



Local Agency Formation Commission
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Merced, CA 95340
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www.lafcomerced.org

**EXECUTIVE OFFICER'S REPORT
OUT OF BOUNDARY SERVICE EXTENSION
APPLICATION NO. 18-02
CONNECTION TO HILMAR COUNTY WATER DISTRICT FOR
BRET POWERS PROPERTY
(AGENDA ITEM VII.A.)**

January 17, 2019 (Agenda)

I. INTRODUCTION/PURPOSE

With passage of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, a requirement was added that LAFCO review proposed municipal service extensions beyond the boundaries of the service provider. Government Code section 56133(b) requires the Commission's written approval before a city or special district can enter a contract or agreement for an extension of services within the sphere of influence "in anticipation of a later change of organization" which means annexation."

Bret Powers, land owner of the property at 19790 American Avenue in the community of Hilmar (Assessor Parcel No. 015-090-008), has requested connection to the Hilmar County Water District's sanitary sewer system in order to rebuild a home on his 1.3 acre parcel. The parcel currently contains a single family residence and various accessory buildings and has relied on an on-site septic system in the past but already benefits from a ¾ inch water connection from the District. The proposed replacement residence can be served by a four inch connection to the Hilmar County Water District's sewer line extending along American Avenue to newer residential subdivisions to the east. The property is located within the Hilmar Water County District's Sphere of Influence, but it is only contiguous to the District across American Avenue to the south. Connection to District services will help the property owner comply with requirements of the County Division of Environmental Health that new development within the sphere of influence of an urban service district connect with community services.

II. ANALYSIS

As part of the development of local LAFCO policies to implement the Cortese-Knox-Hertzberg-Act, the Commission adopted a specific Objective and a set of policies to address out of boundary service extension requests. Objective VII.A. states:

"Extension of municipal services outside the boundaries of the service provider will be limited to circumstances where there exists a clear and immediate need and annexation is not feasible".

The Commission adopted five policies to guide review of such proposals, of which policies 1, 2, and 3 are applicable to service extensions within the local agency's Sphere of Influence, and where it is not an immediate threat to health and safety. The attached application package submitted by the Hilmar County Water District includes a vicinity map

and the current District and SOI map. As previously mentioned, the 1.3 acre parcel and surrounding properties are within the District's Sphere of Influence.

Policy 1 states that the Commission is to consider whether annexation is a logical alternative to serving the property outside the City's jurisdictional boundary. In the "Out of Boundary Service Application" form submitted by the District under Question Number 6, it is indicated that adjacent parcels around this 1.3 acre parcel are not seeking annexation at this time. District infrastructure is only available to one of the proposed parcels (along First Street) but not to the other (fronting on Bloss Avenue). In response to Question Number 7, the District states that annexation of this area (involving proper to the west, north and east) is anticipated in one of the next two phases of development in the area in the future. The neighboring properties comprise a peninsula of non-district land located between a mobile home park to the west and newer residential subdivisions to the east, and are included in the long-term Community Plan for the residential neighborhood with a neighborhood park.

However, the District has not included as a term in their Out of Boundary Service Agreement that the landowner waive their right to protest the future annexation of the property when annexation becomes feasible. This is a common LAFCO requirement which helps ensure the service extension is consistent with Government Code section 56133(b) that the extension is "in anticipation of a later change of organization" which means annexation. Therefore, LAFCO staff is recommending this be made a condition of approval, and that the waiver of protest be binding on any successors who may purchase the parcel in the future.

Policy 2 states that the Commission is to "Consider the public benefit of the proposal, including the resolution of an existing health and safety hazard." The benefits of this proposal are to avoid upgrading a septic system when existing District facilities are in the vicinity and with the capacity to serve the replacement residence and the property is within the sphere of influence of the District. This approval will also comply with County Division of Environmental Health regulations. Other out of boundary service requests have been approved for services with the District in similar circumstances for individual parcels.

Policy 3 states that the following factors will be utilized to determine the local and regional impacts of an out-of-agency contract for services:

- a. *The growth inducing impacts of any proposal.*
- b. *The proposal's consistency with the policies and general plans of all affected local agencies.*
- c. *The ability of the local agency to provide service to the proposal area without detracting from current service levels.*
- d. *Whether the proposal contributes to the premature conversion of agricultural land or other open space land.*

Staff notes that the extension will only grant District sewer service to a 1.3 acre parcel where a new house will replace and existing one. The property already is connected to District water supply, and no additional development is permitted. Providing sewer service to the replacement home will not detract from the District's current service levels, and does not require construction of any new District infrastructure. The property and surrounding area is designated "Low Density Residential" in the Hilmar Community Plan which is consistent with the present residential use of the parcel. The proposed sewer connection will not lead to a significant impact agricultural or open space land, due to the small size of the parcel and surrounding land uses.

III. ENVIRONMENTAL REVIEW

LAFCO is acting as “Lead Agency” under CEQA for approval of this out of boundary service connection. Staff is recommending that the Commission find that the out of boundary service extension is exempt from CEQA review under Section 15301 – “Existing Facilities” of the CEQA Guidelines, as the District already has sewer line facilities along American Avenue to serve the parcel, and connecting to the sewer system will not change the environment or land use as a result of this connection.

II. RECOMMENDATION

Out of boundary service extensions need to be carefully evaluated on the individual circumstances of each proposal. The extension of sewer services from the Hilmar County Water District would assure adequate wastewater treatment services to one replacement home on the parcel. Based on the above analysis LAFCO Staff supports this proposal and recommends the Commission make the following determinations and finding:

1. Determine that the proposal qualifies as an Out of Boundary Service Extension as defined in Section 56133 of the Government Code.
2. Determine that the site is within the Hilmar County Water District’s Sphere of Influence.
3. Determine that sufficient documentation has been provided to show that it would be more efficient and consistent with District and County Environmental Health policy to connect the replacement residence to the adjacent District sewer line in August Avenue rather than upgrade the septic system, and that annexation of the property into the District is contemplated in the foreseeable future.
4. Find that this application is exempt from CEQA under Section 15301 – “Existing Facilities” of the CEQA Guidelines.

Based on these determinations and finding, staff recommends the Commission take the following action:

Direct the Executive Officer to submit a letter to the landowners and the Hilmar County Water District indicating the Commission’s approval of the out of boundary sewer service extension, limited to one residence on the 1.3 acre parcel subject to the following condition of approval:

1. Prior to final approval of the sewer connection, the District shall enter into an agreement with the landowner to waive their right to protest future annexation when it is feasible, and this agreement will be binding on any successors who purchase the property in the future.

Respectfully submitted,

**LOCAL AGENCY FORMATION
COMMISSION OF MERCED**



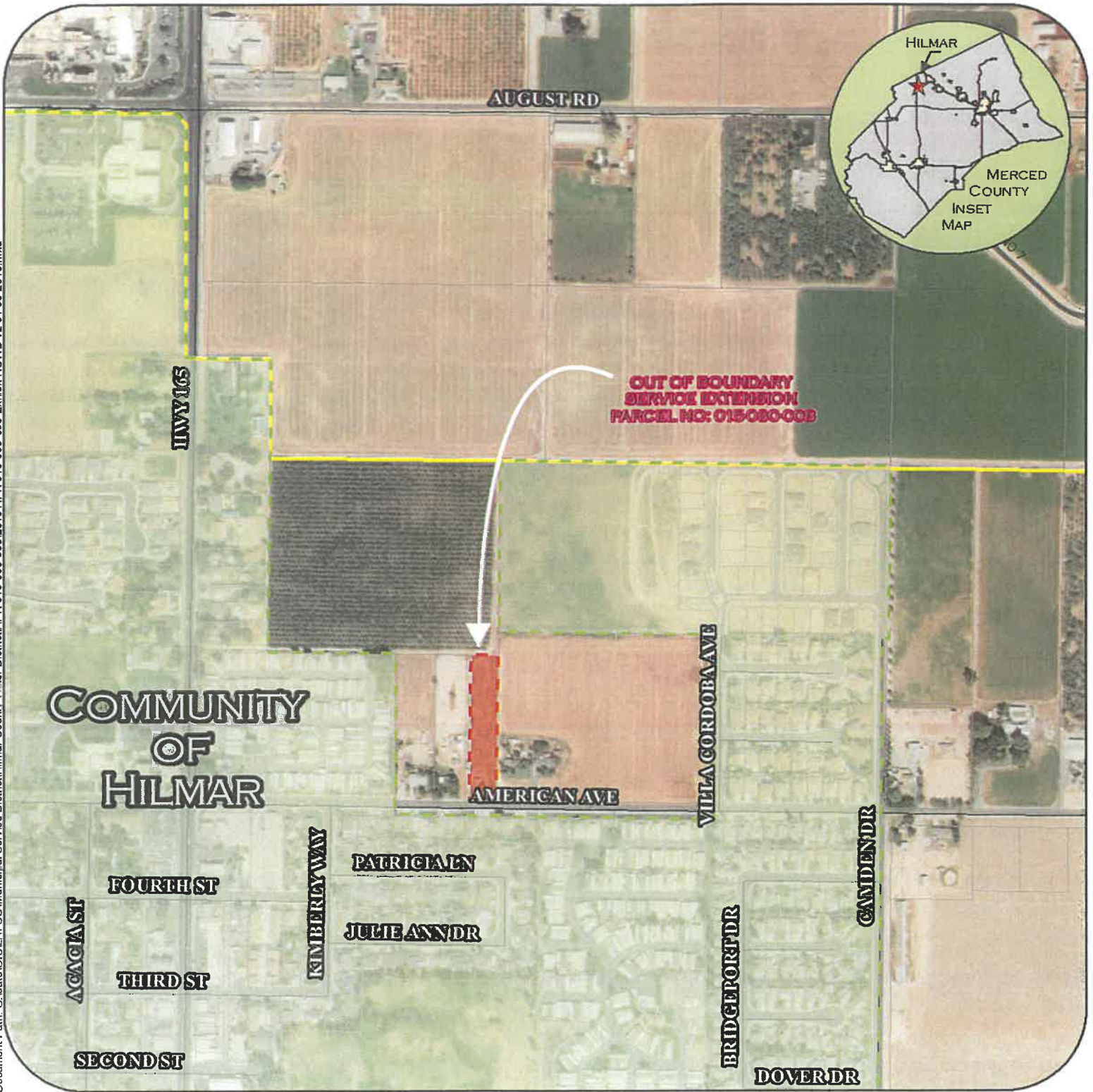
Bill Nicholson, Executive Officer

Attachments

1. District and Sphere of Influence and District Boundary Map
2. Property and area Aerial Photo
3. Out of Boundary Service Application
4. Outside User Agreement (Hilmar County Water Dist. and Landowner)

cc: Curtis Jorritsma, District Manager
Bret Powers, Property Owner

ATTACHMENT 1



Document Path: G:\data\GIS\LAFCO\Municipal Service District\Hilmar County\Water District\APN 015-090-008\2019 APN 015-090-008 Exhibit HCWD v2 01 09 2019.mxd

DISTRICT & SPHERE OF INFLUENCE MAP OF
HILMAR COUNTY WATER DISTRICT
 in
MERCED COUNTY



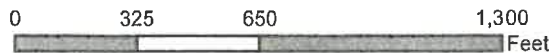
Merced
County
GIS

Date: 1/9/2019

District Boundary



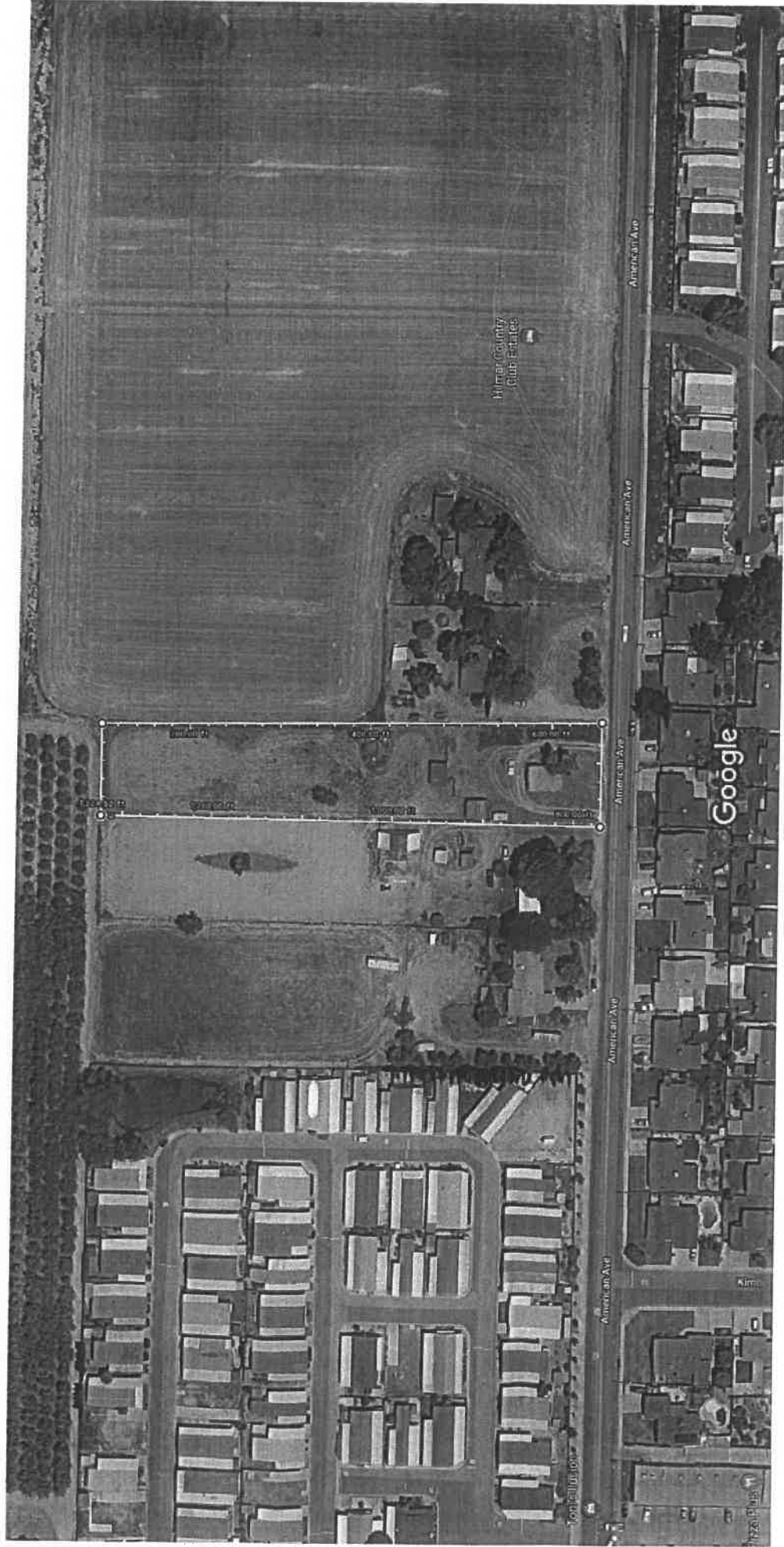
SOI Boundary



Google Maps

Hilmar

EXHIBIT A: 19790 American Avenue, Hilmar CA 95324



Imagery ©2018 Google, Map data ©2018 Google 100 ft

BRET POWERS PROPERTY
APN 015-090-008

Attachment 2



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OUT-OF-BOUNDARY SERVICE
APPLICATION

Attachment 3

Date: 11-21-18

Agency seeking LAFCO Approval:

Name: Hilmar County Water District
Address: 8319 Lander
PO BOX 1060, Hilmar CA 95324
Phone: 209-632-3523
Contact Person: Curtis Jorritsma

Property Owner Information:

Attach additional sheets as needed

Name: Bret Powers
Phone: 209-678-2527
APN: 015-090-008
Property Address: 19790 American Ave, Hilmar CA 95324

Project Information

Please answer all relevant questions. Attach additional sheets as needed

- Types of public service(s) that are to be provided? sewer connection
- Reason for out-of-boundary service contract, (why the service is needed)? LOCATION OF PROPERTY IS CURRENTLY NOT ANNEXED
- Provide a detailed description and map(s) of how services are to be extended to the property (ies) (e.g., distance to water or sewer connections, cost of improvements, method of financing, etc.): ONE SEWER SERVICE WILL BE EXTENDED FROM NEW HOUSE LOCATION TO MAIN.
- Is the territory within the Agency's sphere of influence? (If no, a sphere amendment should be requested concurrent with this application): YES

5. Describe threat to public health and safety if request is made under emergency conditions (and provide information documenting the circumstances such as County Health Department Notice): _____

N/A

6. Explain why annexation is not being considered as an alternative to providing services outside the agency's jurisdictional boundaries at this time: _____

ANNEXATION SHOULD BE CURRENTLY NOT AN OPTION BECAUSE OTHER SURROUNDING PROPERTIES ARE NOT SEEKING IT.

7. Is annexation of the project area anticipated in the future? If yes, what are the agency's plans and timelines for annexation? Provide relevant information that demonstrates that the service contract is in anticipation of a future annexation: _____

YES. THIS AREA WILL MOST LIKELY ANNEX IN ONE OF THE NEXT TWO PHASES OF HOME DEVELOPMENT IN THE AREA

8. If new development is proposed, provide a description of the proposed project: _____

N/A

9. Identify Lead Agency for environmental review of the project: _____

Hilmar County Water District



**HILMAR COUNTY WATER DISTRICT
Outside User Agreement**

Attachment 4

DATE: November 7, 2018

PARTIES: HILMAR COUNTY WATER DISTRICT,
hereinafter referred to as the "District"; and

BRET POWERS;
residing at 3606 W. Linwood Avenue, Turlock, CA 95380
hereinafter referred to as "Outside User".

RECITALS:

1. The Outside User owns certain property located at 19790 American Avenue, Hilmar, CA 95324 (hereinafter referred to as the "Subject Property") which is located outside the boundaries of the District, and more particularly described in Exhibit "A" attached hereto.
2. Outside User has applied to the District for the Privilege of utilizing District water for domestic use and/or sanitary sewer on the Subject Property and District is willing to provide District water/sewer subject to certain limitations and conditions.

AGREEMENT:

IN CONSIDERATION of the terms, covenants and conditions contained herein, the District hereby agrees to provide the Subject Property with water and/or sanitary sewer from the District system on a temporary basis as follows:

Section 1. It is acknowledged by the parties that under the ordinances and regulations of the District and the State of California, the District can only provide District water/sewer to properties outside its boundaries for terms not to exceed six (6) months and such use must at all times be subject to the prior rights and benefits of properties within the District's boundaries. Therefore, the District agrees to provide domestic water and/or sewer to the property for a period of six months commencing 11-07-18; provided however, said services shall automatically renew for successive six (6) months renewals at the discretion of the District if Outside User has not given the District written notice to terminate the service prior to the end of any current six (6) month term. Any and all such renewals shall be on the same terms and conditions set forth in this Agreement. The District shall have the right to terminate the agreement at any time, without cause, upon 120 days written notice mailed by first class mail to the Outside User.

It is acknowledged by Outside User that said water and sewer service is at all times subordinate to the prior rights of property users within the District boundaries, and the District shall have the right at any time, with or without notice, to terminate water/sewer service to Outside User and the Subject Property should the Board of Directors determine that users within the District boundaries need the water/sewer or that providing water/sewer service to Outside User has become detrimental to the best interest of the District and property owners within the District boundaries.

Section 2. The District agrees to continue to allow **one** water service connection, currently installed at the Subject Property which provides a ¾ inch service to the Subject Property. The District also agrees to allow **one** sewer service connection to be installed by Outside User at his expense to the Subject Property which will allow a four-inch (PVC SD35) service to the Subject Property.

Section 3. For the privilege of having District water/sewer, Outside User agrees to pay a monthly water/sewer fee, according to the rates and schedules duly adopted under the Hilmar County Water District Ordinance, or as set by the District from time to time.

Section 4. All connection costs of backflow devices, flow meters, engineering fees, legal fees, inspection fees and all other cost associated with hooking up and installing water/sewer service to the exterior boundaries of the Subject Property shall be born and paid by Outside User immediately upon receipt of a billing from the District. Outside User shall be responsible for constructing all water lines, valves and other plumbing facilities on the Subject Property needed to accept District water/sewer at Outside User's sole cost and expense (hereinafter referred to as Outside User's "Private Water System/Sewer System").

Section 5. Outside User agrees that its Private Water System/Sewer System will at all times conform with all of the requirements and specifications set by the District, the District's Engineer and its ordinances. Outside User expressly consents to allow the District's agents to enter upon the Subject Property at any reasonable hour of the day to inspect Outside User's Private Water System/Sewer System.

Section 6. Outside User specifically agrees to provide at Outside User's sole cost and expense a backflow device acceptable to the District's Engineer and any State and District regulations. The District shall have the option to have its representative make the installation or to have Outside User employ a duly licensed contractor acceptable to the District to install it. Outside User shall be responsible to keep said devices free from any defects and in good working order at all times. Outside User specifically agrees to allow the District's engineer and representatives to enter the Subject Property to inspect said device, to provide periodic servicing, and to make any repairs which are found to be required, and in connection therewith Outside User agrees to pay for any such servicing and repairs immediately upon receipt of the District's billing.

Section 7. It is acknowledged that the Subject Property is located relatively close to one of the major wells of the District and therefore the water service provided to the Subject Property will connect to a main water line of the District at a point where the water pressure could be as high as 100 psi. It shall be the responsibility of Outside User to provide pressure reducers to protect Outside User's Private Water System. Outside User specifically agrees to indemnify and hold the District and its employees, agents and representatives free and harmless from any and all damages to Outside User's Private Water System and property which may be incurred as a result of the inability of Outside User's Private Water System to handle the high water pressure, and Outside User hereby waives the right to claim any damages from the District, its employees or agents resulting therefrom.

Section 8. Outside User agrees to utilize District Water/Sewer strictly for domestic purposes and agrees to abide by all ordinances, rules, regulations, policies and charges of the District as they now exist and as they may be changed from time to time.

Section 9. Should the Outside User fail to pay the monthly charges for water/sewer service regularly charged by the District, violate any section of this Agreement, or violate any of the terms or conditions of the rules, regulations and ordinances of the District, the District may terminate this Agreement and enforce its rights against the property owners pursuant to the Hilmar County Water District's Water Ordinance. Should any legal action be instituted to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

Section 10. This agreement shall be binding on the parties hereto, and to their heirs, successors, and assigns to abide by all ordinances, rules and regulations in regard to the manner in which water/sewer service shall be used. This agreement may be recorded to the Merced County Recorder's Office.

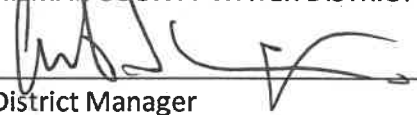
Section 11. Service is contingent upon LAFCO Approval.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

BRET POWERS



HILMAR COUNTY WATER DISTRICT



District Manager

EXHIBIT "A"

MERCED COUNTY PARCEL 015-090-008

Google Maps

Hilmar
EXHIBIT A: 19790 American Avenue, Hilmar CA 95324



Imagery ©2018 Google, Map data ©2018 Google 100 ft

Measure distance
 Total area: 60,182.50 ft² (5,591.14 m²)
 Total distance: 1,324.52 ft (403.71 m)