
APPENDIX H – RECLAMATION PROJECT AGREEMENT

RECLAMATION PROJECT AGREEMENT

This Reclamation Project Agreement ("Agreement") is made and entered into the 6th day of August, 2001, by and between the LAKESIDE IRRIGATION WATER DISTRICT, a California Water District ("Lakeside"), and the CITY OF HANFORD, a municipal corporation ("City").

WHEREAS, the City is in need of access to the Lakeside Ditch for the purpose of discharging disinfected secondary treated effluent from the City of Hanford Wastewater Treatment Facility and its holding ponds ("Treated Effluent"), and

WHEREAS, Lakeside owns water conveyance and distribution facilities and utilizes other such facilities owned by the Lakeside Ditch Company pursuant to a master agreement with the Company, and

WHEREAS, Lakeside has demand for additional water for crop irrigation and other beneficial uses throughout its service area, and

WHEREAS, the City and Lakeside jointly and cooperatively prepared and submitted an application for issuance of a Master Reclamation Permit by the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") for the Lakeside and City Reclamation Project, and

WHEREAS, on October 27, 2000, the Regional Board approved and issued Order Number 5-00-222, Waste Discharge Requirements Master Reclamation Permit for Lakeside and City Reclamation Project ("Reclamation Permit") and

WHEREAS, the City and Lakeside wish to enter into this Agreement in order to implement the Lakeside and City Reclamation Project in accordance with the provisions of the Reclamation Permit.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties hereto, it is agreed as follows:

1. City, as the producer under the Reclamation Permit and Lakeside as the Distributor under the Reclamation Permit each agree to comply with their respective obligations, conditions and requirements identified in the Reclamation Permit. A true and correct copy of the Reclamation Permit is attached to this Agreement as Exhibit "A".

2. Lakeside shall construct, at its sole cost and expense, all the mitigation projects required and approved by the Regional Board as identified in the Reclamation Permit attached to this Agreement as Exhibit "A" (collectively "Mitigation Projects").

3. In consideration of the City's right to discharge Treated Effluent into the Lakeside Ditch in accordance with the provisions of the Reclamation Permit, City shall pay to Lakeside a one-time mitigation fee ("Mitigation Fee"). The Mitigation Fee shall be equal to 50% of the actual costs paid by Lakeside for the construction of the Mitigation Projects. Upon the completion of construction of the Mitigation Projects, Lakeside shall submit certified invoices/contracts identifying all of the actual costs paid by Lakeside for the construction of the Mitigation Projects. The City shall pay the Mitigation Fee to Lakeside within 60 days of receipt and validation of such invoices/contracts by the City.

4. The initial term of this Agreement shall be five (5) years, commencing on the date of this Agreement as set forth above. This Agreement shall automatically renew for successive terms of two (2) years each, unless terminated as provided in Paragraph 5 of this Agreement.

5. This Agreement may not be terminated during the initial five (5) year term. Thereafter, either party may terminate this Agreement by delivering written notice of termination to the other party two (2) years prior to the effective date of the termination.

6. The right of the City to discharge Treated Effluent into the Ditch shall be subject to all of the following conditions:

a. Subject to any legal obligations of the City regarding the delivery, use or storage of the Treated Effluent existing on the effective date of this Agreement, Lakeside shall have the first right to receive any available Treated Effluent.

b. The City shall make no discharge of Treated Effluent into the Ditch, which would violate any term, or condition of Waste Discharge Order No. 91-164 or future orders as may be issued by the Regional Board for operation of the City's Wastewater Treatment Facility or any term or condition contained in the Reclamation Permit which relates to the discharge of the Treated Effluent into the Ditch.

c. The City shall cease all discharges of Treated Effluent into the Ditch at any time there is evidence that such discharge is in violation of the provisions of Paragraph 6.b. of this Agreement, including without limitation, receipt of written notice from the Regional Board of such violation(s). Upon curing any such violation, the City may again commence discharging Treated Effluent into the Ditch.

d. The City shall develop facilities enabling discharge into the Ditch at the maximum capacity of the conveyance pipeline existing on the effective date of this Agreement. Except as provided herein, the rate of discharge into the Ditch shall be determined by Lakeside. Upon at least seventy-two hours notice to Lakeside, the City shall have the right to discharge up to twenty (20) cubic feet per second into the Ditch when the City's Treated Effluent storage basins are at or near capacity.

e. The City shall pay Lakeside a "Discharge Fee" of thirty dollars (\$30.00) per acre foot of discharge into the Ditch. .

Payment of the Discharge Fee shall be made to Lakeside on or before the 25th of each month for all Treated Effluent discharged into the Ditch the previous month.

f. The maximum Discharge Fee paid by the City during any one-year period of the initial five-year term of this Agreement shall not exceed \$125,000.00. After the expiration of the initial five-year term, the maximum Discharge Fee paid by the City for any one-year period during subsequent two-year renewal periods, shall not exceed \$150,000.00 per year. For renewal periods beyond the third two-year renewal period (i.e. six years) the maximum Discharge Fee paid by the City for each year during each successive two-year renewal period shall not exceed an amount mutually agreed to by the Parties.

7. Subject to the rate of discharge limitation contained in 6(d) hereof, City shall have the right to discharge into the Ditch each year during the initial term and any successive term of this Agreement a minimum of 70% of the City's annual production of Treated Effluent. The City's annual production of Treated Effluent is currently estimated to be approximately 5000 acre-feet. Each January the City will provide written notification to Lakeside of the estimated volume of Treated Effluent to be delivered to the Ditch for that year.

8. Lakeside shall take immediate action to correct and/or eliminate any violation of the Reclamation Permit, Waste Discharge Order No. 91-164 or any other permit or order issued by the Regional Board and regarding the Treated Effluent, by Lakeside, its officers, directors, employees, agents, contractors, or landowners within the Lakeside service area. The City shall take immediate action to correct and or eliminate any violation of the Reclamation Permit, Waste Discharge Order No. 91-164 or any other permit or order issued by the Regional Board and regarding the Treated Effluent, by the City, its officers, directors, employees, agents, or contractors.

9. To provide for effective and efficient storage of the increasing production of Treated Effluent by the City and the use thereof for crop irrigation and other beneficial uses by Lakeside and the landowners within the Lakeside Service Area, Lakeside and the City will develop/construct projects to store, transport and distribute such Treated Effluent pursuant to mutually satisfactory agreements.

10. Lakeside and the City shall each designate a person who shall represent that party regarding its responsibilities under this Agreement. The representatives shall meet at least annually to review the user permit, irrigation water use, discharge needs, schedules, and anticipated capital improvements needs. The representatives shall also meet when necessary to address problems or complaints that may arise during the course of the year.

11. The City shall provide Lakeside a copy of all reports required by the monitoring and reporting requirements included in Waste Discharge Order No. 90-164. Notwithstanding the frequency of reporting requirements contained therein, the City shall provide Lakeside a general mineral constituent analysis of Treated Effluent discharged into the Ditch at least monthly. Such analysis shall conform to the constituents and testing methods specified in Exhibit "B".

12. City agrees to defend, indemnify and hold Lakeside, its officers, directors, employees and agents and landowners within the Lakeside water service area completely free and harmless from any and all claims, suits, losses, injuries, damages and costs, including attorney's fees occasioned or arising out of or in any way related to delivery of the Treated Effluent to the Lakeside Ditch System or any violation by the City of the provisions of the Reclamation Permit, Waste Discharge Order 91-164 or any other permit or order issued by the Regional Board and regarding Treated Effluent delivered to the Lakeside Ditch System.

13. Lakeside agrees to defend, indemnify and hold the City, its officials, employees and agents, completely free and harmless from any and all claims, suits, losses, injuries, damages and costs, including attorney's fees, occasioned or arising out of or in any way related to transportation of the Treated Effluent through the Lakeside Ditch System, maintenance of the Lakeside Ditch System and appurtenances thereto, and any violation by Lakeside or landowners within the Lakeside water service area of the provisions of the Reclamation Permit, Waste Discharge Order 91-164 or any other permit or order issued by the Regional Board and regarding Treated Effluent delivered to the Lakeside Ditch System.

14. Prior to instituting any actions to enforce the terms and conditions of this Agreement pursuant to Paragraph 15 hereof, a party shall notify the other party in writing of any alleged breach or default of any obligation arising under this Agreement ("Notice of Default"). The other party shall have 15 days to respond in writing to the Notice of Default ("Default Response") or to cure the alleged breach or default identified in the Notice of Default. If the other party fails to provide a Default Response to the other party within said 15 day period, the alleged breach or default identified in the Notice of Default shall be deemed admitted by the non-responding party. If the Default Response disputes the allegations in the Notice of Default, the parties shall meet and confer in good faith to attempt resolve the dispute. Such meeting shall take place within 15 days of the date of the Default Response. An alleged breach or default of any provision of this Agreement which would support a request for a temporary restraining order and preliminary injunction may be initiated without first complying with the provisions of this paragraph 14.

15. If, after meeting and conferring in good faith pursuant to Paragraph 14 hereof, the parties are unable to resolve the dispute, either party may initiate any action at law or in equity necessary to enforce or interpret the terms of this Agreement. If such action is initiated, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any

suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court, whichever is applicable, in the County of Kings, State of California for any proceeding arising hereunder.

16. This Agreement shall be binding on the successors and assigns of the parties.

17. This Agreement and the Exhibits attached hereto supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

18. Except as otherwise expressly provided herein, any notice, consent, authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or e-mail if receipt is acknowledged by the addressee, one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or three business days after being mailed by first class mail, charges and postage prepaid, properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed and addressed as follows:

Lakeside Irrigation Water District
9304 Houston Avenue
Hanford, CA 93230

City of Hanford
Attn: Director of Public Works
900 S. 10th Avenue
Hanford, CA 93230

19. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

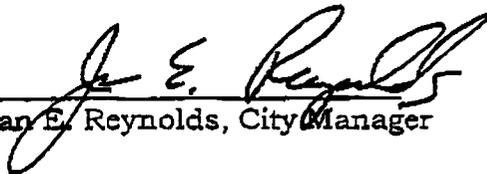
20. No change, amendment or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto.

21. No waiver or any breach of any terms, condition or provision of this Agreement shall constitute a waiver of any other breach of any other term, condition or provision and no consent of one party to any departures by the other shall be effective unless such waiver shall be in writing and shall be signed by the non-waiving party or a duly authorized agent thereof and the same shall be effective only for a period, on the conditions and for the specific instances and purposes specified in such writing. No notice to or demand on the non-waiver party in any case shall entitle the non-waiving party to any other or further notice or demand in similar or other circumstances.

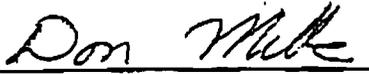
22. This Agreement shall be construed and governed pursuant to the laws of the State of California.

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

CITY OF HANFORD

BY: 
Jan E. Reynolds, City Manager

LAKESIDE IRRIGATION WATER DISTRICT

BY: 
Don Mills, President

BY: 
Ken Cartwright, Secretary

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