

Agenda Item



DATE: January 31, 2012

TO: Board of Supervisors

FROM: Alan Weaver, Director *Alan Weaver*
 Department of Public Works and Planning

SUBJECT: Agreement and Accept Wastewater Treatment Facility on behalf of County Service Area No. 34 (Millerton New Town)

RECOMMENDED ACTIONS:

- 1. Approve and authorize the Chairman to execute an Agreement with JPJ Incorporated which will provide funding for operations and maintenance costs and a warranty for the wastewater treatment facility that will serve County Service Area No. 34 Zone A (Brighton Crest), Zone C (Granite Crest), and future zones of benefit located within the Millerton New Town Specific Plan area.**
- 2. Accept the Grant Deeds on behalf of County Service Area No. 34 (Millerton New Town) for the wastewater treatment facility and the land upon which it is located (portion of Assessors Parcel Number 300-541-39, 300-541-63 and 300-541-67) as described therein.**

The recommended actions will allow for the new tertiary (reclaimed) wastewater treatment plant to be available to the Millerton New Town Area as previously planned, with no net County cost.

ALTERNATIVE ACTION(s):

Your Board may modify requirements in the Agreement. If an Agreement is not approved, then development within County Service Area (CSA) Zone 34C (34C) will not be able to proceed.

If your Board elects to not accept the wastewater treatment facility the County will not own the facility. Ownership of the facility and the land on which it is located by CSA 34 was a condition of approval of Conditional Use Permit (CUP) 2979 that allowed construction of the facility.

ADMINISTRATIVE OFFICE REVIEW *Bradi Oth* Page 1 of 44

BOARD ACTION: DATE _____ APPROVED AS RECOMMENDED _____ OTHER _____

UNANIMOUS _____ ANDERSON _____ CASE _____ LARSON _____ PEREA _____ POOCHIGIAN _____

FISCAL IMPACT:

There is no net County cost associated with the recommended actions. The wastewater treatment facility's operations and maintenance will be fully funded through service fees, assessments and developer financing agreements.

IMPACTS ON JOB CREATION:

Approval of the recommended actions and acceptance of the wastewater treatment facility will allow development of Tract No. 4870 to proceed, thereby creating construction jobs.

DISCUSSION:

On December 19, 2000, your Board adopted the Millerton New Town Infrastructure Plan which identifies and guides the development of infrastructure that will serve the Millerton New Town area as well as CSA 34-A which includes the Brighton Crest development and a golf course located south of Millerton Road, adjacent to the east of Millerton New Town. This Infrastructure Plan requires tertiary wastewater treatment for all development located within the Millerton New Town area. CSA 34-C is comprised of Tract No. 4870 (Granite Crest). Tract 4870, developed by JPJ Incorporated, was approved by your Board on April 27, 2010. A map is provided in EXHIBIT A that delineates the multiple zones of benefit within CSA 34. Construction of the wastewater treatment facility was allowed pursuant to approval of CUP No. 2979 on October 9, 2003.

The tertiary treatment facility is intended to serve up to 800 equivalent development units (EDU). Additional phases of the wastewater treatment facility will be constructed as necessary for future development beyond 800 units. The facility will ultimately provide reclaimed water for irrigation use for public landscaped areas and/or the golf course located at Brighton Crest.

In accordance with the Millerton New Town Infrastructure Plan, CSA 34-A will disconnect from the secondary level wastewater treatment facility currently serving the Brighton Crest development and connect to the tertiary wastewater treatment facility. Construction funding for Brighton Crest's portion of the facility, a total of 160 EDUs, was provided by the developer of Brighton Crest. These include 153 EDUs for the 153 recorded residential lots and seven EDUs for the clubhouse, golf course, and guard shack. On March 4, 2008, property owners of the residential lots located in Brighton Crest approved the repayment of their fair share cost of the new master wastewater treatment facility to the Brighton Crest developer in the amount of \$570.00 per lot per year over ten years through the Proposition 218 ballot/public hearing process. The remaining 640 EDUs of the wastewater treatment facility are owned in differing proportions by six parties ("Reservation Holders") including the developer of Tract 4870, which comprises County Service Area (CSA) 34, Zone C, Granite Crest.

The estimated first year cost to operate the wastewater treatment facility is \$195,000. The agreement before your Board requires JPJ Incorporated to fund all operations and maintenance costs that are in excess of revenues generated by user fees, applicable assessments, and developer financing agreements.

The agreement before your Board today references an operations and maintenance (O&M) agreement and a warranty agreement, Exhibits A and B to the agreement, respectively, stating JPJ Incorporated will assume all duties and responsibilities of the O&M agreement and warranty agreement until they are signed by all Reservation Holders and approved by your Board. The

O&M agreement and warranty agreement, once executed and approved by your Board, will provide funding toward operations and maintenance of the wastewater treatment facility and warranty related costs from the six parties that own the 640 EDUs of wastewater treatment capacity identified above.

JPJ Incorporated has requested that the County allow it to assume responsibility for the duties and responsibilities identified in the O&M and warranty agreements at this time because it could take a number of additional months to gain approval of the other five Reservation Holders, and JPJ Incorporated would like to expedite home construction and sales within CSA 34C as soon as possible. At such time as all Reservation Holders and the County have executed the O&M and warranty agreements, the agreement being considered by your Board today will terminate.

The O&M agreement serves to provide funding sufficient to fully fund the operation and maintenance of the wastewater treatment facility until service fees, wastewater treatment related assessments, and developer financing agreements provide revenues that are sufficient to fully fund the facility. These additional funds are needed as only a few lots in the 161-lot Granite Crest subdivision are expected to be developed upon initiation of operations, and existing assessments on Brighton Crest lots, which fund sewer service (as well as water service, street lighting and street sweeping), did not consider the costs of being connected to the tertiary wastewater treatment facility at the time of their approval on March 4, 2008.

Additionally, the O&M agreement limits Brighton Crest's contribution toward funding the facility at \$67,000 annually unless non-warrantied, non-routine expenses are incurred, until a new assessment and/or sewer service fee is adopted by CSA 34-A through the Proposition 218 process. Non-warrantied, non-routine expenses could include such things as compliance with new regulatory requirements or fees. This \$67,000 figure represents a three year average (FY 2008/09 to FY 2010/11) of the wastewater treatment costs experienced in operating the secondary level wastewater treatment facility currently serving CSA 34-A.

Sources of revenue for the facility will include applicable user fees from developed lots, applicable assessments on developed and undeveloped lots, developer financing agreements and the reservation holders identified in the O&M agreement.

The warranty agreement requires the Reservation Holders to bear 100% of the cost to repair or replace mechanical and electrical equipment for two years, and all other aspects of the facility for one year, should they fail due to defects in materials and/or workmanship provided by the construction contractor. The reservation holders are being asked to warranty the facility as construction of the facility has been complete for approximately five years, but the facility has never received wastewater for processing. It is anticipated that any defects in equipment or other aspects of the facility will be identified and fixed prior to the termination of the warranty agreement.

The second recommended action will transfer ownership of the wastewater treatment facility and the land on which it is located to the County, pursuant to conditions of approval of CUP 2979, which state, "The land approved for the subject wastewater treatment facility and all improvements constructed thereon shall be owned by County Service Area 34." County staff met with the Citizens Advisory Committee (CAC) for CSA 34-A on December 9, 2011 to discuss these agreements and to answer any questions the CAC might have. The CAC stated they do not have any concerns with the proposed agreements.

While approval of this agreement will allow construction to proceed within CSA 34-C, the number of building permits issued will initially be limited to 20 units due to limited wastewater storage capacity, as the infrastructure for final disposal of the treated wastewater on the golf course and/or other areas is not complete. The developer plans to improve existing facilities to divert the backwash flows from the community sewer plant by April 1, 2012. If backwash flows are diverted then an additional 40 building permits can be issued. If the developer constructs the required infrastructure and obtains a permit for disposal of the treated effluent on the driving range (or comparable facility) by April 1, 2013 the Department may be able to issue building permits for the balance of the lots within Tract 4870 (for a total of 161 homes).

The Reservation Holders identified in the O&M and warranty agreements have been sent copies of the agreements for their review.

REFERENCE MATERIAL:

BAI #13, December 20, 1988

BAI #20, December 19, 2000

BAI #43, June 25, 2002

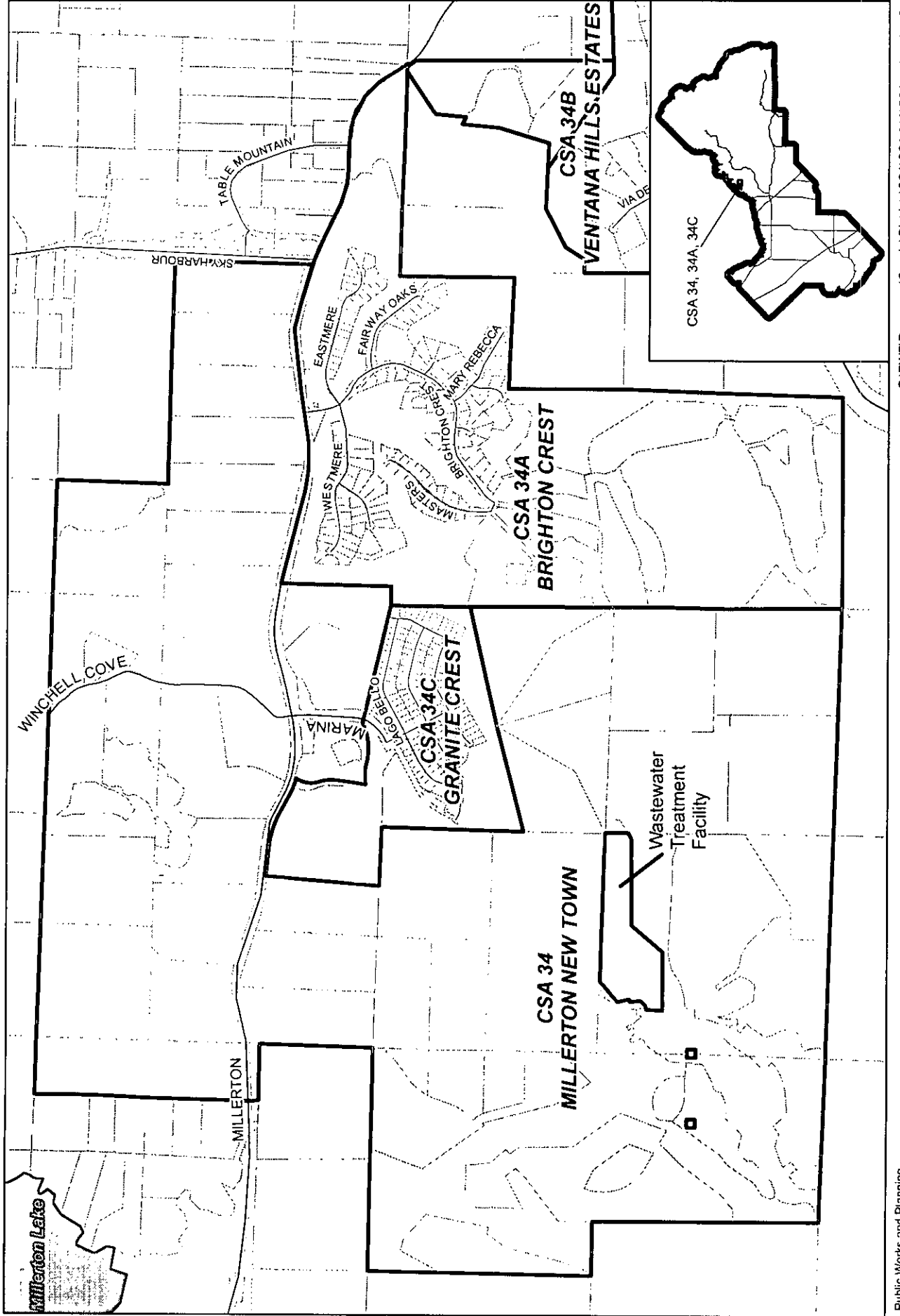
Planning Commission AI #2, October 9, 2003

BAI #14, March 4, 2008

BAI #34, April 27, 2010



EXHIBIT A
**CSA 34/Millerton New Town, CSA 34A - Brighton Crest,
 CSA 34C - Granite Crest**
 Department of Public Works and Planning



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AGREEMENT AND GUARANTY

This Agreement and Guaranty ("Agreement") is made and entered into this ____ day of _____, 2012 and effective as hereinafter provided, by and between County of Fresno on behalf of County Service Area No. 34 ("COUNTY"), and JPJ Incorporated, a California Corporation, developer of Tract No. 4870, hereinafter called "JPJ".

WITNESSETH

WHEREAS, on December 19, 2000, the Fresno County Board of Supervisors adopted the Millerton New Town Infrastructure Plan, (hereinafter called the "Plan") for the Millerton New Town Infrastructure Plan Study Area (hereinafter called the "Plan Area"), that provides implementation procedures for the interested Developers' installation and service of respective systems for water delivery, wastewater treatment and collection, storm drainage and reclaimed water, throughout the Plan Area; and

WHEREAS, consistent with the implementation procedures of the Plan, a group of Developers including JPJ (herein after called the "Reservation Holders") have entered into a cost sharing agreement for the financing of constructing Phase 1 of the Wastewater Treatment Facility (hereinafter called the "Facility"); and

WHEREAS, the Reservation Holders desire the County to accept and commission the Facility before there is adequate development within CSA 34 to fully fund the ongoing operation and maintenance of the Facility; and

WHEREAS, upon the COUNTY's acceptance of ownership of the Facility an agreement is needed for the Reservation Holders to provide funding for costs associated with the COUNTY's operation, maintenance and administration of the Facility on behalf of CSA No. 34 until such time as development within CSA 34 is sufficient to generate an adequate revenue stream to sustain the ongoing operations and maintenance of the Facility; and

WHEREAS, a proposed draft of said Operation and Maintenance agreement has been prepared (a true and correct copy of which is attached as Exhibit A and

1 incorporated herein by this reference), which has been approved by JPJ and is awaiting
2 ratification by all other Reservation Holders; and

3 WHEREAS, the Reservation Holders will guarantee and warrant the satisfactory
4 performance of the Facility for a period of two years following the COUNTY's
5 acceptance of the Facility, and a proposed draft agreement intended to serve that
6 purpose has been prepared (a true and correct copy of which is attached as Exhibit B
7 and incorporated herein by this reference), which has been approved by JPJ and is
8 awaiting ratification by all parties; and

9 WHEREAS, JPJ is developing Tract No. 4870 and wishes to move forward with
10 the construction of homes to be connected to the Facility.

11 NOW, THEREFORE, in consideration of the foregoing, and for other good and
12 valuable consideration the sufficiency of which is hereby acknowledged, the parties
13 hereto do hereby agree as follows:

14 1. By execution of this Agreement, JPJ hereby assumes individually all
15 responsibility for performance of all duties and obligations that would be assumed
16 collectively by all Reservation Holders upon full execution by all listed parties of the
17 Operations and Maintenance Agreement attached hereto as Exhibit A; and all
18 provisions of said attached Exhibit A, having been fully incorporated herein, shall be and
19 are hereby acknowledged as fully binding upon JPJ, which by its execution of this
20 Agreement assumes sole individual responsibility for performance of all such duties and
21 responsibilities until such time as this Agreement is terminated as provided herein
22 below.

23 2. By execution of this Agreement, JPJ hereby assumes individually all
24 responsibility for performance of all duties and obligations that would be assumed
25 collectively by all Reservation Holders upon full execution by all listed parties of the
26 Warranty Agreement attached hereto as Exhibit B; and all provisions of said attached
27 Exhibit B, having been fully incorporated herein, shall be and are hereby acknowledged
28 as fully binding upon JPJ, which by its execution of this Agreement assumes sole

1 individual responsibility for performance of all such duties and responsibilities until such
2 time as this Agreement is terminated as provided herein below.

3 3. It is expressly understood and agreed that JPJ shall remain solely
4 responsible for performance of its duties hereunder, including those stated in the
5 incorporated Exhibits A and B hereto, until such time, if any, that any (or all) of the other
6 Reservation Holders execute Exhibits A and B, or in the alternative execute (together
7 with JPJ) one or more "successor agreements" containing substantially similar terms
8 and provisions to those contained in Exhibits A and B (together with an appropriate
9 provision that such "successor agreement" would supersede and modify JPJ's
10 obligations as set forth in the provisions of this Agreement).

11 4. This Agreement shall become effective between the parties hereto, only
12 upon approval by the Fresno COUNTY Board of Supervisors.

13 5. Notwithstanding any other provision herein, this Agreement shall terminate
14 upon the execution by the Chairman of the Fresno County Board of Supervisors of
15 substantially identical and fully executed versions of the Operations and Maintenance
16 Agreement and the Warranty Agreement (attached hereto as Exhibits A and B
17 respectively), which shall be presented for Board approval only after having been
18 executed by all Reservation Holders.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective as provided herein, on the day and year first above written.

JPJ Incorporated

COUNTY OF FRESNO

BY: [Signature]

BY: _____

TITLE: Pres

Deborah A. Poochigian
Chairman, Board of Supervisors

ADDRESS: _____

REVIEWED & RECOMMENDED FOR APPROVAL

[Signature]

Alan Weaver, Director
Department of Public Works and Planning

FUND/ORG:
SUBCLASS/ACCOUNT:

APPROVED AS TO LEGAL FORM:
FOR APPROVAL:
KEVIN BRIGGS, COUNTY COUNSEL

BY: [Signature]
Deputy

APPROVED AS TO ACCOUNTING FORM:

BY: [Signature]
VICKI CROW, C.P.A.
AUDITOR-CONTROLLER /
TREASURER- TAX COLLECTOR

BY: _____
Deputy

EXHIBIT A

Reservation Holders O & M Agreement for CSA No. 34 WWTP

OPERATIONS AND MAINTENANCE AGREEMENT

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This Agreement is made and entered into this ____ day of _____, 2012 and effective as hereinafter provided, by and between County of Fresno on behalf of County Service Area No. 34 (COUNTY); and JPJ Incorporated, a California Corporation; Table Mountain Rancheria Band of Indians, a federally-recognized sovereign Indian tribe (Tribe); Brighton Crest Holdings, LLC; Clovis Unified School District; Mathews Land, Inc.; and Clarksfield Company, Inc., a California Corporation, hereinafter referred to collectively as the "Reservation Holders".

WITNESSETH

WHEREAS, on December 19, 2000, the Fresno County Board of Supervisors adopted the Millerton New Town Infrastructure Plan, (hereinafter called the "Plan") for the Millerton New Town Infrastructure Plan Study Area (hereinafter called the "Plan Area"), that provides implementation procedures for interested Developers' installation and service of respective systems for water delivery, wastewater treatment and collection, storm drainage and reclaimed water, throughout the Plan Area; and

WHEREAS, consistent with the implementation procedures of the Plan, the Reservation Holders have entered into a cost sharing agreement for the financing of constructing Phase 1 of the Wastewater Treatment Facility (hereinafter called the "Facility"); and

WHEREAS, the Facility is a tertiary treatment level facility which has been completed with an estimated capacity of two hundred thousand gallons per day and is intended to serve up to eight hundred (800) units; and

WHEREAS, County Service Area 34, Zone A (CSA 34-A), which provides wastewater treatment and other services to the Brighton Crest development, is currently served by a secondary treatment level wastewater treatment facility; and

WHEREAS, the secondary treatment level wastewater treatment facility currently serving CSA 34-A was intended under the Plan to be a temporary facility until such time

1 as a tertiary treatment level facility was constructed to serve both Millerton New Town
2 and the Brighton Crest Development; and

3 WHEREAS, CSA 34-A will be disconnected from its existing wastewater
4 treatment facility and connected to the Facility; and

5 WHEREAS, the Reservation Holders desire the COUNTY to accept and
6 commission the Facility before there is adequate development within CSA 34 to fully
7 fund the ongoing operation and maintenance of the Facility; and

8 WHEREAS, the approved assessment on properties within CSA 34-A, which
9 provides funding for water, sewer, street sweeping and street lighting services, did not
10 consider potential costs associated with receiving wastewater treatment services from
11 the Facility and therefore may be insufficient to fully fund Facility related expenses
12 associated with providing wastewater treatment services to CSA 34-A; and

13 WHEREAS, until a new assessment and/or fees are established for CSA 34-A
14 via Proposition 218 requirements, total CSA 34-A contributions toward funding Facility
15 operations and maintenance shall be limited as identified in this Agreement; and

16 WHEREAS, upon the COUNTY's acceptance of ownership of the Facility, an
17 agreement or other appropriate arrangement shall be required, pursuant to which the
18 Reservation Holders shall provide funding as necessary to fully subsidize the costs
19 associated with the COUNTY's operation, maintenance and administration of the
20 Facility on behalf of CSA No. 34, until such time as development within CSA 34 is
21 sufficient to generate an adequate revenue stream to sustain the ongoing operations
22 and maintenance of the Facility.

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

24 **I. Definitions**

25 For purposes of this Agreement, the following terms shall be defined as follows:

26 A. **Reservation Holders** shall mean JPJ Incorporated, a California
27 Corporation; Table Mountain Rancheria Band of Indians, a federally-recognized
28 sovereign Indian tribe (Tribe); Brighton Crest Holdings, LLC; Clovis Unified School

1 District; Mathews Land, Inc.; and Clarksfield Company, Inc., a California Corporation.
2 Reservation Holders have reserved wastewater plant capacity for Developers'
3 respective project Tracts totaling five hundred eighty-four (584) equivalent housing
4 units, a capacity for the Clovis Unified School District (CUSD) of sixteen (16) units, and
5 a capacity of forty (40) units for small projects (Small Projects Reserve). These units,
6 plus the one hundred sixty (160) held by properties within CSA 34-A, result in a total
7 estimated reserve capacity of eight hundred (800) units. A breakdown by each
8 Reservation Holder of their number and percentage of reserved units, and allocation of
9 estimated capacity before and after distribution of Small Projects Reserve Units is
10 provided in Exhibit A, attached hereto.

11 B. **Final Project Approval** shall mean the final approval, as required under
12 the COUNTY's General Plan or applicable County Ordinances or policies, of
13 development as to any portion of the Plan Area for residential or commercial uses
14 where such development will connect to any part of CSA No. 34 Facilities. Depending
15 upon the context in which it is used, final approval of a project shall mean approval of:

- 16 1. Final subdivision tract map, where the Subdivision Map Act
17 requires a tentative tract map.
- 18 2. Parcel Map, if the Subdivision Map Act does not require a tract
19 map.
- 20 3. Parcel map waiver, lot line adjustment, or similar division of land
21 either required by or authorized by the Subdivision Map Act.
- 22 4. Use permit or site plan approval.
- 23 5. Director's determination or other administrative approval by the
24 COUNTY.
- 25 6. Issuance of a building permit
- 26 7. Construction of improvements
- 27 8. An exemption for facilities that are used exclusively for agricultural
28 purposes.

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9. Use of CSA No. 34 facilities to provide domestic water, sewer and irrigation services for existing uses allowed by current zoning on properties within the Plan Area is permitted, provided the requirements and fees specified within the Plan are complied with.

C. **County Service Area No. 34** is the Millerton New Town Area which will be served by the Facility, specifically excluding Benefit Zone "B" (Ventana Hills), which utilizes individual septic systems for disposal of wastewater and which accordingly will not be served by the Facility.

County Service Area No. 34, Zone A: One hundred sixty (160) units are permanently allocated for the mapped lots, golf course, clubhouse and guard shack at Brighton Crest within Zone A. The developer of Brighton Crest contributed a proportional share of the cost of the Facility for those 160 units and retained seven (7) of these units for use by the golf course, clubhouse, and guard shack. The property owners of the one hundred fifty-three (153) mapped residential lots at Brighton Crest are repaying the developer of Brighton Crest for their 153 units via an approved assessment. Said assessment is \$570 per year and will terminate in Fiscal Year 2018-19.

Clovis Unified School District Reserve (CUSDR) represents sixteen (16) reserved units for Clovis Unified School District's future school site located within the Plan Area.

Small Projects Reserve represents forty (40) reserved units for yet to be determined projects whose proportional cost participation for the operations and maintenance shall be provided by the Reservation Holders that are assuming such costs, and are effectively the owners of the Small Projects Reserve. Assignment or use of the Small Project Reserve units shall be in accordance with the terms of Paragraph IX H. 2 of the Millerton New Town Area Implementation Procedures adopted as part of the Millerton New Town Infrastructure Plan.

1 **Permanently Allocated Units** shall mean when a project receives final approval
2 and the Reservation Holder or subdivider/developer/landholder that has obtained small
3 project reserved units executes an agreement with the COUNTY to pay and has paid
4 the Facility Fees in accordance with the Plan's implementation procedures.

5 **Facility** shall mean the wastewater treatment facility building, wastewater
6 collection ponds and any other appurtenant facilities located on the property upon which
7 the Facility is located.

8 **II. Responsibilities of Reservation Holders**

9 A. The Reservation Holders agree to:

- 10 1. Provide a Representative that will be the contact person for the
11 Reservation Holders.
- 12 2. Provide the COUNTY with the complete (as determined by County)
13 Operations and Maintenance Manuals provided by Facility's Engineer of Record, Allied
14 Engineers, Inc.
- 15 3. Provide technical assistance in preparing the operational budget for
16 the Initial Period.
- 17 4. Pay the costs of operation and maintenance of the Facility that are
18 over and above contributions from all other applicable sources of income for wastewater
19 services in CSA No. 34, as listed in Paragraph III. A. 7 herein below. There shall be
20 consultation between the COUNTY and the Reservation Holders to ensure that
21 available reserve funds have been utilized in a legally appropriate manner to fund non-
22 warranty Facility equipment failures or other non-routine operational and maintenance
23 expenses. Reservation Holders, and each of them, shall be responsible jointly and
24 severally for the entire cost of operation and maintenance of the Facility in excess of
25 revenues received from other applicable sources.
- 26 5. Pay for the costs incurred by COUNTY in order to obtain the final
27 Waste Discharge Requirements (WDR), in recognition that conditions of approval need
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1 to be satisfied to obtain the final WDR. This may include costs of adding and/or
2 modifying instruments or components in Facility.

3 6. Secure the advance written approval of the COUNTY's Director of
4 Public Works and Planning, for transfer of reserved capacity unit amounts listed in
5 Exhibit A (the "Reserved Unit Distribution"), consistent with the provisions of Article V.

6 7. Provide a qualified representative of their choosing and at their
7 expense to conduct a comprehensive annual review prior to February 1 of each
8 calendar year of the Facility and the COUNTY's operations of the Facility. The scope of
9 the representative's review shall include a review of operational methods and
10 expenditures as well as review of changes to the facility operation. Said representative
11 shall file a written report following the annual review by May 1 of the same calendar
12 year with the COUNTY, either confirming that the COUNTY is fully complying with
13 requirements of Section III. B. of this Agreement, or identifying all areas perceived as
14 deficient and offering suggestions for improvement. Said review shall also identify
15 areas of concern related to Facility costs and provide suggestions for changes to
16 contain Facility costs. Failure to provide the annual report shall indicate the Reservation
17 Holders' concurrence that the COUNTY has fully complied with COUNTY's
18 responsibilities as identified in this Agreement.

19 B. The payments provided by a Reservation Holder pursuant to this
20 Agreement for the operation and maintenance of the Facility shall not preclude, nor
21 shall such payment(s) serve to release, relieve reduce or in any way affect such
22 liabilities as that Reservation Holder may incur or accumulate pursuant to other
23 Agreements that the Reservation Holder has entered into with the COUNTY for other
24 costs incurred by CSA 34, or by a Zone of Benefit for wastewater treatment services,
25 until such time as responsibility for funding of such costs has been assumed entirely by
26 the ultimate users of such service(s).

27 C. If any Reservation Holder is not able to obtain Final Project Approval or
28 permanently allocated units for any reason, or to develop entitlements because of

1 restriction that have been placed on the development by County, State and Federal
2 agencies after the entitlements were granted, this shall not negate the Reservation
3 Holder's individual obligation or the collective obligation of all Reservation Holders to
4 make contributions and payments to the COUNTY towards the costs of operating and
5 maintaining the Facility.

6 D. The COUNTY may withhold Final Project Approval of a Reservation
7 Holder's project within the Plan Area, until all payments required under this Agreement
8 have been made.

9 **III. Responsibilities of the COUNTY**

10 A. The COUNTY agrees to:

- 11 1. Provide a Representative that will be the contact person. The
12 COUNTY Representative shall be the Director of Public Works and Planning or a
13 designee.
- 14 2. Evaluate whether existing assessments collected by CSA 34-A are
15 sufficient to pay for CSA 34-A's proportional share of Facility related operational and
16 maintenance costs.
- 17 3. If necessary, meet with Reservation Holders to evaluate any
18 additional contribution that COUNTY determines is necessary to be collected from CSA
19 34-A.
- 20 4. If necessary, begin Proposition 218 procedures to establish new
21 fees for wastewater disposal services for CSA 34-A, however, the COUNTY cannot
22 provide any assurances that such procedures will be successful.
- 23 5. Track the amounts paid by the Reservation Holders.
- 24 6. Meet annually with the Reservation Holders (and other
25 subdivider/developer/landholders with reserved units) to discuss issues. This meeting
26 shall include discussion of issues related to cost containment.
- 27 7. Prepare Annual Period budgets and determine contributions that
28 should come from all sources of income for wastewater disposal services in CSA No.

1 34. The sources of revenue to fund the operations and maintenance of the Facility shall
2 be required and applied in the following priority, and shall include but not be limited to:

- 3 a. Applicable and legally approved user fees from developed lots and
- 4 applicable and legally approved assessments on developed and
- 5 undeveloped lots, including the Golf Course within CSA 34A.
- 6 b. Any applicable developer financing agreements.
- 7 c. Reservation Holders

8 Calculation of amounts due from Reservation Holders shall include adjustments for
9 overpayment or underpayment from previous Annual Periods.

10 B. The COUNTY as the Facility Operator shall provide the following
11 professional services:

12 1. Operate and maintain the Facility in accordance with the
13 procedures and methods of the Operations and Maintenance Manuals and regulatory
14 requirements, and provide for all of its functional needs. This includes providing all
15 necessary labor, equipment, tools, and supplies in a manner more specifically described
16 below:

17 2. The chief plant operator shall have obtained appropriate
18 certification and/or licensure as required by law for the operation of the Facility, proof of
19 which shall be given to the COUNTY and held in display at the site.

20 3. Maintain all motors, pumps, lift stations, etc. including periodically
21 changing the oil in motors and lubricating lift stations, pumps, motors, etc.

22 4. Carry out the Wastewater Treatment Facilities Monitoring and
23 Reporting Program as specified in the WDR. The WDR includes, but is not limited to:
24 (1) effluent monitoring (consisting of daily measurement of flow, weekly measurement of
25 dissolved oxygen, monthly measurement of specific electrical conductance and pH);
26 (2) water supply monitoring (consisting of a monthly testing of specific conductivity of a
27 representative water supply in the plant area); (3) monitoring of any sludge disposal;
28 (4) weekly visual pond observations; (5) monthly monitoring reports to the CRWQCB

1 summarizing the results of Items 1 through 4 (above); and (6) such other activities, if
2 any, as are required for compliance with the WDR.

3 5. The COUNTY shall, in accordance with all applicable legal
4 requirements, deliver laboratory samples to COUNTY determined state certified /
5 licensed laboratory, then analyze the laboratory results and transmit laboratory reports
6 to CRWQCB.

7 6. Provide all necessary routine operations, sampling, monitoring and
8 maintenance in order to keep the Facility in compliance with all applicable regulations.

9 7. Check all systems for signs of excessive wear, malfunctions,
10 blockages or signals that preventative maintenance is appropriate and where the
11 necessary maintenance is outside the scope of normal maintenance activities, report
12 these conditions to the Representative of Reservation Holders as soon as reasonably
13 possible.

14 8. Notify the Reservation Holders' designated Representative, in a
15 timely manner, of breakages, plugged lines, or equipment failures. The COUNTY shall
16 have the sole discretion to determine who will conduct repairs and/or replace equipment
17 and the timing of these repairs and/or replacements.

18 9. As determined by the Facility operators, keep Facility areas clean
19 and neat, free of debris, weeds, etc., including proper disposal of debris, weeds, etc.
20 Provide weed/rodent control as needed on the banks of and within the sewage
21 treatment plant pond.

22 **IV. Budgets, Contributions, Invoicing and Payments**

23 A. The COUNTY's Fiscal Year runs from July 1 of any calendar year to and
24 including June 30 of the succeeding calendar year. An "Initial Period Budget" will be
25 established for the beginning Facility Budget from the Effective Date of this Agreement
26 to the end of the following Fiscal Year (which necessarily will encompass a period in
27 excess of twelve (12) months). After this "Initial Period," succeeding Annual Periods for
28 establishing Facility Budgets will coincide with the COUNTY's Fiscal Years.

1 B. The parties agree that costs for Septic Tank Effluent Pump (STEP) and
2 collection system maintenance are not included in the Facility operation and
3 maintenance costs for which the Reservation Holders are responsible.

4 C. Reservation Holders, and each of them, shall be jointly and severally
5 responsible for providing all funding for operational and maintenance expenses in
6 excess of the revenues provided by the developed and undeveloped lots that are
7 subject to legally approved user rates and/or assessments. There shall be consultation
8 between the COUNTY and the Reservation Holders to ensure that available reserve
9 funds have been utilized in a legally appropriate manner to fund non-warranty Facility
10 equipment failures or other non-routine operational and maintenance expenses.

11 D. Until a new assessment and/or sewer user rate is legally adopted CSA 34-
12 A will be responsible for an annual contribution up to \$67,000 from the existing
13 assessments to fund routine operational and maintenance expenses. If, due to non-
14 warranty Facility equipment failure or other non-routine operational and maintenance
15 expenses CSA 34-A's proportional responsibility would exceed \$67,000, then CSA 34-A
16 reserve funds may be utilized in a legally appropriate manner to fund such expenses.

17 E. The current limitations on CSA 34-A's annual contribution, as referenced
18 in the immediately preceding Section IV.D, shall terminate upon legal adoption of a new
19 assessment and/or sewer rate established to fund the operations and maintenance of
20 the Facility.

21 F. The parties have agreed upon a Facility Budget for the first twelve months
22 of the Initial Period in the amount of \$195,000 based on the estimated cost to operate
23 and maintain the Facility. This amount shall be prorated in the amount of an additional
24 \$16,250 for each month during the Initial Period that is in excess of 12 months. The
25 details of the Initial Period Budget showing estimated expenses and estimated revenues
26 are shown for illustrative purposes only in Exhibit D. The estimated annual cost is
27 based on average costs for County operation and maintenance of similar facilities and
28 has been rounded up to \$195,000 for the purposes of this Agreement. The estimated

1 revenues from Zones A and C are based on an estimated cost per unit to operate the
2 Facility at full capacity and represent each zone's respective share of the cost of
3 operation and maintenance of the Facility.

4 G. The parties agree that any and all economic benefit associated with the
5 Facility or underlying land on which the Facility is situated shall remain with the
6 Reservation Holders and the property owners within CSA 34 (as defined above in
7 Section I.C to specifically exclude CSA 34-B, Ventana Hills), in the percentages of their
8 respective economic interests in the Facility. Accordingly, the COUNTY agrees that any
9 and all proceeds and economic benefit from any subsequent sale, assignment or
10 transfer of the Facility and underlying land, to the extent consistent with applicable law,
11 would be paid directly to the Reservation Holders in proportion to the percentage of their
12 respective economic interest in the Facility as shown in Exhibit B, and/or the property
13 owners within CSA 34. based on appropriate equitable considerations including but not
14 limited to the timing of any such subsequent transfer.

15 H. Upon the Effective Date, the COUNTY Department of Public Works and
16 Planning Financial Services Division shall establish appropriate project and/or activity
17 codes in its accounting system so that Facility related operations and maintenance
18 expenditures will be proportionally divided between CSA 34-A, CSA 34-C, future
19 developments within CSA 34, and reservation holders as appropriate.

20 I. Both parties acknowledge that expenditures associated with Septic Tank
21 Effluent Pump (STEP) system maintenance shall be solely borne by CSA 34-A and that
22 these costs shall not be included when calculating the appropriate proportional share of
23 Facility related costs to be borne by CSA 34-A.

24 J. All parties hereto acknowledge that based on effluent testing and industry
25 standards that the sludge contribution from STEP system units in CSA 34-A is 27% of
26 the contribution from units in CSA 34-C and future development within CSA 34 with
27 gravity collection systems. This difference in sludge contribution will be considered
28

1 when calculating the appropriate proportional share of Facility related costs to be borne
2 by CSA 34-A in future assessment or sewer rate establishment proceedings.

3 K. Upon the Effective Date, the COUNTY will separately invoice the
4 Reservation Holders for their estimated proportional share for the Initial Period based on
5 the spreadsheet in Exhibit A and Reservation Holders will be responsible for payment of
6 their proportional share within thirty (30) calendar days from the date on the invoice. If
7 Facility expenses exceed the available revenues at any time, Reservation Holders shall
8 be responsible for providing additional funds to address funding shortfalls in an amount
9 equal to their proportional share as identified in Exhibit A. Payment shall be made
10 within thirty (30) calendar days from the date on the invoice.

11 L. The COUNTY shall make a good faith effort, no later than seventy (70)
12 days prior to the last date of the Initial Period, and the last date of succeeding Annual
13 Periods, to collect and evaluate actual costs of operating and maintaining the Facility for
14 the purpose of developing a Facility Budget for the upcoming Annual Period. The
15 Annual Period Facility Budgets shall be based on the actual incurred and anticipated
16 costs for the then current fiscal year, known or anticipated increased costs of any type
17 for the upcoming Annual Period, and anticipated non-routine labor and equipment
18 repair/replacement costs. Cost considerations shall include but not be limited to: (1)
19 electrical power; (2) chemical; (3) laboratory analysis and reporting and sampling
20 materials; (4) State WDR application fees; (5) compliance with WDR; (6) labor for
21 Facility operations and maintenance; (7) administrative labor and account reporting; (8)
22 capital improvements; (9) contingency for unanticipated costs; and (10) Consumer Price
23 Index (CPI) adjustments.

24 **M. NOTICE OF POTENTIAL FORFEITURE OF INTEREST**

25 For the upcoming Annual Period (i.e., the first twelve-month Annual Period
26 Budget), Reservation Holders' collective contribution to the Facility's Budget account
27 shall be an amount over and above the contributions from all sources of income as
28 stated in Paragraph III A. 7, up to the anticipated Facility Budget amount. Reservation

1 Holders will be responsible for payment of their proportional share within thirty (30)
2 calendar days from the date on the invoice. If at any time Facility expenses exceed the
3 Facility budget, Reservation Holders shall be responsible for providing additional funds
4 to address funding shortfalls in an amount equal to their proportional share as identified
5 in Exhibit A. Payment shall be made within thirty (30) calendar days from the invoice
6 date. If any Reservation Holder fails to pay its share within one hundred eighty (180)
7 calendar days from the invoice date, then that Reservation Holder forfeits its economic
8 interest in the Facility and its reserved units in the amount of one (1) reserved unit and
9 proportional economic interest per each \$5,667 (or fraction thereof) that is unpaid. (This
10 is based on the per unit construction cost of the Facility, which was \$5,667 as identified
11 in Exhibit C.) Upon such forfeiture, COUNTY shall send a notice to the remaining
12 Reservation Holders identifying the unpaid amount. If another remaining Reservation
13 Holder desires to acquire the forfeited shares and economic interest, it may acquire one
14 (1) reserved unit and the proportional economic interest for each \$5,667 (or fraction
15 thereof) paid toward the non-paying Reservation Holder's contribution. If multiple
16 Reservation Holders desire to purchase the forfeited units, the units shall be transferred
17 to the first Reservation Holder to submit payment. If none of the remaining Reservation
18 Holders offer payment for the forfeited units within fifteen (15) calendar days of the date
19 of the notice, then they shall be billed a proportionate share for the unpaid amount and
20 the forfeited economic interest in the Facility and reserved units shall be transferred to
21 the Reservation Holders in (1) one unit increments as determined by the County.

22 N. For the upcoming Annual Period (i.e., the first twelve-month Annual Period
23 Budget), COUNTY staff shall update the spreadsheet in Exhibit A to reflect changes in
24 the number of Reserved Units and Permanently Allocated Units of Reservation Holders,
25 as well as changes in the Adjusted Percentages, and shall determine the proportional
26 contribution of each Reservation Holder. The proportional contribution of each
27 Reservation Holder for that and for each subsequent Annual Period will be based on the
28 distribution of units as of April 1 of the then current Annual Period. The COUNTY shall

1 also reduce the proportional share of Reservation Holders' responsibility provided for
2 the Small Projects Reserve units if those units are converted to Permanently Allocated
3 Units.

4 O. Any overpayments by Reservation Holders from the previous Annual
5 Period up to the contribution amount shall be credited to the Reservation Holders'
6 respective contributions for the upcoming Annual Period. Overpayments shall be
7 determined by subtracting the previous Annual Period's revenues received from sewer
8 user rates, assessments and developer financing agreements from the actual Facility
9 expenses from the previous Annual Period, plus the targeted reserve amount. If the
10 difference is positive it will then be applied to the respective reservation holders in
11 accordance with the proportionate shares identified in Exhibit A.

12 P. COUNTY shall make a good faith effort to send each Reservation Holder
13 a statement seventy (70) calendar days prior to the beginning of the upcoming Annual
14 Period showing the Facility Budget, contributions from all sources of income, an
15 updated spreadsheet, and adjustments for overpayments or underpayments made by
16 individual Reservation Holders. From this a net contribution amount for each
17 Reservation Holder will be determined.

18 Q. The Reservation Holders shall have up to fifteen (15) calendar days from
19 the date on the statement to notify the COUNTY in writing requesting changes,
20 modifications or review of issues in the determination of Reservation Holders' net
21 contribution amount. The Reservation Holder(s) and COUNTY shall enter discussions
22 to try to resolve issues.

23 **R. NOTICE OF POTENTIAL FORFEITURE OF INTEREST**

24 The COUNTY will invoice the Reservation Holders separately for one half of the
25 net contribution amount on a biannual basis on the approximate dates of January 2 and
26 July 30 of each calendar year. The Reservation Holders shall be responsible for
27 payment of their proportional share within thirty (30) calendar days from the invoice
28 date. If a Reservation Holder fails to pay its share within one hundred eighty (180)

1 calendar days from the invoice date, the Reservation Holder forfeits its economic
2 interest in the Facility and its reserved units in the amount of one (1) reserved unit and
3 proportional economic interest per each \$5,667 (or fraction thereof) that is unpaid. (The
4 per unit construction cost of the Facility was \$5,667 as identified in Exhibit C.) Upon
5 such forfeiture, COUNTY shall send a notice to the remaining Reservation Holders
6 identifying the unpaid amount. If another remaining Reservation Holder desires to
7 acquire the forfeited shares and economic interest, it may acquire one (1) reserved unit
8 and the proportional economic interest for each \$5,667 (or fraction thereof) paid toward
9 the non-paying Reservation Holder's contribution. If multiple Reservation Holders
10 desire to purchase the forfeited units, the units shall be transferred to the first
11 Reservation Holder to submit payment. If none of the remaining Reservation Holders
12 offer payment for the forfeited units within fifteen (15) calendar days of the date of the
13 notice, then they shall be billed a proportionate share for the unpaid amount and the
14 forfeited economic interest in the Facility and reserved units shall be transferred to the
15 Reservation Holders in (1) one unit increments as determined by the County.

16 S. Under current COUNTY policy as adopted by the Board of Supervisors,
17 the targeted result is to accumulate, within five (5) years, an unobligated reserve equal
18 to 50% of the average of the preceding three years' operations and maintenance
19 expenses. Accordingly, for purposes of this Agreement, the targeted reserves at the
20 close of each Fiscal Year will be the cumulative sums of not less than ten percent (10%)
21 of the actual operations and maintenance expenses for each Fiscal Year, until the
22 targeted percentage of reserves under such policy (or under any revision to such policy
23 subsequently adopted by the Board) has been achieved.

24 V. Non-Assignment

25 Reservation Holders, and each of them, shall not assign any of their respective
26 rights, duties or obligations under this Agreement without the prior written consent of the
27 COUNTY, and any purported or attempted assignment or transfer by Reservation
28 Holders of any of their respective duties and responsibilities hereunder, including but

1 not limited to Reservation Holders' obligation to make the installment payments to
2 subsidize the provision of wastewater services to the Property within CSA No. 34 shall
3 be void and have no legal effect as between the parties hereto, in the absence of the
4 requisite prior written consent of the COUNTY. Such written consent shall not be
5 unreasonably withheld by the COUNTY and may be given by the Director of the
6 Department of Public Works and Planning or designee, in consultation with County
7 Counsel.

8 **VI. Notices**

9 The persons and their addresses having authority to give and receive notice
10 under this Agreement include the following:

11

12 RESERVATION HOLDERS

13 JPJ, Incorporated
14 Rick Heyman
7030 N. Fruit Ave., Ste. 101
Telephone (559) 435-9700
Facsimile (559) 435-9717

15 Brighton Crest Holdings LLC
16 A. Ben Ewell, Jr.
466 W. Fallbrook Ave. #101
Fresno, CA 93711
17 Telephone: (559) 437-1990
Facsimile (559) 437-1992

18 Clarksfield Company, Inc.
19 Ben Ewell
466 W. Fallbrook Ave. #101
20 Fresno, CA 93711
Telephone: (559) 437-1990
21 Facsimile (559) 437-1992

22 Table Mountain Rancheria
23 Dan Casas, Legal Counsel
P.O. Box 410
Friant, CA 93626
24 Telephone: (559) 822-7014
Facsimile: (559) 822-7114

25 Clovis Unified School District
26 1450 Herndon Ave
Clovis, CA 93611
27 Telephone: (559) 327-9000

28 //

1 Mathews Land, Inc.
Pat Mathews
2 3202 W March Lane, Suite A
Stockton, CA 95219
3 Telephone: (209) 951-5444
Facsimile: (209) 473-5101

4 COUNTY OF FRESNO
5 Attn: Resources Manager
Department of Public Works and Planning
6 2220 Tulare Street, Sixth Floor
Fresno, CA 93721
7 Telephone (559) 600-4259
Facsimile (559) 262-4286

8 Each party hereto shall keep the other apprised of its current name, mailing
9 address, street address, facsimile number, telephone number, and the position or title
10 and name of that party's contact person having authority to give and receive notice
11 under this Agreement. This information shall be transmitted in writing pursuant to the
12 personal service or mail service requirements of this Article VI, even if it is also
13 conveyed by telephone or facsimile for convenience.

14 **VII. Effective Date**

15 This Agreement shall become effective upon acceptance of the Facility and the
16 land upon which it is located by the Fresno County Board of Supervisors on behalf of
17 the COUNTY.

18 **VIII. Termination of Agreement**

19 This Agreement shall remain in effect until such time as all parties to this
20 Agreement mutually agree that the Agreement shall be terminated.

21 **IX. Governing Law; Venue**

22 The rights and obligations of the parties and all interpretation and performance of
23 this Agreement shall be governed in all respects by California law. Venue for any action
24 arising out of or related to this Agreement shall only be in the Superior Court of the
25 State of California, located in Fresno County, California.

26 In the event that any legal proceedings are necessary for the enforcement of this
27 Agreement or the declaration of any rights under the terms of this Agreement, the Tribe
28 hereby agrees to submit to the jurisdiction of the Superior Court of the State of

1 California in and for the County of Fresno and further agrees not to assert sovereign
2 immunity as an affirmative defense to any such legal proceeding.

3 **X. Warranties and Representations**

4 The individual executing this Agreement on behalf of each Reservation Holder
5 hereby covenants, warrants and represents: (1) that he or she is duly authorized to
6 execute and deliver this Agreement on behalf of the Reservation Holder in accordance
7 with the policies and procedures thereof; (2) that his or her execution of this Agreement
8 is and shall be binding upon the Reservation Holder, and such individual hereby
9 acknowledges his or her understanding that the COUNTY is expressly relying upon
10 such representation and warranty in entering into this Agreement.

11 The undersigned Reservation Holders claim that they own the reserved capacity
12 unit amounts as identified in Exhibit A hereto. Reservation Holders shall jointly and
13 severally indemnify, hold harmless and defend the County of Fresno and each of its
14 officers, officials, employees and agents from any and all claims, actions, suits,
15 proceedings, losses, costs, damages, liabilities, deficiencies, fines, penalties, damages
16 or expenses of any kind or nature whatsoever (including, without limitation, reasonable
17 attorneys' fees), arising from or related to any claim of ownership of the reserved
18 capacity unit amounts adverse to the title claimed to be owned by the Reservation
19 Holders.

20 **XI. Entire Agreement**

21 This Agreement constitutes the entire agreement between the parties hereto with
22 respect to the subject matter herein and supersedes all previous negotiations,
23 proposals, commitments, writings, and understandings of any nature whatsoever unless
24 expressly included in this Agreement.

25 Should any provision herein be found or deemed to be invalid, this
26 Agreement shall be construed as not containing such provision, and all other provisions
27 which are otherwise lawful shall remain in full force and effect, and to this end the
28 provisions of this Agreement are hereby declared to be severable.

1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
2 executed, effective as provided herein, on the day and year first above written.

3 **RESERVATION HOLDERS**

4 JPJ Incorporated

Mathews Land, Inc

5 BY: _____

BY: _____

6 TITLE: _____

TITLE: _____

7 ADDRESS: _____

ADDRESS: _____

8

9 Brighton Crest Holdings, LLC

10 BY: _____

11 TITLE: _____

12 ADDRESS: _____

13

14 Clarksfield Company, Inc.

15 BY: _____

16 TITLE: _____

17 ADDRESS: _____

18

19 Table Mountain Rancheria Band of Indians

20 BY: _____

21 TITLE: _____

22 ADDRESS: _____

23

24 Clovis Unified School District

25 BY: _____

26 TITLE: _____

27 ADDRESS: _____

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COUNTY OF FRESNO

BY: _____
Deborah A. Poochigian
Chairman, Board of Supervisors

APPROVED AS TO LEGAL FORM:
FOR APPROVAL:
KEVIN BRIGGS, COUNTY COUNSEL

REVIEWED & RECOMMENDED FOR
APPROVAL

BY: _____
Deputy

Alan Weaver, Director
Department of Public Works and
Planning

APPROVED AS TO ACCOUNTING
FORM:

BY: _____
VICKI CROW, C.P.A.
AUDITOR-CONTROLLER /
TREASURER- TAX COLLECTOR

BY: _____
Deputy

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EXHIBIT A

CSA 34 Wastewater Treatment Plant - Phase 1 Reserved Unit Distribution and Percentages

Reservation Holder	Initial Reserved Units	Permanently Allocated Units	Current Reserved Units	Percent Reserved Units	Distribute Pool Units	Adjusted Percent
JPJ, Inc.	300	161	139	29.02%	15.79	32.3%
Clarksfield Co, Inc	34		34	7.10%	1.79	7.5%
Matthews Land, Inc	150		150	31.32%	7.89	33.0%
Brighton Crest Holdings, LLC	69		69	14.41%	13.69	17.3%
Brighton Crest Recorded Lots	160	160			0.00	0.0%
Table Mountain Rancheria	31		31	6.47%	0.00	6.5%
Clovis Unified School District	16		16	3.34%	0.84	3.5%
Small Projects Pool	40		40	8.35%		
Total	800	321	479	100.00%	40.00	100.0%

RHH - 10/19/2011

EXHIBIT B

CSA 34 Wastewater Treatment Plant - Phase 1
Economic Interest Holders
October 1, 2011

Reservation Holder	Reserved Units	Percent Reserved Units	Distribute Pool Units*	Adjusted Percent
JPJ, Inc	300	37.50%	15.79	39.47%
Clarksfield Co, Inc	34	4.25%	1.79	4.47%
Mathews Land, Inc.	150	18.75%	7.89	19.74%
Brighton Crest Holdings, LLC	69	8.63%	13.69	10.34%
Table Mountain Rancheria	31	3.88%	0.00	3.88%
Brighton Crest Recorded Lots**	160	20.00%	0.00	20.00%
Clovis Unified School District	16	2.00%	0.84	2.11%
Small Projects Pool	40	5.00%		
Total	800	100.00%	40.00	100.00%

* Small Project Pool unit distribution based on ownership from original contributions with modifications in accordance with transactions of sale or transfer of units.

**Current lot owners are purchasing plant capacity over 10 years from Brighton Crest Holdings LLC. To be reimbursed for years paid to date of acquisition and balance to Brighton Crest Holdings LLC.

10/19/2011

EXHIBIT C

Plant Capacity: 800 Units

Facility Cost:

A. <u>Land</u> (11.53 Acres at \$20,000)	\$230,600
B. <u>Constructed Facilities</u>	
1. Concrete Tankage	\$41,000
2. Effluent Storage Reservoir	<u>\$100,000</u>
	\$141,000
C. <u>Plant Construction/Storage</u>	
1. Travis Construction Bid	\$2,709,160
2. 22 Acre ft. Storage Pond	\$350,000
3. Contingency	<u>\$61,560</u>
	\$3,120,720
D. <u>Miscellaneous</u>	
1. Provost Engineering	\$68,000
2. Allied Engineering	\$303,000
3. Landscaping	\$100,000
4. Fees	\$120,000
5. Construction Supervision	\$50,000
6. Pump Station/Distribution	\$350,000
7. Contingency	<u>\$50,000</u>
	\$1,041,000
Total Cost:	\$4,533,320

Unit Cost = Total / 800 = \$5,667 / Unit

Exhibit D

County Proposed First Year Budget

<u>Category</u>	<u>Cost</u>
Operation and Administration (without Billing Costs)	83,088
Billing Costs (50 Units)	2,652
Utilities	45,000
Water Quality Analysis	6,155
Equipment Replacement Fund	0
Reserve Fund (O&M Reserve per Board Policy - 10%)*	13,690
Contingency @15% of O&M	<u>22,588</u>
Total without Sludge Handling	\$173,172
Sludge Disposal	13,161
Reserve Fund (O&M Reserve per Board Policy - 10%)*	1,316
Contingency @ 15% Sludge Handling	<u>2,172</u>
Total Sludge Handling:	\$16,649
Total Estimated Annual Cost	\$189,821
Assume 50 residential units on line from Zone C 91 Units from Zone A	
<u>Revenue</u>	
Zone C Maximum Share of Cost	94,570
Zone C Share of Cost	94,570
Zone C Contribution	\$94,570 (\$587.39 x 161)
Zone A Maximum Share of Cost	59,430
Zone A Share of Cost	59,430
Zone A Contribution	\$59,430 (\$371.44 x 160)
Total Revenue	\$154,000
Reservation Holders Share	\$35,821

* Per Board of Supervisors policy, targeted reserve is 50% of a three year average of routine operational and maintenance expenses, to be accumulated at rate of 10% per year over five years.

WARRANTY AGREEMENT

This Agreement is made and entered into this ____ day of _____, 2012, and effective as hereinafter provided, by and between the County of Fresno on behalf of County Service Area No. 34 ("COUNTY"), and JPJ Incorporated, a California Corporation; Table Mountain Rancheria Band of Indians, a federally-recognized sovereign Indian tribe (Tribe); Brighton Crest Holdings LLC; Clovis Unified School District, Mathews Land, Inc, a California Corporation; and Clarksfield Company, Inc., a California Corporation, hereinafter referred to collectively as the "Participating Landowners".

WITNESSETH

WHEREAS, on December 19, 2000, the Fresno County Board of Supervisors adopted the Millerton New Town Infrastructure Plan (hereinafter called the "Plan") for the Millerton New Town Infrastructure Plan Study Area (hereinafter called the "Plan Area"), that provides implementation procedures for the installation and service of respective systems for water delivery, wastewater treatment and collection, storm drainage and reclaimed water, throughout the Plan Area; and

WHEREAS, consistent with the implementation procedures of the Plan, the Participating Landowners have entered into a cost sharing agreement for financing the construction of Phase 1 of the Wastewater Treatment Facility (hereinafter called the "Facility"); and

WHEREAS, the Facility has been completed with an estimated capacity of two hundred thousand gallons per day and is intended to serve up to eight hundred (800) units; and

WHEREAS, the duties and responsibilities of the COUNTY and the Participating Landowners need to be established in order for the COUNTY to accept ownership of the Facility on behalf of CSA No. 34.

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

2 **I. Responsibilities of the Participating Landowners**

3 A. The Participating Landowners agree to:

4 1. Connect the wastewater line from CSA 34-A to the Facility prior to
5 the "Effective Date" of this Agreement.

6 2. Provide for the performance, or alternatively reimburse the
7 COUNTY for one hundred percent (100%) of the expenses, in connection with the
8 repair or replacement of mechanical and electrical equipment and all other aspects of
9 the Facility that have failed due to defects in materials and/or workmanship provided by
10 the original construction contractor or subcontractors, the occurrence of which arises or
11 is discovered during the two-year term of this Agreement; provided, however, that such
12 warranty shall apply with respect to defects in components of the structure itself (e.g.,
13 foundation, walls, and roof) for only one year from the effective date of this Agreement.

14 3. Provide for the performance, or alternatively reimburse the
15 COUNTY for one hundred (100%) of the expenses incurred, in connection with the
16 alteration, adjustment, modification, replacement or addition of electrical or mechanical
17 equipment, controls, systems and processes, in order to ensure that, throughout the
18 Term of this Agreement: (a) the Facility will operate to the engineer of record's
19 specifications provided in the construction record documents and equipment
20 manufacturers' performance specifications; and (b) the Facility meets the Wastewater
21 Discharge Requirements (WDR) issued by the Regional Water Quality Control Board.

22 4. Upon the Effective Date, provide a financial guarantee in a form
23 acceptable to the COUNTY to cover the expenses incurred by the COUNTY in the
24 event the Participating Landowners do not fulfill their obligations provided in the above
25 Paragraphs 2 and 3. The Participating Landowners proportional share of the cost of
26 providing the financial guarantee, including allowances for Small Projects Reserve, is
27 shown in Exhibit A. The proportional share of the Participating Landowners' reserved
28 units identified in Exhibit A are exclusive of any portion of the 160 reserved units

1 allocated to Tract Nos. 4048, 4197, 4241, 4388 and 4660 located in CSA 34-A that
2 Participating Landowners may hold as a result of being an owner of property located
3 within CSA 34-A. The financial guarantee shall meet the following requirements:

4 a. The COUNTY shall be the sole beneficiary and recipient for claims
5 made by the COUNTY against the financial guarantee, up to the maximum cumulative
6 amount of Two Hundred Ninety Eight Thousand and No/100s Dollars (\$298,000.00),
7 which represents approximately twenty five percent (25%) of the Facility's construction
8 cost for electrical and mechanical equipment.

9 b. The financial guarantee:

10 (i) Shall be in effect throughout the Term of this Agreement.

11 (ii) Shall not cover normal wear and tear of equipment,
12 upgrading the Facility with new technology and/or processes that were not part of the
13 plans and specifications approved by Fresno County for construction of the Facility
14 unless such changes are required in the COUNTY'S sole determination, following
15 consultation with Allied Engineers, to enable the Facility to perform at the planned
16 capacity;

17 (iii) Shall not cover work required to comply with regulations that
18 go into effect after the issuance of the WDR.

19 Should the COUNTY's determination not concur with Allied Engineer's
20 determination, the Participating Landowners may appeal the COUNTY's determination
21 to the Fresno COUNTY Board of Supervisors. If an appeal is desired, the Participating
22 Landowners shall request said appeal in writing to the Director of the Department of
23 Public Works and Planning or designee. Said appeal shall be scheduled for the next
24 feasible regular hearing of the Fresno COUNTY Board of Supervisors.

25 5. Secure the advance written approval of the COUNTY's Director of
26 Public Works and Planning, for the proposed transfer, by any Participating Landowner,
27 of reserved capacity unit amounts listed in Exhibit A ("the Reserved Unit Distribution"),
28 consistent with the provisions of Article V hereinbelow.

1 B. In the event the COUNTY determines that the Participating Landowners
2 need to rectify a condition or conditions specified in Paragraphs I.A.2 and I.A.3 of this
3 Agreement, then the COUNTY shall issue a written notification to the Participating
4 Landowners identifying the conditions and may recommend one or more courses of
5 action and timelines for completion. The Participating Landowners shall have thirty (30)
6 calendar days from the date of the COUNTY's written notification to respond to the
7 written notice with a proposed course of action to solve the problem and an estimated
8 timeline for completion. If the COUNTY agrees with the Participating Landowners'
9 proposed course of action and estimated timeline of completion, the Participating
10 Landowners shall commence with that course of action to resolve the problem. If the
11 COUNTY disagrees with or requests a modification to the Participating Landowners
12 proposed course of action or the estimated timeline of completion, then the parties shall
13 meet to try to resolve their differences. If the Participating Landowners do not respond
14 to the COUNTY's written notification within thirty (30) calendar days or the parties
15 cannot reach agreement on a course of action and an estimated timeline of completion
16 within ninety (90) calendar days from the date of the COUNTY's written notification,
17 then the COUNTY may commence with its course of action and make a claim against
18 the financial guarantee for the full expenses incurred.

19 C. In the event that the condition or conditions needing to be rectified as
20 specified in Paragraphs I.A.2 and I.A.3 of this Agreement, in the sole determination of
21 the COUNTY, represent a health and safety concern and/or are anticipated to result in a
22 regulatory violation if not rectified immediately, then adherence to the notification and
23 discussion periods described in the immediately preceding Section B of this Article shall
24 not be required, and the COUNTY may require that the condition or conditions be
25 rectified immediately. In the event that this occurs, the COUNTY shall notify the
26 Participating Landowners of the condition or conditions and timeframe for completion of
27 the action(s) required to be taken.

28

1 D. If an escrow account, created pursuant to a separate escrow agreement
2 between the COUNTY and the Participating Landowners, is utilized as an instrument for
3 providing the financial guarantee required by this Agreement, then upon expiration of
4 the Term of this Agreement, any unclaimed portion of the funds shall be released to the
5 Participating Landowners based on their respective proportional contributions to the
6 escrow account.

7 **II. Responsibilities of the COUNTY**

8 The COUNTY agrees to:

9 A. Accept ownership of the Facility and the land upon which the Facility is
10 located.

11 B. Operate the Facility in accordance with procedures and methods specified
12 in the Operations and Maintenance Manuals provided by Facility's Engineer of Record,
13 Allied Engineers, Inc. or as modified by the COUNTY in the COUNTY'S sole
14 determination, following consultation with Allied Engineers, to meet the WDR. Should
15 the Participating Landowners disagree with the COUNTY's determination, it may appeal
16 COUNTY's determination to the Board of Supervisors as identified in Subparagraph (c)
17 of Paragraph I.A.4 of this Agreement.

18 C. Notify the Participating Landowners of any needed repairs over \$1,000.00
19 or operational problems within the Facility before making any repairs or modifications,
20 except in case of an emergency where there are health and safety issues and/or it is
21 anticipated the issue may result in a regulatory violation. The Participating Landowners
22 shall be notified as soon as feasible in the case of any emergency repairs or
23 modifications to the Facility.

24 **III. Effective Date**

25 This Agreement shall become effective upon acceptance of the Facility and the
26 land upon which it is located by the Fresno County Board of Supervisors on behalf of
27 the COUNTY.

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1 **IV. Term of the Agreement**

2 The Term of this Agreement shall be for a period of two years from the Effective
3 Date.

4 **V. Non-Assignment**

5 Participating Landowners, and each of them, shall not assign any of their
6 respective rights, duties or obligations under this Agreement without the prior written
7 consent of the COUNTY, and any purported or attempted assignment or transfer by
8 Participating Landowners of any of their respective duties and responsibilities
9 hereunder, including but not limited to Participating Landowners' obligation to make the
10 installment payments to subsidize the provision of wastewater services to the Property
11 within CSA No. 34, shall be void and have no legal effect as between the parties hereto,
12 in the absence of the requisite prior written consent of the COUNTY. Such written
13 consent shall not be unreasonably withheld and may be given by the Director of the
14 Department of Public Works and Planning or designee.

15 **VI. Notices**

16 The persons and their addresses having authority to give and receive notice
17 under this Agreement include the following:

18
19 PARTICIPATING LANDOWNERS

20 JPJ Incorporated
21 c/o Rick Heyman
22 7030 N. Fruit, Ste. 101
23 Fresno, CA 93711
24 Telephone (559) 435-9700
25 Facsimile (559) 435-9707
26 Email: Rick@bonadelle.com

27 Clarksfield Company, Inc.
28 Attn: A. Ben Ewell, Jr.
466 W. Fallbrook Ave. #101
Fresno, CA 93711
Telephone: (559) 437-1990
Facsimile (559)

27 //

28 //

1 Brighton Crest Holdings, LLC
Attn: A. Ben Ewell, Jr.
2 466 W. Fallbrook Ave. #101
Fresno, CA 93711
3 Telephone: (559) 437-1990
Facsimile (559) 437-1992

4 Table Mountain Rancheria
Attn: Dan Casas, Legal Counsel
5 P.O. Box 410
Friant, CA 93626
6 Telephone: (559) 822-7014
7 Facsimile: (559) 822-7114

8 Mathews Land, Inc.
Attn: Pat Mathews
3202 W March Lane, Suite A
9 Stockton, CA 95219
Telephone: (209) 951-5444
10 Facsimile: (209) 473-5101

11 COUNTY OF FRESNO
Attn: Resources Manager
12 Department of Public Works and Planning
2220 Tulare Street, Sixth Floor
13 Fresno, CA 93721
Telephone (559) 600-4259
14 Facsimile (559) 262-4286

15 Each party hereto shall keep the other apprised of its current name, mailing
16 address, street address, facsimile number, telephone number, and the position or title
17 and name of that party's contact person having authority to give and receive notice
18 under this Agreement. This information shall be transmitted in writing pursuant to the
19 personal service or mail service requirements of this Article VI, even if it is also
20 conveyed by telephone or facsimile for convenience.

21 **VII. Governing Law; Venue**

22 The rights and obligations of the parties and all interpretation and performance of
23 this Agreement shall be governed in all respects by California law. Venue for any action
24 arising out of or related to this Agreement shall only be in the Superior Court of the
25 State of California, located in Fresno County, California.

26 In the event any legal proceedings are necessary for the enforcement of this
27 Agreement or the declaration of any rights under the terms of this Agreement, the Tribe
28 hereby agrees to submit to the jurisdiction of the Superior Court of the State of

1 California in and for the County of Fresno and further agrees not to assert sovereign
2 immunity as an affirmative defense to any such legal proceeding.

3 **VIII. Warranties and Representations**

4 The individual executing this Agreement on behalf of each Participating
5 Landowner hereby covenants, warrants and represents: (1) that he or she is duly
6 authorized to execute and deliver this Agreement on behalf of the Participating
7 Landowner in accordance with the policies and procedures thereof; (2) that his or her
8 execution of this Agreement is and shall be binding upon the Participating
9 Landowner, and such individual hereby acknowledges that the COUNTY is relying upon
10 such representation and warranty in entering into this Agreement.

11 The undersigned Participating Landowners claim that they own the reserved
12 capacity unit amounts as identified in Exhibit A hereto. Participating Landowners, and
13 each of them, shall jointly and severally indemnify, hold harmless and defend the
14 County of Fresno, and each of its officers, officials, employees and agents from any and
15 all claims, actions, suits, proceedings, losses, costs, damages, liabilities, deficiencies,
16 fines, penalties, damages or expenses of any kind or nature whatsoever (including,
17 without limitation, reasonable attorneys' fees), arising from or related to any claim of
18 ownership of the reserved capacity unit amounts adverse to the title claimed to be
19 owned by the Participating Landowners.

20 **IX. Entire Agreement**

21 This Agreement constitutes the entire agreement between the parties hereto with
22 respect to the subject matter herein and supersedes all previous negotiations,
23 proposals, commitments, writings, and understandings of any nature whatsoever,
24 unless expressly included in this Agreement.

25 Should any provision herein be found or deemed to be invalid, this Agreement
26 shall be construed as not containing such provision, and all other provisions which are
27 otherwise lawful shall remain in full force and effect, and to this end the provisions of
28 this Agreement are hereby declared to be severable.

1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
2 executed, effective as provided herein, on the day and year first above written.

3 **PARTICIPATING LANDOWNERS**

4 JPJ Incorporated

COUNTY OF FRESNO

5 BY: _____

BY: _____
Deborah A. Poochigian
Chairman, Board of Supervisors

6 TITLE: _____

7 ADDRESS: _____

8 _____

9 Brighton Holdings, LLC

REVIEWED & RECOMMENDED FOR
APPROVAL

10 BY: _____

11 TITLE: _____

12 ADDRESS: _____

13 _____

Alan Weaver, Director
Department of Public Works and
Planning

14 Clarksfield Company, Inc.

15 BY: _____

APPROVED AS TO LEGAL FORM:
FOR APPROVAL:
KEVIN BRIGGS, COUNTY COUNSEL

16 TITLE: _____

17 ADDRESS: _____

18 _____

19 Table Mountain Rancheria Band of Indians

BY: _____
Deputy

20 BY: _____

21 TITLE: _____

22 ADDRESS: _____

23 _____

APPROVED AS TO ACCOUNTING
FORM:

BY: _____
VICKI CROW, C.P.A.
AUDITOR-CONTROLLER /
TREASURER- TAX COLLECTOR

24 Clovis Unified School District

25 BY: _____

BY: _____
Deputy

26 TITLE: _____

27 ADDRESS: _____

28 _____

1 **Mathews Land, Inc**

2 BY: _____

3 TITLE: _____

4 ADDRESS: _____

5 _____

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8 G:\4360Resources\SPECIAL DISTRICTS\CSA\CSA

9 34\Dev Agrmt\WWTF Warranty Agreement\CSA_34_WWTF

10 Warranty Agrmt Revised 1-4-2012.doc

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EXHIBIT A

CSA 34 Wastewater Treatment Plant - Phase 1 Reserved Unit Distribution

Participating Landowners	Reserved Units	Percent Reserved Units	Distribute Pool Units	Adjusted Percent
JPJ, Inc	300.00	46.88%	15.79	49.34%
Clarksfield Co, Inc	34.00	5.31%	1.79	5.59%
Brighton Crest Holdings, LLC	69.00	10.78%	13.69	12.92%
Matthews Land, Inc	150.00	23.44%	7.89	24.67%
Table Mountain Rancheria	31.00	4.84%	0.00	4.84%
Clovis Unified School District	16.00	2.50%	0.84	2.63%
Small Projects Pool	40.00	6.25%		
Total	640	100.00%	40.00	100%

Note: Total Phase 1 plant capacity is 800 units. CSA 34-A holds 160 units which is 20% of the total plant capacity. These 160 units are for the 153 mapped lots in Tracts 4048, 4197, 4241, 4388 and 4660 plus 7 units for golf course clubhouse, restrooms and guard shack. The unit distribution above and percentages shown are the Participating Landowner shares of their 640 units which is 80% of the total plant

11/23/2011