

RESOLUTION NO. 33:18-19

**A RESOLUTION APPROVING THE PARTICIPATION AGREEMENT
TO FUND THE WICKERD ROAD SEWER REPLACEMENT PROJECT**

WHEREAS, Global Investment Pool, LLC (the “Developer”) is constructing La Ventana Ranch, a 511-unit residential project on 170 acres (the “Development”), within the Perris Union High School District’s (“District”) boundaries, adjacent to the property where the District intends to construct a new high school (“Liberty High School”); and

WHEREAS, the District and Developer entered into that certain School Facilities Funding and Mitigation Agreement dated as of May 20, 2015 (the “Mitigation Agreement”), and pursuant to the Mitigation Agreement, the Developer agreed to, among other things, pay for the planning design and construction of a 15” replacement gravity sewer main to service Liberty High School (the “Sewer Replacement Project”); and

WHEREAS, due to a change in circumstances, the School District and Developer intend to enter into that certain Amended and Restated School Facilities Funding and Mitigation Agreement whereby the School District agrees to assume the Developer’s responsibility to fund the Sewer Replacement Project, up to maximum cost of \$1,593,758; and

WHEREAS, the District and the Eastern Municipal Water District (“EMWD”) hereby desire to enter into the Participation Agreement to Fund the Wickerd Road Sewer Replacement Project (“Sewer Agreement”) and memorialize their respective obligations with respect to the design, management and construction of the Sewer Replacement Project; and

**NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE PERRIS UNION
HIGH SCHOOL DISTRICT DOES HEREBY RESOLVE, ORDER AND DETERMINE AS
FOLLOWS:**

1. The Board of Trustees hereby approves the Sewer Agreement, which is attached hereto as Exhibit 1 and incorporated herein by reference.
2. The Board of Trustees authorizes and directs the Deputy Superintendent of Business Services, Candace Reines, to execute and deliver the Sewer Agreement on behalf of the District, in the form of Exhibit 1, with such additions and changes therein as are determined necessary by the Deputy Superintendent or designee and legal counsel. Approval of such additions and changes shall be conclusively evidenced by the execution and delivery of the Sewer Agreement by the District.
3. This Resolution shall be effective as of the date of its adoption.

[signatures appear on the following page]

ADOPTED, SIGNED AND APPROVED this 3rd day of June, 2019.

AYES:

NOS:

ABSTAIN:

ABSENT:

Edward D. Garcia, Jr., President of the Board of Trustees

ATTEST:

Dr. Randall Freeman, Clerk of the Board of Trustees

I, Dr. Randall Freeman, Clerk of the Board of Trustees of the Perris Union High School District, hereby certify that this Resolution was duly adopted at a regular meeting of the Board held on June 3rd 2019 and that it remains in full force and effect.

Dr. Randall Freeman, Clerk of the Board of Trustees

EXHIBIT 1

**PARTICIPATION AGREEMENT
TO FUND THE WICKERD ROAD SEWER REPLACEMENT PROJECT**

**PARTICIPATION AGREEMENT TO FUND THE
WICKERD ROAD SEWER REPLACEMENT PROJECT**

This Participation Agreement to fund the Wickerd Road Sewer Replacement Project (this “**Agreement**”) is entered into this 3rd day of June, 2019, by and between the Eastern Municipal Water District, organized and operating pursuant to Division 20 of the California Water Code (hereinafter “**Water District**”) and the Perris Union High School District, a California public school district (hereafter “**School District**”). The Water District and School District are sometimes collectively referred to herein as “**Parties**” and each individually as a “**Party**.”

RECITALS

- A. WHEREAS, Global Investment Pool, LLC (the “**Developer**”) is responsible for construction of La Ventana Ranch, also known as Tract 36785, a 511-Unit residential project on 170 acres. La Ventana Ranch, which was approved by the County Board of Supervisors in June 2016, will hereinafter be referred to as the “**Development**”; and
- B. WHEREAS, the School District has proposed a new high school (the “**New High School**”) immediately adjacent to the Development’s eastern boundary. The New High School will hold up to 2,500-students on a site covering 52 acres. The School District has approval through the Division of the State Architect, “**DSA**”, and anticipates opening the New High School for the 2021/2022 School Year; and
- C. WHEREAS, the Developer and School District executed a School Facilities Funding and Mitigation Agreement, whereby the Developer, among other requirements, was obligated to deliver sewer service for the New High School; and
- D. WHEREAS, due to a change in circumstances, the School District and Developer intend to enter into that certain Amended and Restated School Facilities Funding and Mitigation Agreement whereby the School District agrees to assume the Developer’s responsibility to fund, up to a maximum cost of \$1,593,758, the Sewer Replacement Project, as defined below; and
- E. WHEREAS, the Developer shall also enter into a separate private sewer agreement with the owner of TTM 37496 to provide sewer service. TTM 37496 is located immediately south of the New High School and southeast of the Development; and
- F. WHEREAS, the Water District shall reserve full sewer capacity for the Development, the New High School, and TTM 37496, based on the “**Sewer Phasing Schedule**” (see **Exhibit “A”**); and
- G. WHEREAS, the Water District approved the Revised Master Plan of Service on July 17, 2018 for the Development. The Revised Master Plan of Service identified an initial point of connection for sewer for the Development to be an existing 12” Gravity

Sewer Main in Wickerd Road located at Mira Street. The Master Plan of Service also identified the need to replace the existing 12” Gravity Main with a new 15” Gravity Sewer Main from approximately Mira Street to the existing westerly 21” Sewer Main in Menifee Road, hereinafter referred to as the “**Sewer Replacement Project**” (See **Exhibit “B”**); and

- H. WHEREAS, the Water District shall allow an initial flow in the existing 12” Sewer Main from the Development, the New High School, TTM 37496, and existing flows, up to a depth over diameter (D/d) ratio of 0.80. This ratio allows for an initial combined flow from the Development, the New High School, and TTM 37496, to be 394 GPM. In no event will this change the Water District’s commitment in Recital F, above, to reserve full sewer capacity for the three projects in accordance with the Sewer Phasing Schedule; and
- I. WHEREAS, the Developer’s engineer has developed a cost estimate for the construction of the Sewer Replacement Project, which the Water District has reviewed and approved, at a total cost of \$1,593,758 (see **Exhibit “C”**); and
- J. WHEREAS, the purpose of this Agreement is to define the terms, conditions, and financial arrangements whereby the School District will fund the Sewer Replacement Project; and

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties agree as follows:

AGREEMENT

- 1. **Incorporation of Recitals.** The Recitals set forth above are incorporated into and hereby made a part of this Agreement.
- 2. **School District Responsibilities:**
 - a. The School District shall fund up to \$1,593,758 of the cost to design, construct and manage the Sewer Replacement Project, including any costs associated with the required CEQA clearance and right of way approvals. Under no circumstance shall the School District fund more than \$1,593,758; and
 - b. The School District shall provide an initial progress payment of \$450,000 upon School District’s receipt of State funding for the New High School, or occupancy of the first residential unit in the Development, whichever occurs first. A Second, and final, progress payment of \$1,143,758 shall be made by the School District upon the Water District’s completion and approval of the Construction Contract Documents, as defined below, for the Sewer Replacement Project, or no later than eighteen (18) months after the initial progress payment, whichever occurs first.

c. The School District shall inform the Water District, in writing, of changes to the Sewer Phasing Schedule.

3. **Water District Responsibilities:**

a. The Water District shall serve as lead agency in processing under the California Environmental Quality Act (“CEQA”) for the Sewer Replacement Project; and

b. The Water District shall be responsible for the design, right of way clearance, bid administration, construction, and overall timing, of the Sewer Replacement Project; and

c. The Water District shall provide final construction drawings, construction specifications, and engineer’s estimates (“**Construction Contract Documents**”) for the Sewer Replacement Project; and

d. The Water District shall confirm disposition of right of way for existing 12” Gravity Main. If there is a deficiency in existing right-of-way, will resolve the deficiency up to, and if necessary, purchase of right of way/easements. This includes preparation of legal descriptions & plats and associated documents, as needed, for the Sewer Replacement Project; and

e. The Water District shall advertise, competitively bid, and oversee construction of the Sewer Replacement Project.

4. **Hold Harmless and Indemnification.** Each Party shall assume the defense of, indemnify and save harmless the other Party, its respective officers, employees and agents, and each and every one of them, from and against any and all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or claimed to be of, or resulting from, any act or omission of such Party required hereunder, provided, however, that no Party shall be required to indemnify the other Party as to damages resulting from negligence or willful misconduct of such Party, its officers, agents or employees.

5. **Amendments.** This Agreement may be amended or modified only in writing signed by all Parties.

6. **Notices.** Any notice required by this Agreement to be given or delivered or delivered to any Party shall be deemed to have been received when personally delivered or three (3) days after placement in the United States mail addressed as follows:

Water District:

Eastern Municipal Water District
Attn: General Manager
Post Office Box 8300
Perris, CA 92572-8300

School District:

Perris Union High School District
Attn: Candace Reines
Deputy Superintendent
155 E. 4th Street
Perris, CA 92570-2124

Either Party may change such address by giving notice to the other Party as provided herein.

7. **Term.** This Agreement shall remain in effect until the earlier of the satisfaction of all obligations set forth herein or such time as the Agreement is terminated by the mutual agreement of the parties.
8. **Force Majeure.** Provided that delay caused by circumstances beyond either Party's control and not foreseeable is established, and only to the extent of such delay; neither Party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, earthquakes, floods, fires, epidemics, riots, labor disputes, government shutdowns, failures or delay in transportation or communications, or any act or failure to act by the other Party or such other Party's employees, agents or contractors.
9. **Governing Law and Venue.** This Agreement and the rights of the Parties under this Agreement shall be governed by and enforced in accordance with the laws of the State of California. Venue of any action brought hereunder will be in Riverside County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceedings.
10. **Agreement Enforcement.** In the event any action is commenced by a Party to this Agreement against the other to enforce its rights or obligations arising from this Agreement, the prevailing Party in such action, in addition to any other relief and recovery ordered by the court or arbitration, shall be entitled to recover all litigation and collection expenses, witness fees, court costs, plus reasonable attorney's fees.
11. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated.
12. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto, including any party that may now or in the future retain a reversionary interest in the impacted parcels, and including the payment of the School District's obligation described in Section 2 above of this Agreement.

13. **Preparation of this Agreement.** This Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it.
14. **Entire Understanding.** This Agreement constitutes the entire understanding of the Parties as to subject matter hereof and supersedes and completely extinguishes all prior understandings or agreements between the Parties as to the subject matter hereof.
15. **Contingency:** This Agreement shall not take effect until the later-in-time of the following two events has occurred:
 - a. Approval of the terms of this Agreement by the School District’s Board of Trustees; and
 - b. The Amended and Restated School Facilities Funding and Mitigation Agreement has been executed by both the School District and the Developer, and has taken effect.
16. **Authority to Enter Agreement.** Each Party warrants to the other that the individual signing this Agreement on behalf of each Party has the legal power, right, and authority to make this Agreement and bind such respective Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the final date of the last of the Parties to sign below.

WATER DISTRICT:

EASTERN MUNICIPAL WATER DISTRICT

By: Paul D. Jones II, P.E.
General Manager

Signature: _____

Dated: _____

ATTEST: _____

SCHOOL DISTRICT:

PERRIS UNION HIGH SCHOOL DISTRICT

By: Candace Reines
Deputy Superintendent

Signature: _____

Dated: _____

ATTEST: _____

Exhibit A

Sewer Phasing Schedule

SEWER PHASING SCHEDULE

12" Wickered Road Capacity vs. Timing	05/2020	11/2020	05/2021	11/2021	05/2022	11/2022	05/2023	11/2023	05/2024	11/2024	05/2025	11/2025
Existing Units, GPD	89,305	89,305	89,305	89,305	89,305	89,305	89,305	89,305	89,305	89,305	89,305	89,305
La Ventana CofO's	0	60	120	180	240	300	360	420	480	513	513	513
La Ventana GPD	0	15,900	31,800	47,700	63,600	79,500	95,400	111,300	127,200	135,945	135,945	135,945
High School Students	0	0	0	1,000	1,000	1,500	1,500	2,000	2,000	2,200	2,200	2,500
High School GPD	0	0	0	26,500	26,500	39,750	39,750	53,000	53,000	58,300	58,300	66,250
TTM 37496	0	0	0	0	0	0	8	32	56	80	104	112
TTM 37496 GPD	0	0	0	0	0	0	2,120	8,480	14,840	21,200	27,560	29,680
Total Flow, GPD	89,305	105,265	121,225	164,685	180,645	210,355	228,443	264,537	286,881	307,543	313,927	324,305
Peak Factor	2.80	2.77	2.77	2.75	2.74	2.73	2.73	2.72	2.71	2.70	2.70	2.70
Peak Flow Rate, (GPM)	173.65	202.37	232.96	312.25	341.37	395.39	429.55	495.05	535.12	571.41	583.33	602.21
Peak Flow Rate, (CPS)	0.387	0.451	0.519	0.696	0.761	0.881	0.957	1.103	1.192	1.273	1.300	1.342
X* (s=0.024; n=0.015)	0.118	0.138	0.159	0.213	0.233	0.270	0.293	0.338	0.365	0.390	0.398	0.411
12" PVC D/d (s=0.0024)*	0.34	0.37	0.40	0.48	0.50	0.55	0.58	0.63	0.67	0.70	0.72	0.73

*Minimum slope per Existing 12" Wickered Road Sewer Plans (EMWD Dwgs D-25301 - 25304, see attached)

Exhibit B

Description of the Sewer Replacement Project

SEWER REPLACEMENT PROJECT
Existing & Proposed Sewer Backbone
Offsite Facilities

Figure 3A
EXISTING SEWER CONDITIONS

Costs for upgrade to 15" sewer (plans and specifications design and Construction Costs at prevailing wage) shall be paid for at the initial Phase and prior to the 1st EDU release and validated during the agreement phase.

Projects that will be covered by a private financial agreement that participated in the Interim lift station

Sewer Replacement Project

12" sewer needs to be upgraded to 15" after reaching 0.761 cfs, refer to POS and sewer calculations

Proposed POC to Proposed Gravity Sewer

Proposed Interim Lift Station. Abandonment cost shall be associated with the interim Lift station

Proposed Force Main

Proposed 15" Gravity Sewer to connect to existing 12" Sewer on interim basis

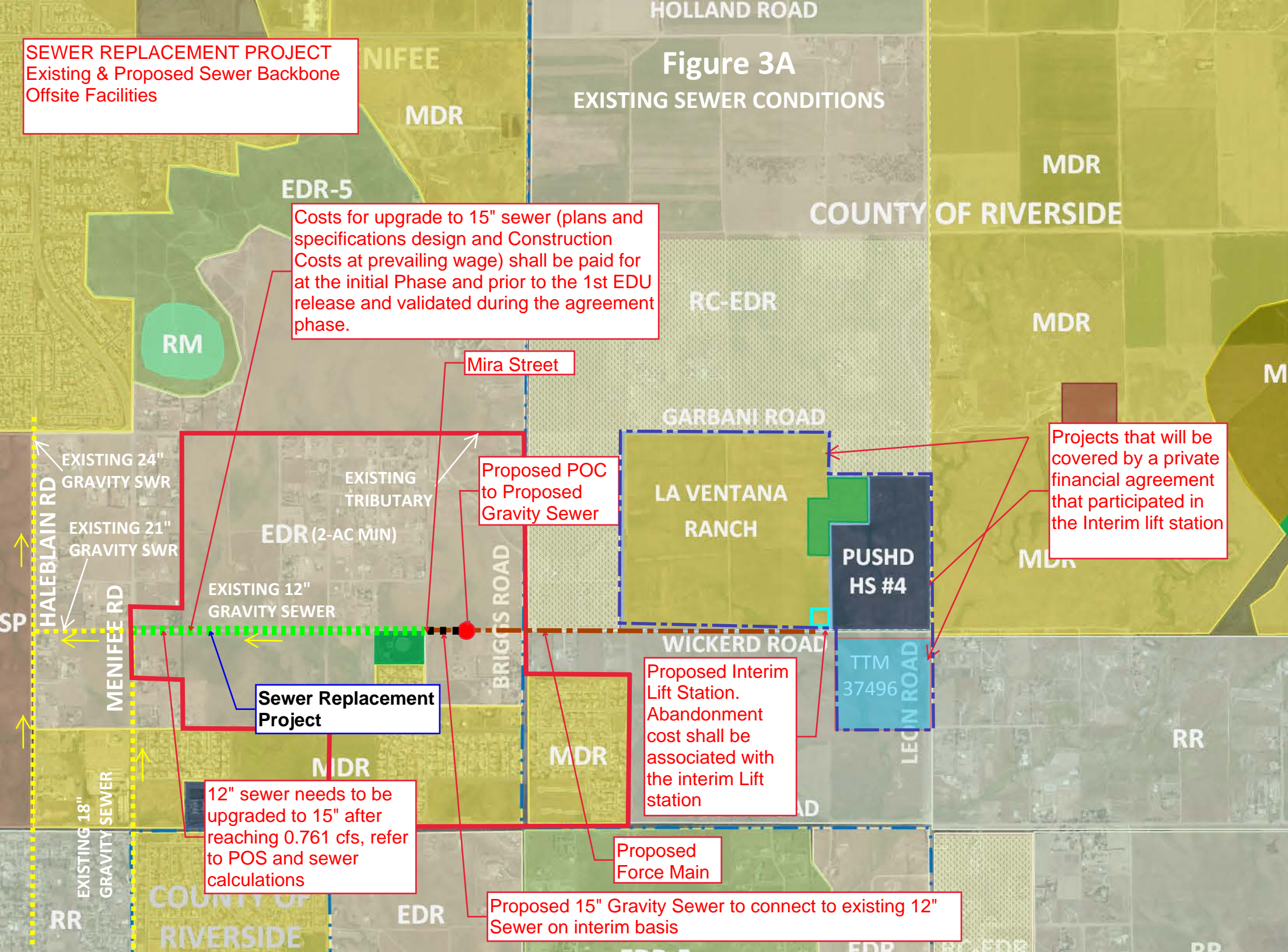


Exhibit C

Cost Estimate for Construction of the Sewer Replacement Project

EMWD's Sewer Replacement Costs Estimate

Hard Costs: (Prevailing Wage)				
Mobilization, Inspection & Bonds		% of Hard Costs	3.5%	\$ 38,959
** 15" Sewer	3,930	LF	\$ 250.00	\$ 982,500
** Manholes (W/ Coating)	8	EA	\$ 11,950	\$ 95,600
Connect to Existing @ Mira St	1	EA	\$ 10,000	\$ 10,000
Connect to Existing @ Menifee Rd	1	EA	\$ 15,000	\$ 15,000
Traffic Control	1	LS	\$ 10,000	\$ 10,000
Sub-Total:				\$ 1,152,059
Soft Costs:				
* Environmental (CEQA)	1		\$ 50,000	\$ 50,000
* Design/R.O.W		% of Hard Costs	12%	\$ 138,247
Admin Fees		% of Hard Costs	2%	\$ 23,041
Contingency		% of Hard Costs	20%	\$ 230,412
Sub-Total:				\$ 441,700
Total:				\$ 1,593,758

****Unit price based on the average unit price for three similar sewer CIP projects.**

***District Risk Unknown Environmental Mitigation or Restrictions & Existing R.O.W. concerns.**

Developer has agreed to pay Interim Lift Station Abandonment Costs.

During Agreement Phase and FPC payment, Developer has agreed to pay for ultimate interim phase pump (Costs to be determine during plan check process)

An escalation factor was not considered in the sewer replacement estimate.