

## **APPENDIX L**

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RD 1000 Drainage Improvements Agreement



## DRAINAGE IMPROVEMENT AGREEMENT

This Agreement is entered into this 12<sup>th</sup> day of December, 2008, by and between the County of Sutter, a political subdivision of the State of California ("SUTTER") and Reclamation District No. 1000, a public entity of the State of California formed as a reclamation district by special act of the California Legislature ("RD1000"), in consideration of the covenants hereinafter set forth. (For the purposes of this Agreement, the term SUTTER shall include any CSA or CSD formed by Sutter County LAFCO).

### RECITALS:

- A. Reference is made to that certain Agreement dated October 31, 2000 between SUTTER and RD1000, which provided for SUTTER's development of a Specific Plan for 3,500 acres of land within an approximate 10,500 acre South Sutter County Industrial-Commercial Reserve ("Reserve"); which Reserve was subsequently reduced by SUTTER in 2005 to 9,500 acres (the "Reserve Area") located in Sutter County and within the boundaries of RD1000, and for the development of a Drainage Plan and a Drainage Improvement Agreement between SUTTER and RD1000 therefore (the "Prior Agreement").
- B. Since the date of the Prior Agreement, Sutter County voters approved "Measure M" on November 2, 2004, as an advisory measure directing SUTTER to develop a Specific Plan for 7,500 acres in the Reserve Area described on Exhibit "A" attached hereto ("Sutter Pointe"). An application for General Plan amendment and for a Specific Plan for Sutter Pointe has been filed with and is being processed by SUTTER. The additional 2,000 acres in the Reserve Area lying outside of the Sutter Pointe boundary is contemplated to be eliminated from the Reserve Area by SUTTER as a result of SUTTER's participation in the Natomas Basin Habitat Conservation Plan.
- C. Subject to approval of the Sutter Point Specific Plan ("SPSP"), SUTTER and RD1000 desire by this Drainage Improvement Agreement to replace and terminate the Prior Agreement and to provide for:
- (i) The orderly and efficient preparation of a Drainage Plan for Sutter Pointe, reasonably acceptable to RD1000, as a part of the further studies recommended in the Sutter Pointe Drainage Master Plan which are necessary to design improvements and determine costs estimates for the Sutter Pointe Specific Plan;
  - (ii) A Drainage Improvement Agreement between SUTTER and RD1000 under which necessary drainage improvements would be identified, paid for and installed for SUTTER in accordance with the Drainage Plan approved by SUTTER and RD1000, and RD1000 would accept and dispose of increased quantities of storm water runoff from development in the Sutter Pointe; and
  - (iii) RD1000 would be made whole for those costs reasonably associated with the additional pumping required to dispose of additional storm water runoff generated by Sutter Pointe and those additional maintenance costs resulting from such

additional storm water disposal, and be provided with emergency power back-up for such additional storm water disposal.

## AGREEMENT

1. Subject to approval of the Sutter Point Specific Plan, the Prior Agreement is hereby terminated and replaced by this Drainage Improvement Agreement.
2. SUTTER agrees to prepare or have prepared, in consultation with RD1000, a Drainage Plan for Sutter Pointe which would provide, to the reasonable satisfaction of RD1000 and with RD1000's written acceptance, for the orderly completion and installation of necessary drainage improvements, in phase with development in Sutter Pointe if desired and agreed to by SUTTER and RD1000, which may provide for: (i) on or offsite detention of storm water runoff and delivery of such storm water runoff to RD1000's drainage system at rates not in excess of .16 cfs per acre; (ii) no increase in the extent of and no change in the location of the one in 100 year internal flood plain within the boundaries of RD1000, except within Sutter Pointe or as may be contained within on or offsite detention basins acceptable to RD1000; (iii) no increase in the one in 100 year stage within RD1000's drainage system; (iv) reasonably necessary improvements to RD1000's system of drainage ditches, canals and pumping plants to accommodate RD1000's disposal of such additional storm water runoff; and (v) ownership, operation and maintenance of any on or offsite detention basins and any storm water collection systems within Sutter Pointe by SUTTER or any municipality which may be formed within Sutter Pointe.
3. SUTTER and RD1000 agree to utilize RD1000's Natomas Basin Modeling Plans for the purpose of hydrologic modeling of the storm water drainage impacts of contemplated Sutter Pointe. RD1000 agrees to cause its consulting engineers to run its Natomas Basin Modeling Plans for such purpose.
4. SUTTER shall reimburse RD1000 for its costs and expenses incurred in: (i) reviewing and commenting upon the Drainage Plan for Sutter Pointe, including consulting engineer's fees and costs therefor; and (ii) for a proportionate share of RD1000's cost of development and updating of RD1000's Natomas Basin Modeling Plans as set forth on Exhibit "B" attached hereto, and for the cost of utilizing such Natomas Basin Modeling Plans in hydrologic modeling of the storm water drainage impacts of the contemplated South Sutter development.
5. All improvements to RD1000's drainage ditches, canals and pumping plants called for in the Drainage Plan accepted in writing by RD1000 shall be installed in accordance with the accepted plans and specifications therefor at the sole cost of SUTTER or Sutter Pointe developers. RD1000 shall contract for and oversee the installation of all such improvements. If and to the extent that the accepted Drainage Plan allows for phased development in Sutter Pointe with phased installation of required drainage improvements, the drainage improvements for each such phase must be completed and accepted in writing by RD1000 before the issuance of any building permits or grading permits other than for installation of on or offsite detention facilities and storm drainage and utility infrastructure by SUTTER (or by any municipality formed within Sutter Pointe) within the relevant phase areas. RD1000 shall be compensated for SUTTER's proportional share of the cost of acquiring and installing an emergency power back-up for the running of pumping plants in the event of an extended electrical power outage for the prevention of flooding. SUTTER's proportional share shall be based upon the pumping capacity which the

acquired power back-up is capable of running as compared to the additional runoff generated by development in Sutter Pointe. If SUTTER elects to reimburse those costs through an impact fee, RD1000 agrees to have performed a nexus study reasonably acceptable to SUTTER to provide the basis for such an impact fee, and the cost thereof shall be reimbursed to RD1000 by SUTTER.

6. All improvements to RD1000's drainage ditches, canals and pumping plants shall be maintained by RD1000. RD1000 shall be compensated on an ongoing basis for those costs reasonably associated with the additional pumping required to dispose of the additional storm water runoff caused by Sutter Pointe and for those additional canal and ditch maintenance costs resulting from the additional storm water runoff disposal. RD1000 may be compensated through an improvement district and an assessment thereby created by SUTTER or such developers. If SUTTER elects to reimburse those costs through the formation of a Mello-Roos Community Facilities District ("CFD"), RD1000 and SUTTER agree to cooperate with each other in good faith to enter into an appropriate form of Joint Community Facilities Agreement and to cooperate in good faith in taking such steps as are necessary for formation of the CFD.

7. RD1000 agrees to accept into its drainage system and to dispose of increased storm water runoff from Sutter Pointe, as and when such Sutter Pointe is developed, provided that: (i) the drainage improvements called for in the Drainage Plan accepted in writing by RD1000 are installed in accordance with the plans and specifications therefor; (ii) such drainage improvements are accepted by RD1000 as complete, prior to such development or in accordance with an approved phasing plan which may be set forth in such accepted Drainage Plan; and (iii) provided that the cost reimbursements required to be made to RD1000 are made as set forth in this Drainage Improvement Agreement.

8. RD1000 agrees to promptly and diligently review and respond to inquiries made by SUTTER or its consultants with regard to the preparation of the Drainage Plan.

9. With reference to other properties which were zoned industrial-commercial within the Reserve prior to October 31, 2000, SUTTER agrees to take those steps required by law to enable itself to adopt, collect and cause to be paid to RD1000 a drainage impact fee at such time as RD1000 has completed, at its cost, a formal nexus study, acceptable to SUTTER and has completed such other actions as may be required by law, all as a condition precedent to the issuance of building permits on such previously zoned industrial-commercial properties. SUTTER agrees not to rezone additional lands from agricultural use for lands located both within SUTTER and RD1000 boundaries for other than agricultural purposes, other than within Sutter Pointe in accordance with this Drainage Improvement Agreement, without first preparing a drainage plan and entering into another drainage improvement agreement with RD1000 therefor.

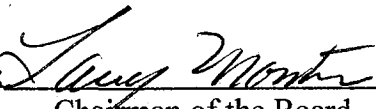
10. This agreement shall be administered and interpreted under the laws of the State of California and any action brought hereunder shall be brought in the Superior Court in and for the County of Sutter. If any provision of this agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the agreement to either party is lost, the agreement may be terminated at the option of the affected party. In all other cases, the remainder

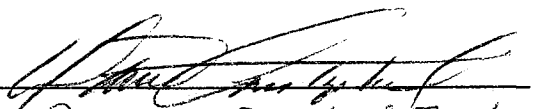
of the agreement shall continue in full force and effect. Modifications or amendments shall be in writing and executed by both parties. This agreement, and all exhibits attached hereto, constitute the entire agreement and understanding between the parties as to the subject matter hereof and, if the Sutter Pointe Specific Plan is approved, supersedes all prior agreements and representations whether written or oral. This agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties. This agreement reflects the contributions of all parties and accordingly the provisions of Civil Code Section 1654 shall not apply in interpreting this agreement.

11. SUTTER and RD1000 shall each defend, hold harmless and indemnify the other party, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages, or expenses, including reasonable attorneys' fees and costs, and including but not limited to consequential damages, loss of use, extra expense, cost of facilities, death, sickness, or injury to any person(s) or damage to any property, from any cause whatsoever arising from or connected with its service hereunder, that arise out of or result from in whole or in part, the negligent, wrongful or willful acts or omissions of the indemnifying party, its employees, agents, subcontractors, independent contractors, consultants, or other representatives.

SUTTER COUNTY

RECLAMATION DISTRICT NO. 1000

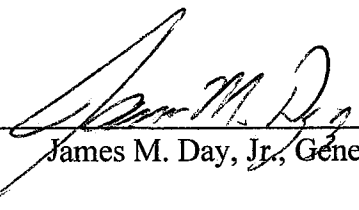
By:   
Chairman of the Board

By:   
President Board of Trustees

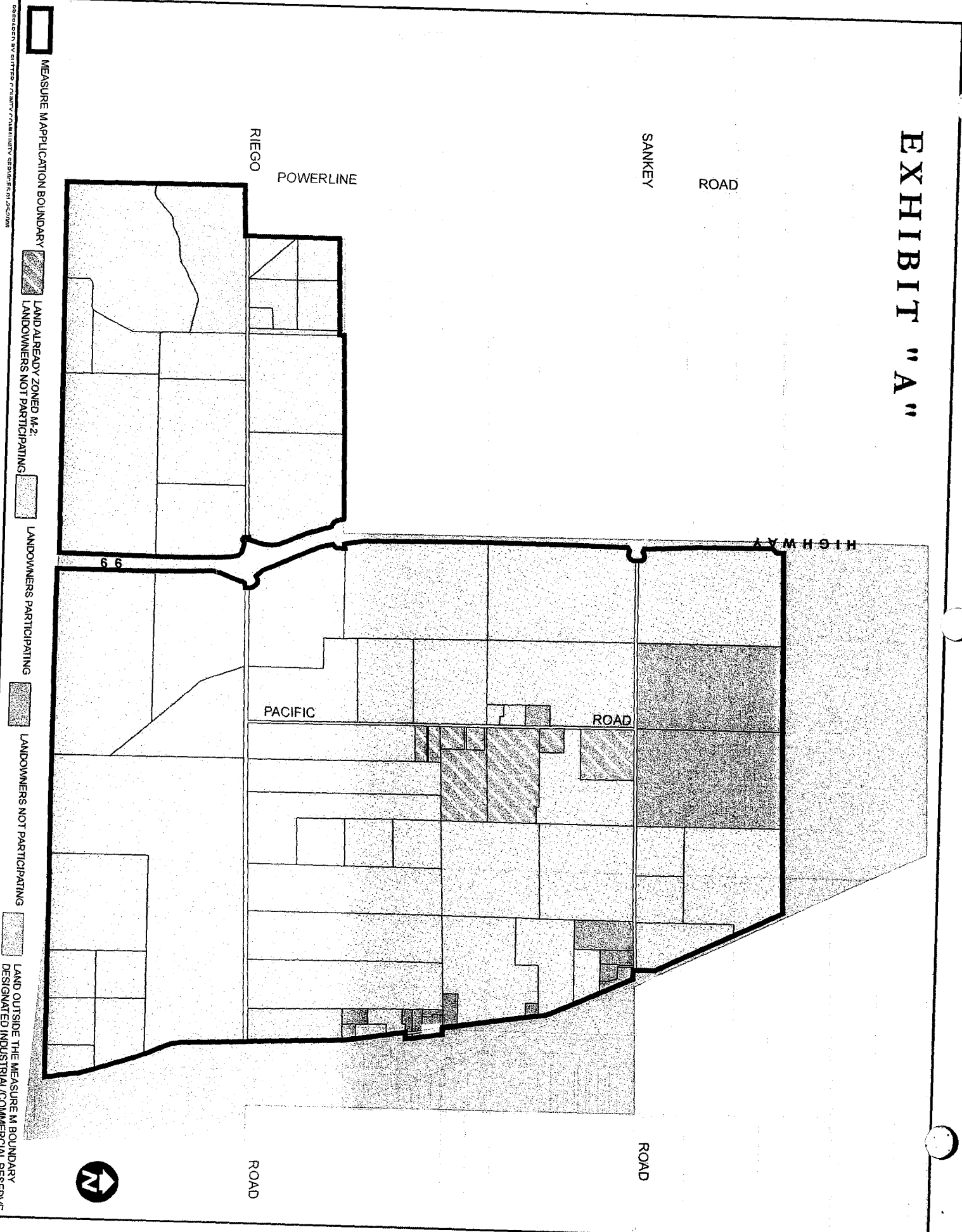
Approved as to form:

Approved as to form:

By:   
Sutter County Counsel

By:   
James M. Day, Jr., General Counsel

# EXHIBIT "A"



PREPARED BY SUTTER CALIBY CONSULTING SERVICES INC. 2019

RESOLUTION NO. 2008- 11A

POLICY FOR RECOVERY OF COSTS OF  
NATOMAS BASIN MODELING PROGRAM

WHEREAS, Reclamation District No. 1000 ("District") has developed the Natomas Basin Modeling Program (the "Program") under agreement with the District's consulting engineers, through which District owns the Program and all improvements or additions thereto which are developed over time;

WHEREAS, the Program enables District to define the flood plain within District boundaries; predict the effect on District's drainage system of various assumed inputs of water thereto and various encroachments in the interior flood plain within District boundaries; and analyze the affect of proposed modifications to the interior drainage system to mitigate associated impacts on the system;

WHEREAS, the cost to District of the developing the Program has been substantial, and the District anticipates future costs to update the model based on technological advances, revised standards and incorporation of new data and changes as well as costs in the nature of interest for loss of use of funds (to be based on the percentage increase, if any, on an annual basis in the U.S. Department of Labor Consumer Price Index for the San Francisco-Oakland Area, All Urban Consumers, All Items) (together "Costs");

WHEREAS, by Resolution No. 1996-4B the District established a policy for recoupment of a portion of the Costs of the Program, recognizing that a portion of the Costs thereof (10%) are properly allocable to all District landowners by virtue of general application of the Program for District-wide purposes (such as flood plain mapping, canal and crossing sizing, pumping plant analysis and general drainage system information) and experience has validated that 90% of the use of the Program is required by development proposals by owners/developers of land within District boundaries



WHEREAS, when the District adopted Resolution No. 1996-4B, it was projected that approximately 15,000 acres of land within District boundaries were susceptible to development in the foreseeable future which has since been amended based on more recent land use decisions, but a portion of the fees have already been collected based on the original projection;

WHEREAS, it is recognized that the Costs to develop, update and maintain the Model as well as the anticipated areas to be developed necessitating use of the Model are subject to change over time,


WHEREAS, the Board wishes to continue the existing policy to recoup a portion of the Costs of the Program as outlined above but wishes to adjust the parameters used to calculate the appropriate fee necessary to fairly and reasonably recoup said Costs;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The above recitals are found to be true and correct.
2. The owners/developers of land within District boundaries should be required, in any form of drainage improvement agreement entered into with District, to pay that portion of 90% of the current Costs of the Program (less any Costs recovered to date) that the acreage of land they propose to develop bears to most current estimate of acres likely to be developed in the Natomas Basin (currently estimated at 10,000 acres) as determined by the District.

CERTIFICATION

I, Terrie Figueroa, Secretary of Reclamation District No. 1000, hereby certify that the foregoing Resolution was duly adopted by the Board of Trustees of Reclamation District No. 1000 at the regular meeting held November 14, 2008, and made a part of the minutes thereof.

  
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Terrie Figueroa

