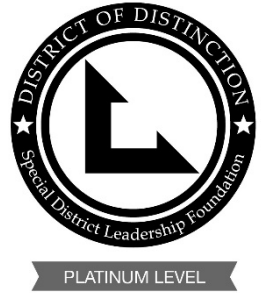




TOWN OF DISCOVERY BAY

A COMMUNITY SERVICES DISTRICT

SDLF Platinum-Level of Governance



President – Carolyn Graham • Vice-President – Bryon Gutow • Director – Kevin Graves • Director – Ashley Porter • Director – Lesley Belcher

**NOTICE OF THE REGULAR MEETING
OF THE WATER AND WASTEWATER COMMITTEE
OF THE TOWN OF DISCOVERY BAY
Wednesday, February 5, 2025, 5:30 P.M.**

TO ATTEND IN PERSON: The meeting will be held at the Community Center located at 1601 Discovery Bay Boulevard.

In addition to physical attendance at the address indicated above, the Town of Discovery Bay Community Services District is offering the following teleconferencing options as an alternative means for the public to participate in this meeting.

TO ATTEND BY ZOOM WEBINAR: <https://us06web.zoom.us/j/81370654114>

TO ATTEND BY PHONE: +1 (669) 444 9171 or +1 (719) 359 4580 **WEBINAR ID:** 813 7065 4114

Download Agenda Packet and Materials at <http://www.todb.ca.gov/>

Water and Wastewater Committee Members

*Kevin Graves
Carolyn Graham*

A. ROLL CALL

1. Call business meeting to order 5:30 p.m.
2. Roll Call.

B. PUBLIC COMMENTS (Individual Public Comments will be limited to a 3-minute time limit)

During Public Comments, the public may address the Committee on any issue within the District's jurisdiction which is not on the Agenda. The public may comment on any item on the Agenda at the time the item is before the Committee for consideration. Any person wishing to speak will have 3 minutes to make their comment. There will be no dialog between the Committee and the commenter as the law strictly limits the ability of Committee members to discuss matters not on the agenda. We ask that you refrain from personal attacks during comment, and that you address all comments to the Committee only. Any clarifying questions from the Committee must go through the Chair. Comments from the public do not necessarily reflect the viewpoint of the Committee members.

C. DRAFT MINUTES TO BE APPROVED

1. Approve Water and Wastewater DRAFT Special Meeting Minutes of November 20, 2024.

D. UPDATES

1. Cross Connection.

E. DISCUSSION

1. Discussion Regarding Establishing Chair and Vice-Chair.
2. Discussion Regarding the Sewer Line Access Road Agreement for the Newport Pointe Subdivision.
3. Discussion Regarding Amending the Herwit Engineering General Services Contract to add \$50,000.

F. FUTURE DISCUSSION/AGENDA ITEMS

G. ADJOURNMENT

1. Adjourn to the next Standing Water and Wastewater Committee meeting at the Community Center located at 1601 Discovery Bay Boulevard.

"This agenda shall be made available upon request in alternative formats to persons with a disability, as required by the American with Disabilities Act of 1990 (42 U.S.C. § 12132) and the Ralph M. Brown Act (California Government Code § 54954.2). Persons requesting a disability related modification or accommodation in order to participate in the meeting should contact the Town of Discovery Bay, at (925) 634-1131, during regular business hours, at least forty-eight hours prior to the time of the meeting."

"Materials related to an item on the Agenda submitted to the Town of Discovery Bay after distribution of the agenda packet are available for public inspection in the District Office located at 1800 Willow Lake Road during normal business hours."



TOWN OF DISCOVERY BAY

A COMMUNITY SERVICES DISTRICT



PLATINUM LEVEL

SDLF Platinum-Level of Governance

President – Michael Callahan • Vice-President – Carolyn Graham • Director – Kevin Graves • Director – Bryon Gutow • Director – Ashley Porter

**MINUTES OF THE SPECIAL MEETING
OF THE WATER AND WASTEWATER COMMITTEE
OF THE TOWN OF DISCOVERY BAY
Wednesday, November 20, 2024, 5:30 P.M.**

Water and Wastewater Committee Members

Chair Kevin Graves

Vice-Chair Ashley Porter

A. ROLL CALL

1. Call business meeting to order 5:30 p.m.
2. Roll Call was taken, and all members were present.

B. PUBLIC COMMENTS (Individual Public Comments will be limited to a 3-minute time limit)

None.

C. DRAFT MINUTES TO BE APPROVED

1. Approve Water and Wastewater DRAFT Meeting Minutes of November 6, 2024.

Vice-Chair Porter made a Motion to Approve the November 6, 2024 Draft Meeting Minutes.

Chair Graves seconded.

Vote: Motion Carried – AYES: 2, NOES: 0, ABSTAINED: 0, ABSENT: 0

D. PRESENTATIONS

1. Mobile Modular.

Presented by Joshua Dean with Mobile Modular.

- Presentation was to provide update on the design contract, modular building proposal and site work estimate.
- One large tree and a shed will need to be removed from the site.
- New parking includes secure parking for employees and the Board, additional public parking including accessible parking, three EV charging stations, and nine future-ready EV spaces.
- CMU wall with gate for sound and visual separation from community pool area.
- Landscaping using Contra Costa County indigenous plants and trees.
- Design review packet was submitted to Contra Costa County.
- Sound masking was added to several rooms in the building.
- Operable partition was added to the Board Room.
- Additional public restrooms were added per code requirements.
- Dedicated nursing room per CA requirements.
- Sprinkler system included.
- Standing seam metal roof.
- Three coat stucco with integral color.
- Stone wainscot at front facing parts of building.

- Overview:
 - Rough order of magnitude pricing discussed at previous Board meeting presentation:
 - Approximately \$450,000 for design agreement.
 - \$4M building.
 - \$2.5M site plan.
 - \$7M total.
- New items added:
 - Bullet proofing: \$160,000.
 - Operable partition in Board Room: \$52,000.
 - Additional restrooms: \$30,000.
 - Furniture: \$58,000.
 - Subtotal of additional items is \$300,000.
- Demo work and removal of existing structure and tree: \$45,000.
- Mobile Modular Proposal: \$3,994,820.

This presentation as well as the CEQA determination and construction manager recommendation will be brought to the next Board of Directors meeting.

Public comment:

- Speaker mentioned the HVAC system, solar and ethernet wiring. He also mentioned excluded items such as landscaping.

E. UPDATES

None.

F. DISCUSSION

None.

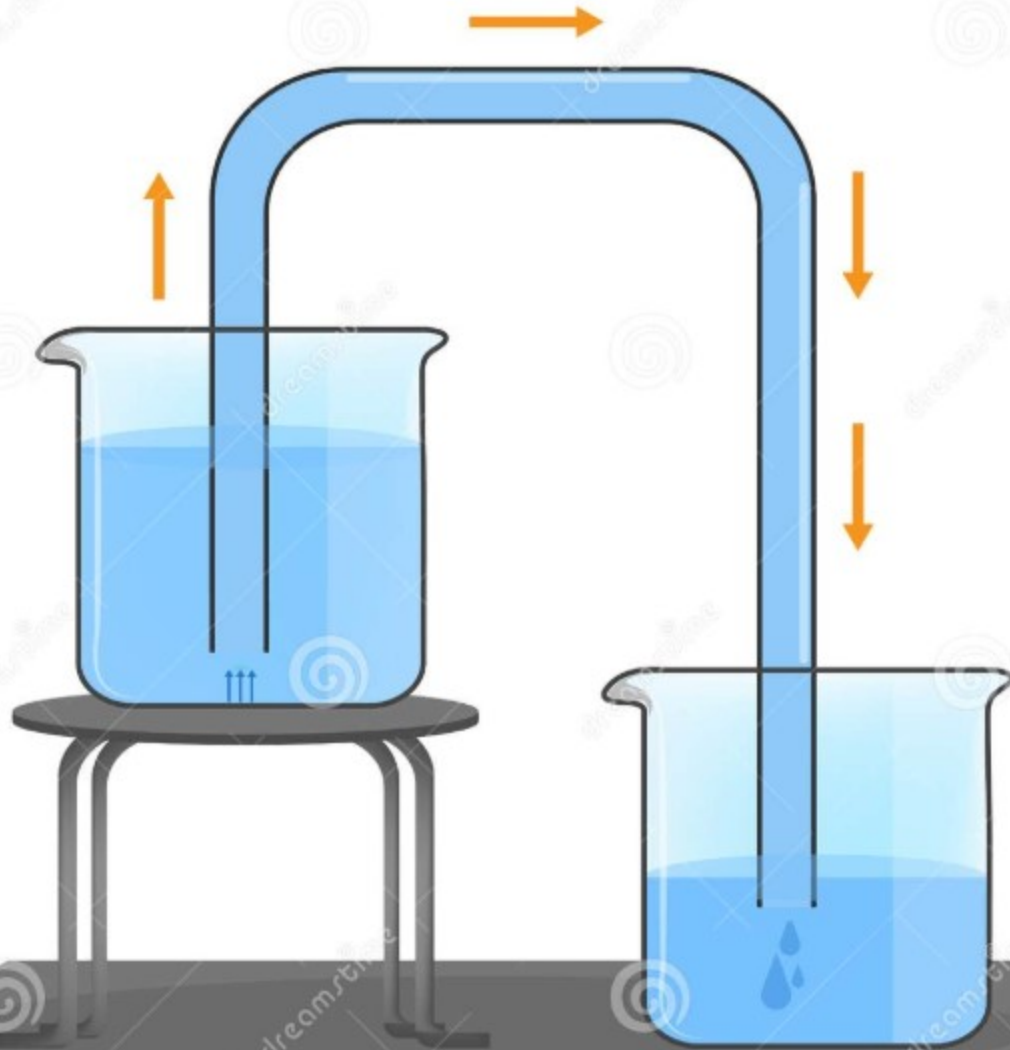
G. FUTURE DISCUSSION/AGENDA ITEMS

None.

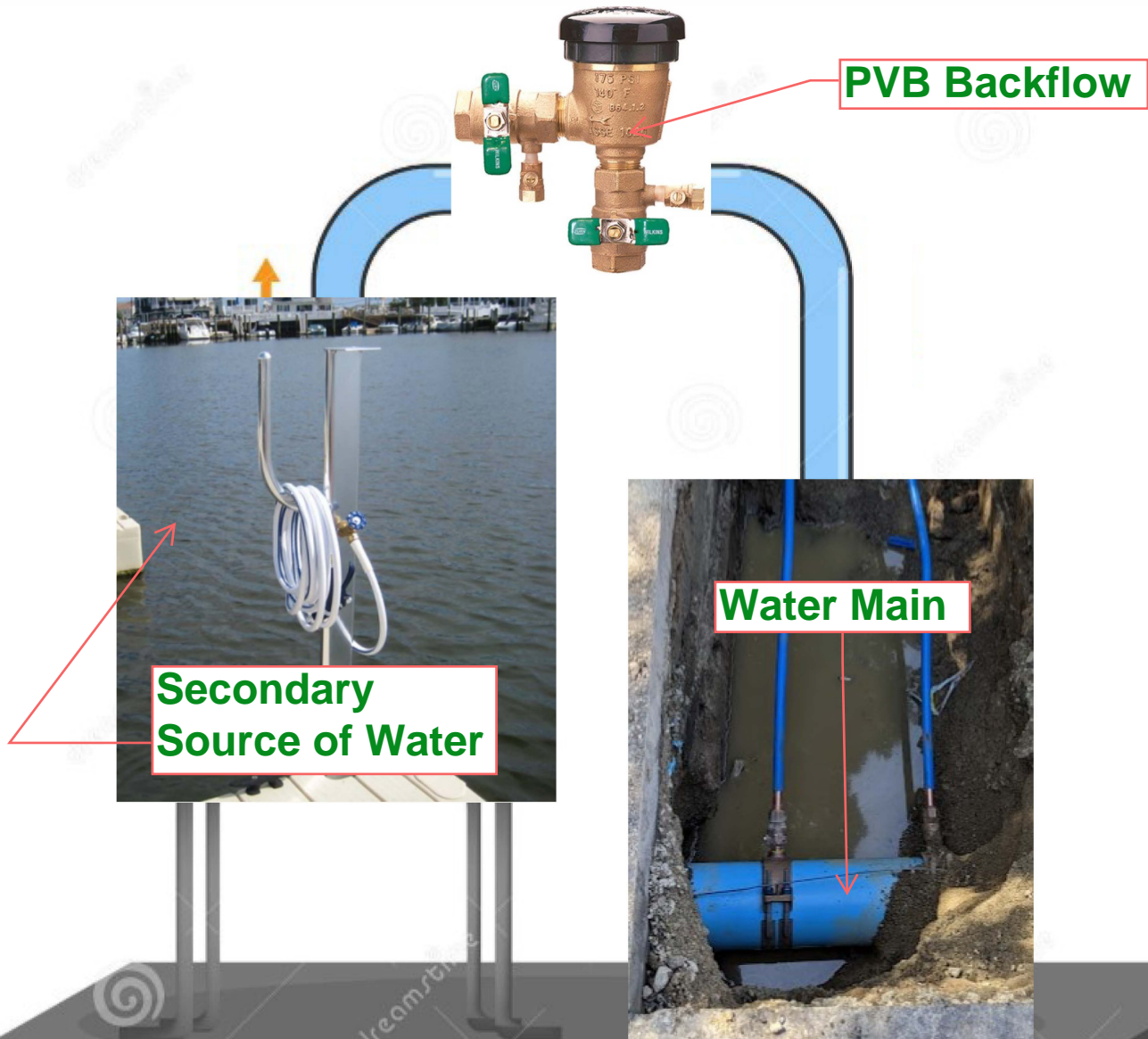
H. ADJOURNMENT

1. Adjourned at 6:07p.m. to the next Standing Water and Wastewater Committee meeting on December 4, 2024, at the Community Center located at 1601 Discovery Bay Boulevard.

Siphon Physics Principles



Siphon Physics Principles





Town of Discovery Bay

“A Community Services District”

STAFF REPORT

Agenda Title: Discussion Regarding the Sewer Line Access Road Agreement for the Newport Pointe Subdivision.

Meeting Date: February 5, 2025

Prepared By: Mike Yeraka, Projects Manager

Submitted By: Dina Breitstein, General Manager

RECOMMENDED ACTION:

- a. Discuss the Sewer Line Access Road Agreement with Century Communities for Access to the Sewer Line Serving the Newport Pointe Subdivision.
- b. Provide Input.

EXECUTIVE SUMMARY:

The original plans for installation of the sewer line to serve the Newport Pointe subdivision did not include a way for the Town to properly maintain the sewer line. The Developer (Century Communities) has submitted an application to the County to install an access road for the Town to maintain the sewer line as shown on the attached Exhibit. The timing of approval from the County for the access road is uncertain and the developer wishes to move forward with installing the sewer line so they can start building homes. The attached agreement was prepared in order to accommodate the developer’s request and provide certainty that the access road will be constructed.

In general, the agreement includes the following:

- 1. The access road will be built at the expense of the Developer.
- 2. The Developer will deposit \$150,000 with the Town as a guarantee that the road will be built.
- 3. In the event the Developer does not build the access road, the Town will have the right to build the road using the \$150,000 plus any additional funds that may be needed at the expense of the Developer.
- 4. The Developer will provide an easement to the Town for the sewer line and access road.
- 5. The Developer will be responsible for maintaining the sewer line and the subdivision sewer system at their expense until the access road is completed.
- 6. The Developer will be responsible for paying any costs or fines associated with any sewer overflows that may occur while they are responsible for maintenance.
- 7. The sewer line, access road, as well as the subdivision water and sewer systems will have a three-year warranty after the Town’s acceptance.

All costs incurred by the Town are paid by the Developer.

Specific Recommended Action:

- a. Discuss the Sewer Line Access Road Agreement with Century Communities for Access to the Sewer Line Serving the Newport Pointe Subdivision.
- b. Provide Input.

FISCAL IMPACT:

Amount Requested: N/A

Sufficient Budgeted Funds Available? N/A Developer Funded

Prog/Fund # Category: N/A

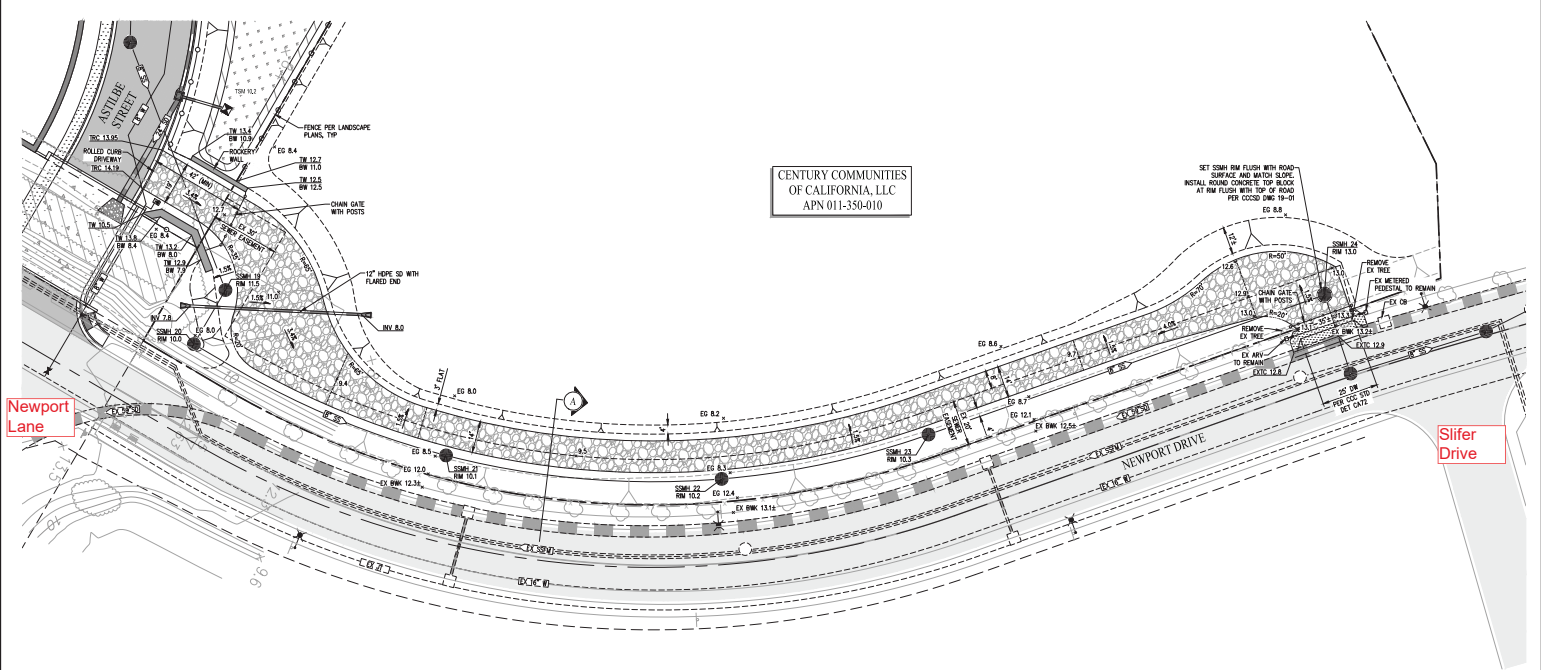
PREVIOUS RELEVANT BOARD ACTIONS FOR THIS ITEM:

The Board authorized the General Manager to execute the Pre-Annexation Agreement for the project at the March 6, 2019, Board Meeting.

ATTACHMENTS:

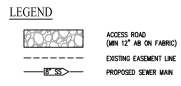
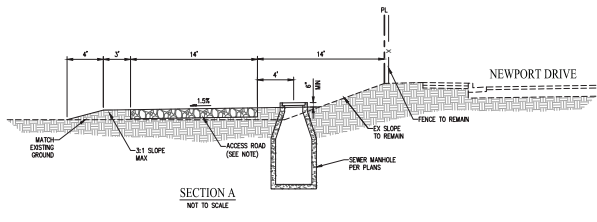
1. Access Road Exhibit.
2. Sewer Line Access Road Agreement.

CENTURY COMMUNITIES
OF CALIFORNIA, LLC
APN 011-350-010



Newport Lane

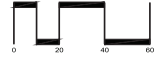
Slifer Drive



NOTE
ACCESS ROAD SHALL BE VIRGIN CLASS 2 AB WITH 90% COMPACTION AND THE FABRIC BELOW THE ROAD SHALL BE VIRGIN 300# OR EQUIVALENT PER GEOTECHNICAL ENGINEERS RECOMMENDATION. PRIOR TO PLACING THE FABRIC, THE SOIL SUBGRADE SHOULD BE COMPACTED TO 90% (MIN) IN ACCORDANCE WITH THE RECOMMENDATIONS CONTAINED IN THE PROJECT'S GEOTECHNICAL REPORT.

SEWER ACCESS ROAD NEWPORT POINT

TOWN OF DISCOVERY BAY CONTRA COSTA COUNTY CALIFORNIA
SCALE: 1"=20' DATE: OCTOBER 3, 2024



GANI RAMON (925) 865-0322
ROSEVILLE (916) 788-4456
WWW.CBGCOLORADO.COM
CIVIL ENGINEERS SURVEYORS PLANNERS

SEWER LINE ACCESS ROAD AGREEMENT

This SEWER LINE ACCESS ROAD AGREEMENT (“**Agreement**”) is made effective as of January ___, 2025 (the “**Effective Date**”) by and between **TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT**, a political subdivision of the State of California (the “**Town**”), and **CENTURY COMMUNITIES OF CALIFORNIA, LLC**, a Delaware limited liability company (“**Century**”).

RECITALS

A. Century owns property in the Town of Discovery Bay, Contra Costa County, California more particularly described on Exhibit A attached hereto (the “**Century Project**”), which Century intends to develop as a residential community.

B. The Town worked with the previous owner of the Century Project to develop a sewer lift station option, a sewer line in the road option and a sewer line through the property to the north of the Century Project option to provide sanitary sewer service to the Century Project. The previous owner of the Century Project and Century both chose to pursue the sewer line through the property to the north option to service the Century Project (the “**Sewer Line**”).

C. After the Town approved the plans for the Sewer Line, the Town came to realize that those plans were incomplete as they did not provide for the Town to access the Sewer Line or manholes to perform maintenance and repairs. The Town then informed Century that Century needed to install a gravel access road near the Sewer Line to facilitate the Town accessing the manholes to inspect, maintain and repair the Sewer Line as needed (the “**Access Road**”).

D. Century agreed to install the Access Road and obtained the Town’s approval of an Access Road plan attached hereto as Exhibit B (the “**Access Road Plan**”).

E. After the Town approved the Access Road Plan, Century submitted the Access Road Plan to the County who indicated that the Access Road Plan needed to go through the County approval process.

F. Century and the Town have agreed to proceed with planning the construction of the Access Road, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Century and the Town agree as follows:

AGREEMENT

1. Access Road Plan. The Town acknowledges that the Town has approved the Access Road Plan in the form attached hereto as Exhibit B. Century, at its sole cost, shall continue to use reasonable diligent efforts to process and obtain County approval of the Access Road Plan (the “**County Approval**”). Without limiting the foregoing, Century will comply with any requirements or mitigation measures that are required by the County as a condition of County Approval. The Town will, at no cost to the Town, reasonably cooperate with such processing including, without limitation, signing any submittals or other documents reasonably required by the County or providing any other documentation supporting County Approval.

2. Construction Funds. Within fourteen (14) business days after mutual execution of this Agreement, Century will deliver to the Town, by either check or wire, the amount of **\$150,178.30** (the “**Construction Funds**”), as security for the construction of the Access Road. The Town will track the funds in an account separate from Century’s current deposit account. The Town shall continue to deduct its actual expenses that the Town incurs in connection with the Town’s performance under or enforcement of this Agreement from the deposit account that Century currently has with the Town and Century shall continue to replenish that deposit account upon notification by the Town. In addition, if at any time the Town determines that the Construction Funds then held are insufficient to complete the Access Road, then Century will deposit any additional amount reasonably determined by the Town within thirty (30) days after the Town’s written notice. The Town will (a) release the Construction Funds to the Century as reimbursement for construction and completion of the Access Road in accordance with Section 3.b and, (b) if the Town exercises its takeover right, then use the Construction Funds for construction of the Access Road in accordance with Section 3.c. Within fifteen (15) days after written request from Century, the Town shall provide an accounting of any deposits, withdrawals, and then-current balance of the Construction Funds.

3. Construction of Access Road. Provided that the County approves the Access Road Plan, then Century will construct the Access Road in accordance with the approved Access Road Plan and all applicable local and State laws and regulations. In the event of unforeseen site conditions, Century and the Town will work together to address any reasonable modifications to the Access Road Plan, and (1) Century shall implement all said modifications at Century’s expense required by the County, and (2) Century shall implement all said modifications at Century’s expenses required by the Town provided such Town-imposed modifications (a) remain substantially in conformance with the Access Road Plan attached hereto as Exhibit B, and (b) do not require any additional approval from the County.

a. Commencement and Completion Time Frames. Century shall commence construction of the Access Road within thirty (30) days after obtaining County Approval, and will use commercially reasonable diligent efforts to complete the Access Road within sixty (60) days after commencement; provided, however, the commencement and completion deadlines are subject to a day-for-day extension for any period in which Century is unable to perform any construction due to any unforeseen force majeure event including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) epidemic, pandemic or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, epidemic or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; (m) inclement weather; and (n) other similar events beyond the reasonable control of Century.

b. Reimbursement of Century’s Costs from Construction Fund. Within twenty (20) days after the Town’s inspection and confirmation that Century has completed 50% of the Access Road (as evidenced by a written certification from the general contractor or engineer), the Town will release 50% of the Construction Funds to Century. Within twenty (20) days after the Town’s inspection and confirmation that Century has completed the Access Road, the Town will release the remainder of the Construction Funds to Century.

- c. Town's Takeover Right. In the event Century fails to commence or complete the Access Road within the time frames set forth in Section 3, and does not cure such failure within thirty (30) days after written notice from the Town, then the Town may, in its sole discretion, elect to take over construction of the Access Road. In the event the Town exercises its takeover right, then the Town may deduct from the Construction Funds all actual costs that the Town incurs in completing the Access Road. Within thirty (30) after completion, the Town will provide an accounting of the Town's actual costs in constructing the Access Road, and (i) if such actual costs are less than the Construction Funds, the Town will return any remaining Construction Funds to Century within twenty (20) days after delivering such accounting; and (ii) if such actual costs exceed the Construction Funds, Century will reimburse the difference to the Town within twenty (20) days after receipt of such accounting.
- d. No County Approval. Notwithstanding anything herein to the contrary, if the County refuses to approve the Access Road by August 22, 2025, then the Town shall undertake completing the Access Road as a Town project. In such event, Century will at its sole cost, retain consultants approved by the Town to perform any analysis and prepare any documents under the California Environmental Quality Act ("CEQA") as may be reasonably required by the Town acting as the Lead Agency on the project. In addition, Century shall perform any mitigation measures as may be required by any applicable governmental agency (including any reasonable mitigation measures required by the Town) or a court of law to comply with CEQA. Upon the Town's notice that the Access Road has been approved as a Town project, Century shall cause the Access Road to be constructed in accordance with Section 3.
- e. Insurance. Before commencing work pursuant to any work described in this Agreement, Century shall obtain the insurance required under this Section and receive the approval of the Town's General Manager or her designee as to form, amount and carrier. Century shall maintain the insurance during the term of this Agreement. The insurance shall name the Town as an additional insured and extend to the Town, its elective and appointive boards, commissions, officers, agents, employees and representatives and to the Century and each contractor and subcontractor performing work on the Century Project and Access Road.
- f. Workers' Compensation Insurance. Century shall maintain workers' compensation insurance for all persons employed at Century Project and Access Road project. Century shall require each contractor and subcontractor similarly to provide workers' compensation insurance for their respective employees. Century agrees to indemnify the Town for damage resulting from Century's failure to take out and maintain such insurance.
- g. Public Liability and Property Damage Insurance. Century shall maintain public liability insurance in an amount not less than \$1,000,000.00 for injuries (including death) to any one person and subject to the same limit of any one occurrence.
- h. Evidence of Insurance. Century shall furnish Town, concurrently with the execution of this Agreement, satisfactory evidence of the insurance required. Century shall request that the carrier provide evidence that the carrier will give the Town at least ten (10) days' prior written notice of the cancellation or reduction in coverage of a policy (the "**Insurance Notice Confirmation**"). However, the Century's carrier has previously informed Century that it will not provide an Insurance Notice Confirmation. Therefore, unless and until

Century delivers the Insurance Notice Confirmation, Century will be required to (i) give the Town at least ten (10) days' prior written notice before Century takes any action to cancel or reduce coverage of a policy, and (ii) deliver to the Town any notice of cancellation or reduction of coverage that the carrier delivers to Century within three (3) business days after receipt.

4. Sewer and Access Easement. Within 90 days of execution of this Agreement, Century shall deliver to the Town a signed, notarized original of an easement in the form attached hereto as Exhibit C, for access, use, maintenance and repair of the Access Road and Sewer Line the metes and bounds of which shall be as approved by the Town.

5. Maintenance; Warranty. Century has installed the water system for the Century Project (the "**Water System**") and the sewer system for the Century Project (the "**Sewer System**"). The Sewer Line, and the Access Road will be installed in accordance with this Agreement. The Water System, Sewer System, Sewer Line and Access Road are each hereinafter referred to in this Paragraph 5 individually as an "**Improvement**" and collectively as the "**Improvements**". Until such time as an Improvement is accepted by the Town, Century shall be responsible for and bear the risk of loss to such Improvement constructed or installed. Until such time as an Improvement is fully completed and accepted by Town, Century shall be solely responsible for the care, maintenance of, and any damage to such Improvement, in addition to paying any fines that may be imposed on the Town or Century by any governmental entity, including by the Town, or court having jurisdiction over the Improvements, inclusive of any expenses the Town may incur to resolve any sewer overflows, backups, or other necessary maintenance that Century fails to perform. Town shall not, nor shall any officer or employee thereof, be liable for any accident, loss, or damage, regardless of cause, happening or occurring to the work, or any Improvement prior to the completion and acceptance of such Improvement unless in the event of such officer's or employee's gross negligence or willful misconduct. All such risks shall be the responsibility of and are hereby assumed by Century. Upon acceptance of an Improvement, the Town will assume the responsibility to maintain the such Improvement. Notwithstanding the foregoing, Century will warrant that each Improvement is free from design or construction defects for a period expiring three (3) years after acceptance of such Improvement, and shall cause any necessary repairs to be made at the expense of Century. For clarification, each Improvement may be accepted by the Town at different times, and in such event the three (3) year warranty period for each Improvement shall expire at different times based on the acceptance date for such Improvement.

6. Century Project Development. Within two (2) business days after mutual execution of this Agreement and the Town's receipt of the Construction Funds (as defined in Section 3 above), the Town shall sign off on all plot plans that comply with Town regulations, Ordinances, and design criteria for the lots within the Century Project. Upon obtaining the plot plan sign-off, Century and any other owners of portions of the Century Project may proceed in obtaining building permits for the lots and constructing residences thereon. The Town will not withhold its approval of any building permits or certificates of occupancy based on the status of completion of the Access Road; however, Century shall not apply for any final inspection or any certificate of occupancy on any of the residences until the Sewer Line, and the entire sewer system for the Century Project are completed in the Town's sole discretion. During construction, Century will use commercially reasonable best efforts and industry best practices to prevent Century Project construction debris from the entering into the Sewer Line. Upon completion of all residences within the Property, Century will run a closed-circuit video camera through the entire Century Project sewer system and the entire length of the Sewer Line, and remove any debris that is show on the video feed. If, debris is found within the entire sewer system including the Sewer Line during the course of construction or upon running the camera through the Sewer Line and Century does not remove it within ten (10) days after

notice from the Town, then the Town may have it removed and deduct the costs incurred from the Construction Funds in accordance with Section 3.

7. Indemnity. Century hereby agrees to defend and hold the Town and its elected and appointed officers, agents, employees and representatives harmless from claims, costs and liabilities for any personal injury, death or property damage which arises, directly or indirectly, as a result of the construction of the Access Road, Sewer Line or operations performed under this Agreement by Century or by Century's contractors, subcontractors, agents or employees, whether such operations were performed by Century or any of Century's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for Century or any of Century's contractors or subcontractors.

In addition, Century shall defend Town and its elected and appointed representatives, officers, agents and employees against actions arising out of such personal injury, death, or property damage which is caused, or alleged to have been caused, by reason of Century's activities in connection with the Century Project. Century further agrees to defend and save and hold Town harmless from any and all claims, costs and liabilities arising as a result of any legal action or proceeding brought against the Town which challenges the validity of this Agreement, any of the terms and conditions herein, the Access Road approvals, or the sufficiency of environmental review pursuant to CEQA as applicable to the Access Road.

This hold harmless agreement applies to all damages or claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this section regardless of whether or not the Town prepared, supplied or approved plans or specifications, or both, for the Century Project and/or Access Road.

8. Cooperation in the Event of Legal Challenge. In the event of any legal or equitable act, action or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. In the event Town and Century are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel, although Century shall be responsible for all Town costs incurred in relation to defending against such an action or proceeding, as further provided for in Section 7 of this Agreement.

9. Default; Remedies. If either party fails to fully perform any of its obligations hereunder, and such failure continues for thirty (30) days following notice thereof in writing from the non-defaulting party (or any other cure period that is specifically provided for above), then the non-defaulting party shall have the right to file an action for specific performance. Without limiting the foregoing, each party expressly waives its rights to receive consequential, incidental, or punitive damages or damages for lost profits under this Agreement.

10. Notices. All notices and demands which either party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with appropriate postage paid, by personal delivery, by private overnight courier service to the address set forth below for the respective party, or by email at the email address below (provided the sender obtains confirmation of receipt); however, if any party gives notice of a change of name or address or number, notices to that party shall thereafter be given as demanded in that notice. All tenders and notices shall be effective as of (i) the date received if personally delivered, sent by email, or delivered by a private contract carrier that assures same- or next-day delivery and provides a receipt or (ii) the date received or rejected if sent by U.S. certified mail, return receipt requested.

Town's Address:

Town of Discovery Bay
Community Services District
1800 Willow Lake Road
Discovery Bay, CA 94505
Attention: Dina Breitstein, General Manager
Email: dbreitstein@todb.ca.gov

Century's Address:

Century Communities of California, LLC
6700 Koll Center Parkway, Suite 210
Pleasanton, CA 94566
Attention: Daniel Turpin
Email: dan.turpin@centurycommunities.com

Century Communities of California, LLC
c/o Century Communities
4695 MacArthur Court, Suite 350
Newport Beach, CA 92660
Attention: Holly Traube Cordova, Esq.
Email: Holly.Cordova@centurycommunities.com

11. Miscellaneous.

a. Amendments. This Agreement can be amended only by a written agreement executed by both the Town and Century.

b. No Agency, Joint Venture, or Partnership. It is specifically understood and agreed to by and between the parties hereto that: (1) the Century Project is a private development; (2) the Town has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the Town accepts the same pursuant to the provisions of this Agreement or in connection with the various Century Project approvals; (3) Century shall have full power over and exclusive control of the Century Project and Access Road herein described, subject only to the limitations and obligations of Century under the Century Project approvals and this Agreement; and (4) Town and Century hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Town and Century and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between Town and Century.

c. Severability. If any term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

d. Assignment. Upon Town's written consent, Century shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement and the Project Approvals to third parties acquiring an interest or estate in the Project and/or Project Site, or any portion thereof including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or

any lots, homes or facilities located within the Project Site. Century shall give at least thirty (30) days' prior written notice to the Town of its intention to assign or transfer any of its interests, rights or obligations under this Agreement. If all or any portion of the Project or Project Site is transferred by Century to any person or entity, the transferee shall succeed to all of the Century's rights and obligations under this Agreement as they affect the right to proceed with the development of that transferred portion of the Project or Project Site and the transferee shall automatically assume all obligations of Century, past, present and future, hereunder which relates to the transferred Property. Unless Century is released in writing by Town, a transfer of all or any part of the Project Site to any other person or entity shall not release Century from any obligation under this Agreement.

e. Time is of the essence of this Agreement.

f. Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The parties may sign and transmit this Agreement and any amendments thereto by PDF or other electronic means, including, but not limited to, electronic mail, and each party's signature on a PDF or other electronic transmission of this Agreement and electronic signatures on this Agreement and any amendment shall be deemed to be valid and binding upon the parties and considered an original signature with the same binding effect as an original signature on this Assignment and any amendments.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CENTURY:

TOWN:

CENTURY COMMUNITIES OF CALIFORNIA,
LLC a Delaware limited liability company

TOWN OF DISCOVERY BAY COMMUNITY
SERVICES DISTRICT, a political subdivision of
the State of California

By: _____
Name: Daniel Turpin
Its: Vice President

By: _____
Name: _____
Its: _____

EXHIBIT A

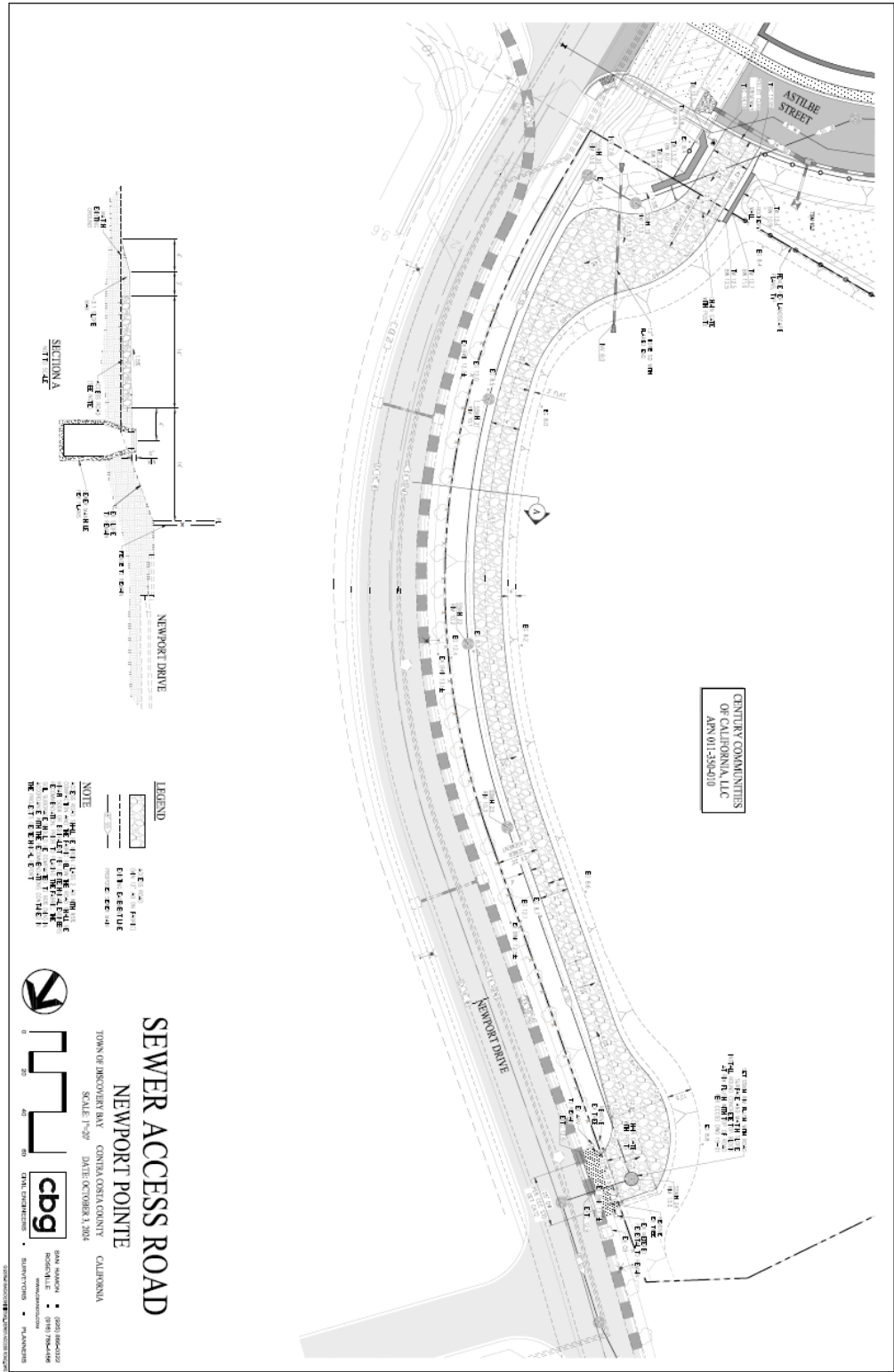
LEGAL DESCRIPTION OF CENTURY PROPERTY

Real property in unincorporated County of Contra Costa, State of California, described as follows:

TRACT ONE:

Lots 1 through 67, inclusive, and Parcels A, B, C, D, E, F and G of Subdivision 9278 – Newport Pointe, as designated on the map recorded May 30, 2024 in Book 557 of Maps at Pages 1 through 10, Document No. 2024-0050970.

EXHIBIT B ACCESS ROAD PLAN



RECORDING REQUESTED ABD
WHEN RECORDED MAIL TO:

Town of Discovery Bay
1800 Willow Lake Road
Discovery Bay, CA 94505

Space above this line for Recorder's use

TITLE(S)

**GRANT OF EASEMENT
FOR PUBLIC USE, ACCESS AND SEWER LINE PURPOSES**

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Town of Discovery Bay
1800 Willow Lake Road
Discovery Bay, CA 94505

Recording Fee: Exempt (Government Code Section 27383) Space above this line for Recorder's use

APN NO(S): 011-350-010

DOCUMENTARY TRANSFER TAX: Exempt (Revenue and Taxation Code Section 11922)

The property is located in the Town of Discovery Bay

**GRANT OF EASEMENT
FOR INGRESS AND EGRESS AND SEWER LINE PURPOSES**

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED,

CENTURY COMMUNITIES OF CALIFORNIA, LLC, A DELAWARE LIMITED LIABILITY
COMPANY

DO(ES) HEREBY IRREVOCABLY GRANT TO

TOWN OF DISCOVERY BAY, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA

AN EASEMENT FOR INGRESS AND EGRESS FOR ACCESS TO AND THE USE MAINTENANCE, REPAIR,
OR REPLACEMENT OF AN ACCESS ROAD, STORM DRAIN CULVERT, RETAINING WALLS, MANHOLES
AND SEWER LINE, AND ALL USES INCIDENT THERETO, UPON, OVER, UNDER AND ACROSS THE
REAL PROPERTY IN THE TOWN OF DISCOVERY BAY, COUNTY OF CONTRA COSTA, STATE OF
CALIFORNIA, AS DESCRIBED IN THE ATTACHED **EXHIBIT "A"** AND SHOWN IN THE ATTACHED
EXHIBIT "B".

THIS GRANT OF EASEMENT MAY BE EXECUTED IN COUNTERPARTS, EACH OF WHICH SHALL BE
DEEMED AN ORIGINAL, BUT ALL OF WHICH TAKEN TOGETHER SHALL CONSTITUTE ONE AND
THE SAME INSTRUMENT.

GRANTOR:

CENTURY COMMUNITIES OF CALIFORNIA,
a limited liability company

By: _____

Name: Daniel Turpin

ACCEPTED BY GRANTEE:

TOWN OF DISCOVERY BAY, a political
subdivision of the State of California

By: _____

Name: _____

Title: Vice President

Title: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____, Notary Public,
Date Name of Notary
personally appeared _____
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

**EXHIBIT A TO
GRANT OF EASEMENT FOR PUBLIC USE AND SEWER LINE PURPOSES**

LEGAL DESCRIPTION OF EASEMENT AREA

(to be attached)

**EXHIBIT B TO
GRANT OF EASEMENT FOR PUBLIC USE AND SEWER LINE PURPOSES**

DEPICTION OF EASEMENT AREA

(to be attached)



Town of Discovery Bay

"A Community Services District"

STAFF REPORT

**AGENDA ITEM:
E3**

Agenda Title: Discussion Regarding Amending the Herwit Engineering General Services Contract to add \$50,000.

Meeting Date: February 5, 2025

Prepared By: Aaron Goldsworthy, Water & Wastewater Manager

Submitted By: Dina Breitstein, General Manager

RECOMMENDED ACTION:

To provide feedback on amending the contract and add \$50,000 to the Herwit Engineering General Service Contract Agreement.

EXECUTIVE SUMMARY:

In June 2024, during the Board of Directors Meeting held on June 19th, 2024, the Board approved the General Manager to enter into a General Services Contract Agreement with Herwit Engineering Consultants for an amount not to exceed \$75,000.

Since the execution of this agreement, the Town has received multiple requests from developers for engineering information related to their various development projects. The purpose of these services is to assist the Town and potential developers in identifying essential information needed to design and construct developments that comply with the Town's specifications for water and wastewater infrastructure and services.

However, since the Town did not have a separate developer contract with Herwit Engineering for the various infrastructure studies, all development work was billed against the general services contract. As a result, the contract funds were exhausted within six months of being executed.

The total billed for developer services amounted to \$52,800, and all of these funds are reimbursable by the developers.

Staff is requesting an amendment to the Herwit Engineering general services contract to add \$50,000. In the next fiscal year, the Town plans to implement two separate contracts as follows:

1. A Standard General Services Contract for Engineering Services.
2. A Developer Services Contract, under which all expenses incurred will be reimbursed by the developers.

Recommended action: To provide feedback on amending the contract and add \$50,000 to the Herwit Engineering General Service Contract Agreement.

FISCAL IMPACT:

\$50,000

PREVIOUS RELEVANT BOARD ACTIONS FOR THIS ITEM:

ATTACHMENTS:

1. 2024-2025 Herwit Engineering General Service Agreement June 19th, 2024.



AGREEMENT BETWEEN
TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT AND
HERWIT ENGINEERING
FOR
DISTRICT ENGINEER – ENGINEERING SUPPORT SERVICES
EXTENTION FY 2024-2025

This AGREEMENT (“Agreement”) is made and entered into this 24 day of June, 2024, by and between the Town of Discovery Bay Community Services District (hereinafter “District”) whose address is 1800 Willow Lake Road, Discovery Bay, California 94505, and HERWIT ENGINEERING SERVICES (“CONSULTANT”).

RECITALS

A. District has determined that it requires the following consultant services from CONSULTANT: Description - name of project.

B. CONSULTANT represents that it is willing to accept responsibility for performing such PROJECT in accordance with the terms and conditions set forth in this Agreement. Furthermore, CONSULTANT agrees that in the event of any conflict or inconsistency in the terms and conditions of this Agreement and CONSULTANT’S scope of work, that such conflict or inconsistency shall be resolved as provided in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, and in light of the circumstances outlined in the Recitals, which are incorporated fully herein by this reference, the District and CONSULTANT agree as follows:

AGREEMENT

1. DEFINITIONS

- 1.1. “Scope of Work”: Such consultant services as are generally set forth in consultant’s scope of work, which is attached hereto as Exhibit A and incorporated herein by this reference.
- 1.2. “Approved Fee Schedule”: Such compensation rates as set forth in Consultant’s fee schedule attached hereto as part of Exhibit A and incorporated herein by this reference.
- 1.3. “Commencement Date”: July 1, 2024.
- 1.4. “Expiration Date”: Final deliverables by June 30, 2025.

2. TERM

The Term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 14 (“Termination”) below.

3. CONSULTANT’S SERVICES

- 3.1. CONSULTANT shall perform the Work identified in the Scope of Work. District shall have the right to request, in writing, changes in the Scope of Work. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to CONSULTANT under this Agreement exceed the sum of \$75,000.00 unless specifically approved in advance and in writing by District.
- 3.2. CONSULTANT shall complete all Work arising out of this Agreement no later than the Expiration Date.
- 3.3. CONSULTANT shall perform all work to the highest professional standards of Consultant’s profession and in a manner reasonably satisfactory to District. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.).
- 3.4. CONSULTANT represents that it has, or will secure at its own expense, all personnel, material, appliances, equipment, and tools required to perform the Work identified in the Scope of Work. All such Work shall be performed by CONSULTANT or under its supervision, and all personnel engaged in the work shall be qualified to perform such Work. The District shall be Consultant’s project administrators and shall have direct responsibility for management and coordination of Consultant’s performance under this Agreement. District shall not direct, control or supervise Consultant’s employees or sub-consultants in the performance of the Scope of Work set forth in this Agreement.
- 3.5. To the extent applicable, CONSULTANT shall provide progress copies of drawings, reports, specifications and other necessary information to the District and other engineers for coordination and review.
- 3.6. CONSULTANT shall strictly observe and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or properties or their protection from damage, injury, or loss. Without limiting the foregoing, CONSULTANT shall comply with all requirements, regulations, orders, and directives promulgated under the Federal Occupational Safety and Health Act, the California Occupational Safety and Health Act, and the California Safe Drinking Water and Toxic Enforcement Act of 1988.

4. COMPENSATION

- 4.1. District agrees to compensate CONSULTANT for the Work provided under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such Work, payment in accordance with the Approved Fee Schedule.
- 4.2. CONSULTANT shall submit to District an invoice, on a monthly basis or less frequently, for the Work performed pursuant to this Agreement. Each invoice shall itemize the Work performed during the billing period and the amount due. Within ten business days of receipt of each invoice, District shall notify CONSULTANT in writing of any disputed amounts included on the invoice. Within sixty (60) calendar days of receipt of each invoice, District shall pay all undisputed amounts included on the invoice. District shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.
- 4.3. Additional Work requested by District and not included in the Scope of Work may be required by the District. Such additional Work shall be performed only in accordance with Change Orders, authorized and issued by District or District's designated representative. Each Change Order shall list the scope of Work to be performed, state the time within which the Work is to be completed, and designate any special conditions. Payments for any additional Work requested by District shall be made to CONSULTANT by District on a time-and-materials basis using the Approved Fee Schedule, unless otherwise stated in the Change Order.

5. OWNERSHIP OF WRITTEN PRODUCTS

- 5.1. All reports, documents or other written material ("written products") developed by CONSULTANT in the performance of this Agreement shall be and remain the property of District without restriction or limitation upon its use or dissemination by District. CONSULTANT may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by CONSULTANT. District shall indemnify CONSULTANT from any liability arising from use of documents in connection with the Scope of Work identified in this Agreement.

6. RELATIONSHIP OF PARTIES

- 6.1. CONSULTANT is, and shall at all times remain as to District, a wholly independent contractor. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of District or otherwise to act on behalf of District as an agent. Neither District nor any of its agents shall have control over the conduct of CONSULTANT or any of Consultant's employees, except as set forth in this Agreement. CONSULTANT shall not represent that it is, or that any of its agents or employees are, in any manner employees of District. CONSULTANT is not entitled to the rights or benefits afforded District employees, including, but not limited to, disability, unemployment or other insurance, or workers' compensation.

7. CONFIDENTIALITY

7.1. All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by District. District shall grant such consent if disclosure is legally required. Upon request, all District data shall be returned to District upon the termination or expiration of this Agreement.

8. INDEMNIFICATION

- 8.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend District, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property to the extent caused by any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any of its officers, employees, agents, or subconsultants in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of District's choice.
- 8.2. District shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due District from CONSULTANT as a result of Consultant's failure to pay District promptly any indemnification arising under this Section 8 and related to Consultant's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 8.3. The obligations of CONSULTANT under this Section 8 will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives any statutory immunity under such statutes or laws as to District, its officers, agents, employees and volunteers.
- 8.4. CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 8 from each and every subconsultant or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend District, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property to the extent caused by any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of District's choice.
- 8.5. District does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by District, or the deposit with District, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

9. INSURANCE

- 9.1. During the term of this Agreement, CONSULTANT shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
 - 9.1.1. Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000), per occurrence and in the aggregate, including products and operations hazard, contractual insurance, broad form property damage, independent contractors, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 9.1.2. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
 - 9.1.3. Worker's Compensation insurance as required by the laws of the State of California.
 - 9.1.4. Professional Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence.
- 9.2. CONSULTANT shall require each of its subconsultants to maintain insurance coverage that meets all of the requirements of this Agreement.
- 9.3. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 9.4. CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, District may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.
- 9.5. At all times during the term of this Agreement, CONSULTANT shall maintain on file with District a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the District and its officers, employees, agents and volunteers as additional insureds under Commercial General Liability. CONSULTANT shall, prior to commencement of work under this Agreement, file with District such certificate(s).
- 9.6. CONSULTANT shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 9.7. The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming District and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to District.
- 9.8. Commercial General Liability insurance provided by CONSULTANT shall be primary to

any coverage available to District. Any insurance or self-insurance maintained by District and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

- 9.9. All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT, and Consultant's employees, agents or subcontractors/subconsultants, from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against the District.
- 9.10. Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of District, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to District, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.
- 9.11. Procurement of insurance by CONSULTANT shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 8 of this Agreement.

10. MUTUAL COOPERATION

- 10.1. District shall provide CONSULTANT with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 10.2. In the event any claim or action is brought against District relating to Consultant's performance in connection with this Agreement, CONSULTANT shall render any reasonable assistance that District may require.

11. RECORDS AND INSPECTIONS

- 11.1. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. District shall have the right to access and examine such records, without charge, during normal business hours. District shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

12. NOTICES

- 12.1. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and District's regular business hours; or (ii) on the fifth business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to District:

Town of Discovery Bay CSD
Attn: General Manager
1800 Willow Lake Road
Discovery Bay, CA 94505
Telephone: (925) 634-1131
Facsimile: (925) 513-2705

With courtesy copy to:

Andy Pinasco, General Counsel for Town of Discovery Bay CSD
Neumiller & Beardslee
P.O. Box 20
Stockton, CA 95201
Telephone: (209) 948-8200

If to CONSULTANT:

HERWIT ENGINEERING
6200 Center Street, Suite 310
Clayton, CA 94517
Telephone: 925-672-6599

13. SURVIVING COVENANTS

13.1. To the extent required by applicable law, the parties agree that the covenants contained in Section 7, Section 8, Paragraph 10.2 and Section 11 of this Agreement shall survive the expiration or termination of this Agreement.

14. TERMINATION

14.1. District shall have the right to terminate this Agreement for any reason on five calendar days' written notice to CONSULTANT. CONSULTANT shall have the right to terminate this Agreement for any reason on thirty (30) calendar days' written notice to District. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All District data, documents, objects, materials or other tangible things shall be returned to District upon the termination or expiration of this Agreement.

14.2. If District terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be paid based on the work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement.

15. GENERAL PROVISIONS

- 15.1. CONSULTANT shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without District's prior written consent, and any attempt to do so shall be void and of no effect. District shall not be obligated or liable under this Agreement to any party other than CONSULTANT.
- 15.2. In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subconsultant, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 15.3. CONSULTANT agrees to comply with the regulations of District's "Conflict of Interest Code." Said Code is in accordance with the requirements of the Political Reform Act of 1974.

CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of work required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the Town of Discovery Bay Conflict of Interest Code, as that term is applied to Consultants.

- 15.4. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 15.5. The waiver by District or CONSULTANT of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by District or CONSULTANT unless in writing.
- 15.6. CONSULTANT shall not be liable for any failure to perform if CONSULTANT presents acceptable evidence, in District's sole judgment that such failure was due to causes beyond the control and without the fault or negligence of CONSULTANT.
- 15.7. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees,

if any, and attorneys' fees expended in such action. The venue for any litigation shall be Contra Costa County, California.

- 15.8. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 15.9. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 15.10. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between District and CONSULTANT with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by District and CONSULTANT.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement.

Signatures contained on next page

/ / /

/ / /

/ / /

/ / /

**“District”
Town of Discovery Bay CSD**

DocuSigned by:
Dina Breitstein
By: _____
BDA6AF9F023646F...
Dina Breitstein, General Manager

Date: June 24, 2024 | 3:39 PM PDT, 2024

**“CONSULTANT”
Herwit Engineering**

DocuSigned by:
Gregory Harris
By: _____
2FA796804BDE490...

Print Name: Gregory Harris

Date: June 24, 2024 | 1:41 PM PDT, 2024

APPROVED AS TO FORM:

DocuSigned by:
Andy Pinasco June 27, 2024 | 2:34 PM PDT
By: _____
517F2EE422624E2...
Andy Pinasco
District Counsel

EXHIBIT A

**SCOPE OF WORK
APPROVED FEE SCHEDULE**

EXHIBIT A
SCOPE OF WORK
DISTRICT ENGINEER
ENGINEERING SUPPORT SERVICES
FOR THE
DISCOVERY BAY COMMUNITY SERVICES DISTRICT

The purpose of this Scope of Work is to provide engineering support services, on an as- needed consulting bases, as District Engineer for the Discovery Bay Community Services District.

CONSULTANT’S SERVICES

The CONSULTANT shall perform the following tasks in carrying out these services and shall perform all services in a manner consistent with the standards of the industry.

TASK 1- ENGINEERING SUPPORT SERVICES AS DISTRICT ENGINEER

- 1.1. PLAN CHECKING: Consultant shall review all subdivision plans and construction documents for wastewater facilities ultimately owned by the District. Consultant shall review, and return signed copies of each submittal to the District for distribution to project applicants. Where possible, Consultant’s comments shall be summarized on a comment sheet attached to one submittal copy.
 - 1.1.1. Consultant shall review construction documents for construction materials and methods acceptable to the District as they relate to the construction of wastewater facilities only, including pipe lines, sewers systems, wastewater plants, wastewater pumping stations, as well as other ancillary facilities directly supporting wastewater facilities such as electrical and control buildings.
 - 1.1.2. The following submittals will not be reviewed by the Consultant: Temporary Construction Submittals including shoring submittals.
 - 1.1.3. The Consultant shall maintain a file of all project plans and submittals.
 - 1.1.4. The Consultant’s review of plans and submittals shall be completed, and review comments sent to the District within twenty-five (25) calendar days following the receipt of the submittal in the Consultant’s office. If for any reason the review cannot be performed within this twenty-five (25) day calendar day period, Consultant shall notify the District and give reason for the delay.
 - 1.1.5. The Consultant’s review is not intended as acceptance of the work if plans and submittals contain errors, omissions, or inconsistencies not discovered by

Consultant, nor is the review intended to relieve the submitting applicant of his full responsibility for proper engineering and design, nor is the review intended to ensure or guarantee lack of errors, omissions, or inconsistencies in submitted construction documents.

- 1.2. FIELD INSPECTIONS: Consultant shall provide field inspection services including the following:
 - 1.2.1. The Consultant shall inspect the construction of wastewater facilities including sewers, manholes, pipelines, pump stations, treatment plants, and support facilities as requested by the District.
 - 1.2.2. The Consultant shall be present during a single final project “walk-through” inspection with the District. Consultant shall participate in review and development of final inspection “punch-list.”
- 1.3. TESTING, REVIEW, and WITNESSING: The Consultant will perform review of procedures and witness testing of mechanical and electrical facilities including the following:
 - 1.3.1. The Consultant shall witness the testing of wastewater facilities including mechanical and electrical equipment as requested by the District.
- 1.4. ATTENDANCE AT MEETINGS: The Consultant shall attend meetings as District Engineer including the following
 - 1.4.1. Construction Meetings. Consultant shall attend and participate in certain project meetings at project sites in order to keep abreast of construction activities and be involved in questions which may arise concerning construction quality as requested by the District. During construction site visits, Consultant shall observe construction progress and shall discuss with Construction Manager relevant construction issues.
 - 1.4.2. Special Meetings. CONSULTANT shall attend special meetings to discuss and assist in resolving any construction issues as requested by the District.
 - 1.4.3. District Board Presentations. Attend and update District Board as requested.
- 1.5. GENERAL ADMINISTRATIVE SERVICES. Consultant shall furnish general administrative services to remain current on District projects and to provide for organized execution of work and retrieval of information. Such services shall include the following:
 - 1.5.1. Review and route, as appropriate, Project correspondence furnished by the Construction Manager and other entities. Maintain a logical and retrievable

filling system.

- 1.5.2. Identify subject on correspondence and transmittals in accordance with a subject identification procedure established by the Construction Manager.
- 1.5.3. Provide DISTRICT each month during the term of this Project, a brief written progress report on the services performed. Such reports shall include the cumulative percentage of the overall budget expended hereunder, a brief description of the work performed during the reporting period, and such other information as may be appropriate.
- 1.6. PROJECT DESIGN: The Consultant shall prepare plans and specifications for the construction of wastewater facilities to support District activities as requested by the District. Consultant shall prepare a separate scope and fee estimate for such services to be approved by the District. When design services are performed, they shall be completed in the following manner:
 - 1.6.1. CONSULTANT shall prepare a set of civil, mechanical, structural, and electrical design drawings and technical specifications (CSI format) suitable for assignment by the owner to a general contractor for construction.
 - 1.6.2. The drawings shall conform to Consultant's typical CADD guidelines.
 - 1.6.3. Plans and specifications shall include the technical information required for the construction of the civil, mechanical, electrical, and structural facilities.
 - 1.6.4. Preparation of the plans and specifications shall include the submittal of 30 and 90 percent complete documents for review by the District, as well as 100 percent complete documents, incorporating the Districts comments.
 - 1.6.5. Consultant shall deliver the reproducible technical specifications and construction drawings for the each project. Electronic files shall also be delivered to the District.
 - 1.6.6. CONSULTANT shall prepare an estimate for the construction cost of the work at the 30 percent and 90 percent completion stages of the project.
 - 1.6.7. Bid Period Assistance: Consultant shall assist the District prior to awarding construction contracts by:
 - 1.6.7.1. Responding to questions from prospective General Contractor's prior to OWNER awarding contract.
 - 1.6.7.2. Preparing addenda.

- 1.6.7.3. OWNER shall be responsible for distribution of original documents and addenda to prospective General Contractor's.
- 1.6.8. Engineering Deliverables: Consultant shall provide the following deliverables as part of design services:
 - 1.6.8.1. 30 percent (30%) design plans and technical specifications (2 copies).
 - 1.6.8.2. 90 percent (90%) design plans and technical specifications (2 copies).
 - 1.6.8.3. One hundred percent (100 %) design plans and technical specifications (reproducible originals).
 - 1.6.8.4. Addenda to plans and specifications (reproducible originals).
- 1.7. PROCESS ASSISTANCE: Consultant shall inspect and make recommendations for improvements to wastewater collection and treatment systems as requested by the District.
- 1.8. PERMIT AND PUBLIC AGENCY ASSISTANCE: Consultant shall assist the District in negotiating with and permitting facilities through other public agencies as requested by the District. Such work to include Environmental Impact Report (EIR) review, permit negotiations, permit applications, and meetings and correspondence with other public agencies.
- 1.9. Assist the District with water facilities or other facilities as requested.

PROJECT PERSONNEL

2. Consultant shall assign the following project personnel to this project:
 - 2.1. Kurt A. Gardner, a registered civil engineer, shall serve as project manager for the Consultant and shall personally oversee the performance of Consultant's Services. Mr. Gardner shall be responsible for civil engineering services.
 - 2.2. Gregory P. Harris, a registered mechanical engineer, shall be responsible for mechanical engineering services and civil engineering services under the direction of the project manager.
 - 2.3. Subconsultants: Consultant shall hire subconsultants in other engineering disciplines as required to assist in performing support services under this contractor.

HERWIT
ENGINEERING

HERWIT ENGINEERING

7/01/24 - 06/30/25 FEE SCHEDULE

<u>Personnel</u>	<u>Hourly Rate</u>
Engineering (Process, Mechanical, Civil)	\$240.00
Drafting	\$120.00
Word Processing	\$105.00
<u>Subconsultants</u>	
Engineering (Electrical - Structural)	\$180.00
 Other Direct Costs	
Travel, \$/mi	Federal Reimbursement
Subconsultants	Cost + 10%
Internal Printing	@ direct cost
Misc. travel and other indirect expenses	@ direct cost