and

WHEREAS, the District is authorized pursuant to California Government Code Section 61100 (a) to provide water service for beneficial uses within its boundaries; and

WHEREAS, Don Clayton, a Sole Proprietor and owner/developer of the project has requested application for water service to serve the Don Pedro Storage to be constructed at 14444 Las Palmas Way; and

WHEREAS, as the sole provider of public water supply to the project site, the District has agreed to provide such water service in accordance with its water rules and regulations and with the construction and dedication of certain water system improvements; and

WHEREAS, the requires the execution of a Plan Check and Inspection Agreement in advance of conducting any engineering review of main extension projects, and to set forth the terms and conditions of the arrangement between the developer and District; such Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LAKE DON PEDRO COMMUNITY SERVICES DISTRICT that the proposal and agreement with CD DG La Grange, LLC included herein as Exhibit A, shall be approved and effective immediately.

WHEREFORE, this Resolution is passed and adopted by the Board of Directors of the Lake Don Pedro Community Services District on August 21, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Danny Johnson, President, Board of Directors

ATTEST:

Syndie Marchesiello,
Secretary CERTIFICATE
OF SECRETARY
(STATE OF
CALIFORNIA) (COUNTY
OF MARIPOSA)

I, Syndie Marchesiello, the duly appointed and Secretary of the Board of Directors of the Lake Don Pedro Community Services District, do hereby declare that the foregoing Resolution was duly passed and adopted at a Regular Meeting of the Board of Directors of the Lake Don Pedro Community Services District duly called and held at the District office at 9751 Merced Falls Road, La Grange, CA 95239, on August 21, 2017