

**LAFCO RESOLUTION 2004-01
APPROVING AN OUT-OF-CITY WATER SERVICE AGREEMENT BETWEEN
CITY OF UKIAH AND RURAL COMMUNITY HOUSING
DEVELOPMENT CORPORATION FOR APN 02-101-17**

WHEREAS, Rural Communities Housing Development Corporation (RCHDC) has made application to the City of Ukiah for water service for a housing project for low and moderate income families to be constructed on subject property outside the City limits; and

WHEREAS, there is a shortage of housing which is affordable to low and moderate income families and limited opportunities within the City's limits to increase the supply of such housing; and

WHEREAS, the reason for this application is that the City believes that it is in the interest of the City to provide water service to this property for purposes of supporting the development of low and moderate income housing; and

WHEREAS, RCHDC must have proof of water availability in order to seek funding for the proposed low and moderate income housing project; and

WHEREAS, if RCHDC cannot provide proof of water availability to the funding authorities by July of 2004, then the opportunity for funding may not be available; and

WHEREAS, RCHDC and the City are willing to annex subject property to the City; and

WHEREAS, in order to secure funding for the project, RCHDC must secure commitment for water service before annexation of the property into the City can be completed; and

WHEREAS, Government Code Section 56133(b) provides the authority for the Commission to authorize the City of Ukiah to provide water service outside its jurisdictional boundaries and within its sphere of influence via an out-of-City service agreement in anticipation of a later change of organization (annexation); and

WHEREAS, an approved out-of-City Water Service Agreement will support the opportunity for RCHDC to obtain funding; and

WHEREAS, the subject property is outside the City's boundary but within the sphere of influence and contiguous to the City's boundary; and

WHEREAS, the subject parcel is in the City's land use or annexation element of the City's General Plan; and

WHEREAS, LAFCO policy requires that a defined date be set for undertaking the annexation process, if the out-of-area service agreement is approved by the Commission so as to meet the "anticipation of a later change of organization" requirement of G.C. 56133; and

WHEREAS, the Commission at its regular meeting on December 7, 2003 approved the concurrent processing of an out-of-area water service agreement application and annexation application; and

WHEREAS, processes for both applications have proceeded forward; and

WHEREAS, a public notice has been published on April 8, 2004 declaring that the Commission will be conducting a public hearing on May 3, 2004 on this proposed out-of-City Water Service Agreement; and

WHEREAS, the territory proposed to be served by the out-of-City Water Service Agreement has less than 12 voters and thus is considered uninhabited for purposes of notification and a map identifying the location of subject property is attached hereto as Exhibit "A"; and

WHEREAS, a Water Service Agreement concerning real property identified as AP# 02-101-17 will be executed between RCHDC and the City of Ukiah, in the form attached hereto as Exhibit "B", if the Commission approves said agreement; and

WHEREAS, the City agrees to provide water service limited to subject property, for RCHDC to provide low and moderate income housing, and will not provide water for any other development on this property and will not provide service to other parcels under the proposed Water Service Agreement in Exhibit "B"; and

WHEREAS, the City of Ukiah via letter from City Manager Candace Horsley has confirmed that the City can provide water to the project according to the terms and conditions of the Water Service Agreement.

WHEREAS, if RCHDC does not acquire title to the property, the City will have no obligation to serve water to the parcel; and

WHEREAS, the Executive Officer has reviewed the proposal and prepared a report as per the requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and Government Code Section 56133, including his recommendation thereon, and the proposal and report have been presented to and considered by this Commission; and

WHEREAS, this Commission called for and held a public hearing on the proposal on May 3, 2004 where the Commission heard and received any and all oral and written protests, objections and evidence which were made, presented or filed, and all persons present were given an opportunity to hear and be heard with respect to this proposal and the report of the Executive Officer; and

WHEREAS, the Commission certifies that they have reviewed and considered the environmental document prepared for this proposal by the City as the Lead Agency and accepts the Categorical Exemption developed by the City; and

NOW, THEREFORE, BE IT DETERMINED, RESOLVED AND ORDERED BY the Local Agency Formation Commission of the County of Mendocino, as follows:

1. The out-of-City Water Service Agreement noted as Exhibit "B" attached hereto and by reference incorporated herein, is approved according to the terms and conditions in Exhibit "B", the City's Resolution of Application and this Resolution of Approval.
2. The City of Ukiah is prohibited from providing service to any other development on the subject property or to other parcels utilizing this approved Out-of-City Water Service Agreement.
3. As a condition of approval of this Water Service Agreement, the City of Ukiah and RCHDC are required to submit a complete annexation application for this parcel and if they do not submit a complete application, then the Water Service Agreement is null and void.
4. RCHDC is required to pay for all costs of the annexation application process to LAFCO and the City including the environmental review.
5. RCHDC is required to pay a proportionate share of the costs, as determined by the Executive Officer, for LAFCO to complete the SOI/MSR process for the City.
6. RCHDC is required to pay a proportionate share of the costs, as determined by the Executive Officer, for completion of the Water Service Review for the Ukiah Valley/Russian River Watershed.
7. The territory of subject parcel is found to be uninhabited, and the application is found to have 100 per cent landowner consent and is assigned the following distinctive short form designation:

CITY OF UKIAH-RCHDC OUT-OF-CITY WATER SERVICE AGREEMENT—MAY, 2004

8. The end date for the reconsideration period as required in Government Code Section 56895 subdivision (b) and Section 57002 is determined to be June 3, 2004.
9. The Vice-Chair, acting as Chair for this public hearing, is hereby authorized to sign and date the Out-of-City Water Service Agreement.

Passed and adopted on May 3, 2004 by the following vote, to wit:

AYES: Orth, Melo, Simon, Oslund, and Delbar
NAYS: Colfax
ABSTAINS: None
ABSENT: Ranker and O'Brien

Dated: May 3, 2004



Michael Delbar, Vice-Chairman—LAFCO

Attest:



Frank McMichael, Executive Officer-LAFCO

UKIAH CITY

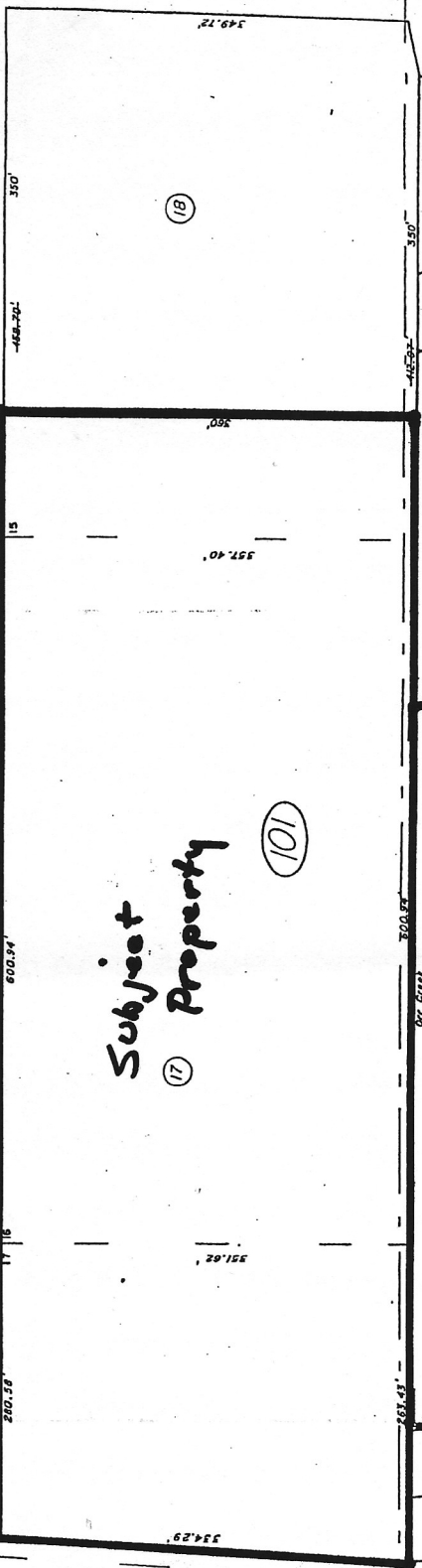
Lots 15, 16, 17, 19 Brunner Briggs Addition
Ford Orchard Subdivision Unit 2 C2 D35 P67
Ford Orchard Subdivision Unit 2 C2 D31 P16

3-003
3-031
154-006

5

BRUSH STREET

800.34'



Subject
Property

101

154-006
3-003

9

522 ORR STREET

3-003
3-031

Exhibit A

3

154-006
3-003

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102

MYRON PLACE

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CITY OF UKIAH

Out-of-City Water Service Agreement

This Agreement is entered into this 13th day of May, 2004, by and between the Rural Communities Housing Development Corporation ("Customer"), whose mailing address is 237 East Gobbi Street, Ukiah, California, 95482, and the City of Ukiah ("City"), whose mailing address is 300 Seminary Avenue, Ukiah, California, 95482. Collectively, the City and the Customer shall be referred to in this Agreement as the "Parties".

Recitals

1. Customer has entered into a sales Agreement to purchase property outside of, but adjacent to, the City limits, which is known as APN 002-101-17, and as more particularly described in the attached Exhibit A ("the Property").
2. The Property is located within the City's sphere of influence but outside its current boundaries.
3. The City currently has a water main along Brush Street adjacent to the Property.
4. Customer is a non-profit public benefit corporation organized and existing to provide housing which is affordable to very low, low and moderate income individuals and families.
5. Customer desires to develop on the Property an apartment complex consisting of approximately 152-units which will be and remain for the useful life of the complex affordable to persons of very low, low and moderate income as the terms "affordable," and "very low," "low," and "moderate" income are defined by the California Department of Housing and Community Development ("HCD") and/or the United States Department of Housing and Urban Development ("HUD") ("the Project") and desires City water service, because water service is not available from the Millview County Water District.
6. Customer will construct at customer's expense those facilities required to connect to the existing water main along Brush Street as a condition of receiving water service at the Property.
7. The City is willing to provide water service to the Project, because there is a shortage of housing which is affordable to low and moderate income families in the City and the surrounding area, increasing the supply of housing affordable to very low, low and moderate income families is an important policy goal of the City of Ukiah and the State of California, and because Mendocino County has agreed in principle to approve a tax sharing agreement for the Property in connection with its eventual annexation into the City.
8. The City agrees to provide water service limited to the Property for Customer to provide low and moderate income housing, and will not provide water for any other development on the Property or to any other parcels of property under this Agreement.
9. The City will become obligated to provide water to the Property only if and when Customer acquires title thereto and as otherwise provided in this Agreement.
10. Since the Property is located outside the City's boundaries, this out-of-area service Agreement must be approved by the Mendocino County Local Agency Formation Commission ("LAFCO").

11. LAFCO has the authority to approve this Agreement, because the Property is located within the City's sphere of influence and should under appropriate circumstances, be annexed into the City in the future. This Agreement anticipates a later application for a change of organization to annex the Property into the City of Ukiah.
12. Customer requires an agreement for the provision of water to the Property before an annexation of the Property into the City could receive final approval. For this additional reason, Customer requires an out-of-area agreement approved by LAFCO in order to develop the Project on the Property.
13. Because of the special circumstances described above, including the need for low and moderate income housing and because of valid concerns about securing funding for the Project which are outside the control of the City or Customer, the City is willing by this out-of-area service agreement to provide water to this future development, until such time that annexation of the Property into the City can be completed.
14. Customer agrees to pursue annexation as instructed by City and the LAFCO.

NOW, THEREFORE, based upon the above recitals, and the mutual promises contained herein, the Parties hereby agree as follows:

1. City will provide water service to the Property, not to exceed 154 water service connections (apartment units) under the following conditions:
 - a. Customer acquires legal title to the Property.
 - b. Customer receives adequate funding commitments for the Project, completes the design of the Project, receives all required approvals to commence construction of the Project, and commences construction of the Project.
 - c. Within the time as specified by the City, Customer completes and submits to the City or to LAFCO, as requested by City, any and all documents necessary to initiate and complete proceedings to annex the Property into the City. The City may, but is not required to, pay any fees or other costs associated with initiating and completing such proceedings. Customer shall pay within such time as specified by City and such fees or costs the City declines to pay.
 - d. The provision of water to the Property is subject to the rules, as defined in paragraph 1.e below, and in any water shortage, to the City's primary obligation to meet the need for water within the City's incorporated limits.
 - e. Customer shall comply with all of the rules, regulations, policies, tariffs, rate schedules, and ordinances (collectively, "rules") of City (whether currently in effect or as adopted or amended hereafter) that apply generally to the City's provision of water service to residents and customers of the City, including the completion of all required applications for service and the payment of all fees and charges.
 - f. Failure of customer to comply with the requirements in subparagraph 1.e shall subject the Customer to the same remedies and sanctions, including termination of water service, as would apply to a customer who receives service within City's boundaries.
 - g. Customer shall submit plans for development of the project to the City for review and approval, and shall develop the property in accordance with the plans approved by the City.

2. This document contains the entire Agreement between the parties concerning its subject matter. Any and all existing statements or agreements, whether oral or written, or renewals thereof, between the parties hereto, covering the same subject matter, are hereby canceled and superseded by this Agreement, and such prior statement or agreement shall have no further force or effect.
3. Whenever notice to a party is required or permitted by this Agreement, it shall be deemed given when deposited with proper address and postage in the U.S. Mail or when personally delivered to the addresses set forth in the first paragraph of this Agreement. Either party may change the address to which notice must be given under this Agreement by providing notice of the address change as provided in this paragraph.
4. This Agreement shall be governed by the laws of the State of California. Any legal action arising out of this Agreement must be filed in Mendocino County. The parties waive any objections they may otherwise have to jurisdiction or venue in Mendocino County.
5. This Agreement is for the sole and exclusive benefit of the parties who do not intend to create any rights in third parties or to create third party beneficiaries.
6. No waiver by either party of any of the provisions of this Agreement or failure of either party to object to a breach thereof shall constitute a waiver of any other provisions of this Agreement, or of the parties' right to enforce a subsequent breach of the same or a different provision of the Agreement. No waiver shall be deemed a continuing one or bind either party in any way, unless confirmed in writing signed by that party.
7. The signatories to this Agreement have been duly and properly authorized by the party they represent to sign this Agreement on its behalf and their signature on this Agreement is binding upon the party they represent.
8. This Agreement may be executed in one or more duplicate originals bearing the original signature of both parties and when so executed any such duplicate original shall be admissible as proof of the existence and terms of the Agreement between the parties.

This Agreement was executed and delivered as of the date first written above in Ukiah, California.

RCHDC



Date

5-13-04

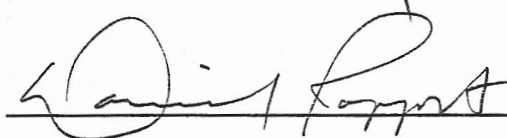
City Manager



Date

5-6-04

City Attorney



Date

5-5-04

Approved by LAFCO on May 3, 2004

By:



MICHAEL DELBAR - VICE-CHAIRMAN-LAFCO

ATTEST:



FRANK MCMICHAEL - EXECUTIVE OFFICER-LAFCO