

## **FIRST AMENDMENT TO WELL RELOCATION AGREEMENT**

This FIRST AMENDMENT TO WELL RELOCATION AGREEMENT ("Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, as lessor ("City"), and GWS#4 DEVELOPMENT, LLC, a California limited liability company ("GWS").

### **RECITALS:**

A. City and GWS, as successor-in-interest to Hillwood Enterprises, L.P., a Texas limited partnership, are parties to that certain Well Relocation Agreement entered into as of March 16, 2017 (the "Agreement"). Capitalized terms not otherwise defined herein shall have the same meaning as in the Agreement. All references to the "Ground Lease" shall mean and refer to the Amended and Restated Ground Lease entered into by City and GWS as of September 17, 2018.

B. As set forth in the Agreement, GWS agreed to complete certain "Well Relocation Work" as defined in the Agreement and as more particularly described in the Well Relocation Report attached to the Agreement as Exhibit "E" and the Scope of Work attached to the Agreement as Exhibit "D." The Scope of Work included the obligation for GWS to relocate the Warren 4 Well to a new location identified in the Agreement as the City Well Parcel.

C. Subsequent testing of the ground water quality under the City Well Parcel revealed unforeseen conditions such that the City Well Parcel is not a suitable location for the new Warren 4R Well (the "Unanticipated Event"). City and GWS have agreed that the Warren 4R Well should be constructed in alternate location within the boundaries of the Leased Premises, which location is identified on Exhibit "A" attached hereto and incorporated herein by reference (the "Licensed Well Area").

D. City and GWS further agreed that GWS would fund the Well Relocation Costs, including any Additional Work, until the Actual Costs exceed the Original Estimate of \$4,100,000. The City and GWS anticipate that the Excess Costs attributable to the Unanticipated Event, as well as other cost overruns (resulting from bid numbers in excess of originally anticipated costs) is \$493,178.59, which GWS has agreed to fund pursuant to Section 1(f) of the Agreement.

E. In addition to the foregoing, City and GWS agree that City has requested Additional Work, the total cost of which, together with the total actual cost to complete the Well Relocation Work, is in excess of the Original Estimate in the amount of approximately \$788,473.66 which the City has agreed to fund in compliance with the Agreement.

F. City and GWS now desire to modify the Agreement to set forth the parties' agreement regarding the timing for completion of the Well Relocation Work and the funding of the Excess Costs and anticipated Additional Work, upon the terms and conditions set forth below.

## A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Amendment, the parties hereto hereby agree as follows:

1. Scope of Work. The scope of the Well Relocation Work is hereby amended to provide that GWS will relocate the Warren 4R Well to the Licensed Well Area rather than to the City Well Parcel.

2. Schedule for Completion. As a result of the Unanticipated Event, GWS estimates that the Well Relocation Work was delayed by approximately 140-days. Therefore, GWS is entitled to an extension of up to 140-days to complete the Well Relocation Work and no Liquidated Damages shall be due to the City for any such extension. The outside date for completing the Well Relocation Work is now February 10, 2020; GWS agrees pay to the City Liquidated Damages in the amount of \$3,000 per day for each and every day beyond February 10, 2020, subject to additional time extensions as provided below and for force majeure conditions (as defined in Paragraph 1.(i)(vii) of the Agreement), that the Warren 4R Well is not installed and operating. Notwithstanding the foregoing, GWS agrees to use commercially reasonable efforts to substantially complete the Well Relocation Work on or before December 16, 2019.

3. Funding of Excess Costs. GWS agrees to fund Excess Costs in the amount of \$493,178.59 subject to a credit against rent under the Ground Lease, as allowed under Section 1(f) of the Agreement and Section 1.4.D.ii. of the Ground Lease.

4. Funding of Additional Work. The City agrees to fund Additional Work in the amount of approximately \$788,473.66 (as further detailed on the Well Relocation Budget Tracking attached hereto as Exhibit "B" to this Amendment), on or before October 17, 2019 in order to allow the Well Relocation Work and the Additional Work to proceed with no further impact upon the construction schedule. Provided, however, if the City is unable to fund such Excess Costs on or before October 17, 2019, the City will continue to use good faith efforts to approve the funding for the Additional Work until such funding is approved. Notwithstanding, City acknowledges that any delay in funding past October 17, 2019 could further impact the construction schedule and that GWS will be entitled to a day-for-day extension to the construction schedule for each day that the City has not funded the Excess Costs after October 17, 2019. Following approval of the funding for the Additional Work, City will make the funds available to GWS via wire transfer to an account designated by GWS.

5. Authority. Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

6. No Other Modification. City and GWS agree that except as otherwise specifically modified in this Amendment, the Agreement has not been modified, supplemented, amended, or otherwise changed in any way and the Agreement remains in full force and effect between the parties hereto as modified by this Amendment. In the event of any conflict between the terms and conditions of the Agreement and this Amendment, the terms and conditions of this Amendment will control and govern the parties.

7. Successors. The provisions and covenants contained in this Amendment shall inure to and be binding upon the successors and assigns of the parties hereto.

8. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Amendment shall be made against either party except on the basis of a written instrument executed by the party to be charged.

9. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same Amendment.

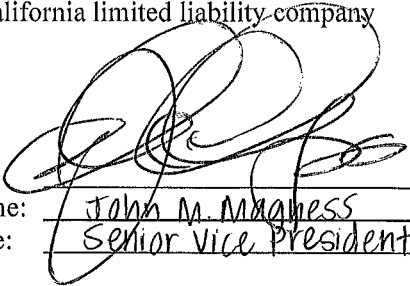
IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

*[Signature Page Follows]*

CITY OF RIVERSIDE

GWS#4 DEVELOPMENT, LLC,  
a California limited liability company

By: \_\_\_\_\_  
City Manager

By:   
Name: John M. Magness  
Title: Senior Vice President

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By:   
Chief Assistant City Attorney

CA 16-1482.6; 07/10/19

**EXHIBIT "A"**

**Licensed Well Area**

# EXHIBIT "A"

SHEET 1 OF 2

## WARREN 4R WELL - LICENSED WELL AREA

### LEGAL DESCRIPTION

THAT PORTION OF LAND SITUATED WITHIN PARCEL 1 OF PARCEL MAP NO. 19814, IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 251, PAGES 55 THROUGH 60, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY NORTHEAST CORNER OF SAID PARCEL 1;

THENCE ALONG SAID EASTERLY LINE OF SAID PARCEL 1 SOUTH 03°06'49" WEST, 322.68 FEET;

THENCE NORTH 89°28'52" WEST, 47.96 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET;

THENCE NORTHWESTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 73°08'08" AN ARC LENGTH OF 53.82 FEET;

THENCE NORTH 16°20'44" WEST, 60.35 FEET;

THENCE NORTH 66°12'11" EAST, 53.49 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 33.00 FEET;

THENCE NORTHERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 71°50'46" AN ARC LENGTH OF 41.38 FEET;

THENCE NORTH 05°38'35" WEST, 10.45 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 84°21'25" WEST, 57.17 FEET;

THENCE NORTH 05°38'35" WEST, 75.33 FEET;

THENCE NORTH 84°21'25" EAST, 101.33 FEET;

THENCE SOUTH 05°38'35" EAST, 75.33 FEET;

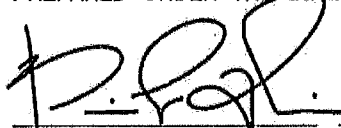
THENCE SOUTH 84°21'25" WEST, 44.16 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

CONTAINING: 7,634 SQUARE FEET OR 0.175 ACRES MORE OR LESS

### SURVEYOR:

PREPARED UNDER THE DIRECTION OF:



BRIAN L. THIENES  
P.L.S. NO. 5750  
REG. EXP. DEC. 31, 2019

DATE

 **Thienes Engineering, Inc.**  
CIVIL ENGINEERING • LAND SURVEYING  
14349 FIRESTONE BOULEVARD  
LA MIRADA, CALIFORNIA 90638  
PH. (714) 521-4811 FAX (714) 521-4173



SCALE: 1" = 80'

# EXHIBIT "A"

SHEET 2 OF 2

## WARREN 4R WELL - LICENSED WELL AREA PLAT

### LEGEND:



INDICATES WELL SITE  
CONTAINS: 7,634 SQ. FT.  
OR 0.175 AC.

P.O.C.  
MOST EASTERLY  
NORTHEAST CORNER  
PARCEL 1

N 89°24'47" E 1276.68'

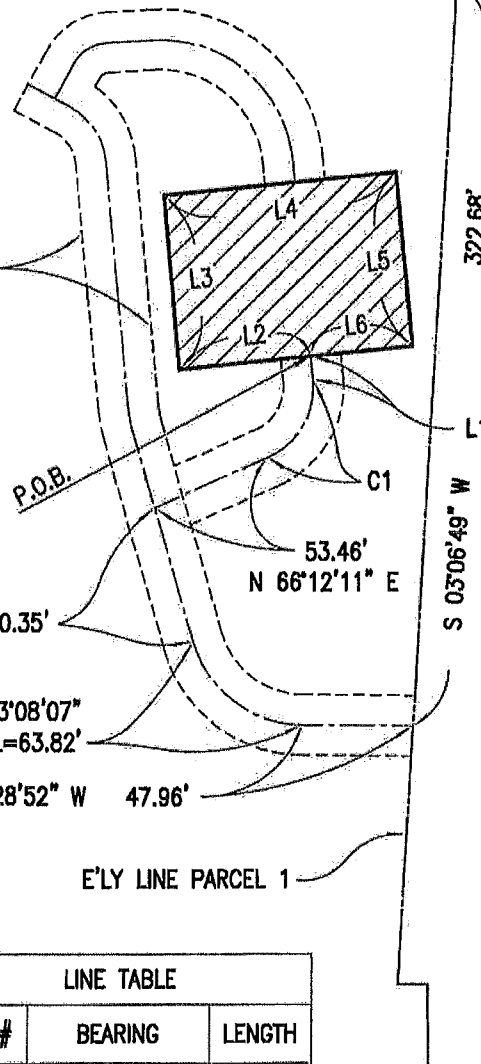
N'LY LINE PARCEL 1

CURVE TABLE			
CURVE #	DELTA	RADIUS	LENGTH
C1	71°50'46"	33.00'	41.38'

PARCEL 1

PARCEL MAP NO. 19814  
P. M. B. 251 / 55 - 60

26' WIDE ACCESS  
EASEMENT TO  
WARREN 4R WELL  
(EXHIBIT B)



WATERMAN AVENUE



### SURVEYOR:

PREPARED UNDER THE DIRECTION OF:

*[Signature]*

BRIAN L. THIENES  
P.L.S. NO. 5750  
REG. EXP. DEC. 31, 2019

DATE

LINE TABLE		
LINE #	BEARING	LENGTH
L1	N 05°38'35" W	10.45'
L2	S 84°21'25" W	57.17'
L3	N 05°38'35" W	75.33'
L4	N 84°21'25" E	101.33'
L5	S 05°38'35" E	75.33'
L6	S 84°21'25" W	44.16'

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**EXHIBIT "B"**

**Well Relocation Budget Tracking Report**



**Table 3 - Cost Estimate for Warren 4R & Rice-Thorne Line Replacement**

Item	Original Budget	Actual Cost	Variance
Drilling Warren 4R	1,400,000	2,104,876	-704,876
Equipping Warren 4R	750,000	1,683,946	-933,946
Warren 4R Blow Off	428,400	201,147	227,253
Rice Thorne Line	489,600	505,262	-15,662
<b>Construction Total</b>	<b>3,068,000</b>	<b>4,495,230</b>	<b>-1,427,230</b>
Design and Engineering	500,000	836,422	-336,422
<b>Anticipated Total Project Cost (rounded):</b>	<b>3,600,000</b>	<b>5,331,652</b>	<b>-1,763,652</b>
Contingency	500,000	0	500,000
<b>Total Project Cost</b>	<b>4,100,000</b>	<b>5,331,652</b>	<b>-1,231,652</b>

(Optional) RPU Inspection		
Inspection	50,000	0
<b>Total Project Cost</b>	<b>4,100,000</b>	<b>5,381,652</b>

Costs Attributable to "Additional Work" (Funded Costs) \$788,474  
 Cost Overruns (Credited Costs) \$493,179  
**Total Project Variance \$1,281,652**

Contractor / Task	Well Destructions	Rice-Thorne	4R Drilling	PTW	Equipping	Add'l Cost to Complete	Total (Less Well Dests)
Wiley/Geoscience	\$120,970	\$57,341	\$380,012	\$115,781	\$193,287	\$90,000	\$836,422
Best Drilling			\$2,090,376				\$2,090,376
Wiley-Electrical/Equipping					\$1,648,946	\$35,000	\$1,683,946
Wiley & Subs (Rice-Thorne)		\$505,262					\$505,262
Paulus Engineering (PTW)				\$176,147		\$25,000	\$201,147
Baltesfield	\$272,739		\$14,500				\$14,500
RPU Inspection						\$50,000	\$50,000
<b>Total</b>	<b>\$393,709</b>	<b>\$562,603</b>	<b>\$2,484,888</b>	<b>\$291,928</b>	<b>\$1,842,233</b>	<b>\$200,000</b>	<b>\$5,381,652</b>

Design & Engineering

Construction

Not Billable to RPU

### Table 3 - Cost Estimate for Warren 4R & Rice-Thorne Line Replacement

(Optional) RPU Inspection	
Inspection	50,000
Total Project Cost	4,599,179
	493,179

\$5.35M Less "Total Added Costs" of \$788k, showing total cost unrelated to Additional Work

**Design & Engineering**  
**Construction**  
**Not Billable to RPU**

	CS Blank	CS Screen	CS Blank	Tubes	Total
CS Blank	\$ 62,192.00	\$ 390,000.00	\$ 285,950.00	\$ 725,390.00	\$ 682,632.00
Coupler	\$ 239,255.00	\$ 390,000.00	\$ 285,950.00	\$ 894,975.00	\$ 894,975.00
FOSTAGE RATE				43,940.00	211,943.00
				<u>Less Tubes Off</u>	<u>156,003.00</u>
					\$
FOSTAGE RATE	70.09	22.17	10.17	\$ 71,930.00	
				Report	
				Diff	
				Cost	