

**AGREEMENT REGARDING 2015 OPERATION & MAINTENANCE OF  
FRESNO IRRIGATION DISTRICT FACILITIES SERVING  
TEMPORARY SURFACE WATER TREATMENT PLANT**

This Agreement is made effective as of January 28, 2015 by and between the Fresno Irrigation District, a California irrigation district ("DISTRICT"), and the City of Fresno, a California municipal corporation ("CITY"). DISTRICT and CITY are sometimes individually referred to below as a Party and collectively as the Parties. This Agreement is made with respect to the following facts:

A. CITY has constructed a temporary surface water treatment plant ("Treatment Plant") on the north side of Dakota Avenue between Temperance and Armstrong Avenues, for the purpose of delivering domestic and municipal water supplies to residents and businesses within its service area until a larger, regional plant can be constructed.

B. District owns and operates the Jefferson Canal No. 112, the Gunn Pipeline No. 386, and the Brown Canal No. 113 (collectively, "District Facilities").

C. CITY desires to receive untreated surface water at the Treatment Plant from the District Facilities, in accordance with the provisions contained within the 1976 Cooperative Agreement between DISTRICT and the CITY.

D. The District Facilities have been upgraded to meet the California Department of Public Health requirements for treatment plant operation, as contemplated in that certain Reimbursement Agreement for Design and Construction of Jefferson Canal Improvements for City of Fresno Interim Surface Water Treatment Plant between the Parties dated September 24, 2009 (the "Reimbursement Agreement").

E. This Agreement is not the separate mutual agreement contemplated at Section 9 of the Reimbursement Agreement governing the operation and maintenance of the District Facilities, and is intended solely for use during the 2015 calendar year.

NOW THEREFORE, in consideration of the Parties' mutual covenant and conditions described below, the Parties agree as follows:

1. Delivery of Water. DISTRICT agrees to deliver water through the District Facilities to the Treatment Plant, on the terms and subject to the conditions of this Agreement. The Parties acknowledge that this Agreement (a) solely concerns the delivery of water, as further described herein, and does not constitute DISTRICT's agreement to provide water supplies, and (b) does not amend or modify the 1976 Cooperative Agreement between DISTRICT and the CITY.

2. Term. The term of this Agreement shall commence on January 1, 2015 and end December 31, 2015. CITY shall remain responsible for any costs accrued and unpaid hereunder as of December 31, 2015.

3. Operational Periods. CITY may receive water from the District Facilities for the Treatment Plant during the period from approximately February 2, 2015 through October 31, 2015 (the "Plant Operation Window"). DISTRICT shall use reasonable efforts to deliver water to the Treatment Plant during such period, but does not guarantee such deliveries, and reserves the right to shut down the District Facilities if DISTRICT deems such shutdown to be reasonably necessary. DISTRICT shall use reasonable efforts to schedule normal maintenance activities for the District Facilities during periods outside of the Plant Operation Window. DISTRICT will use its best efforts to notify CITY in advance of any shutdown.

4. Treatment Plant Operations and Repairs.

(a) At all times during the Plant Operation Window, CITY shall use its best efforts to accept water from the District Facilities at a constant flow rate, twenty-four (24) hours per day, seven (7) days per week, but does not guarantee that it shall do so. CITY shall give DISTRICT twenty-four (24) hours' notice of any change in Treatment Plant flow rate requirements.

(b) CITY shall give DISTRICT thirty (30) days' notice prior to making any repair, alteration, or modification to the Treatment Plant that affects the operation DISTRICT's conveyance system, including, but not limited to, the District Facilities. Such repair, alteration, or modification shall not occur without DISTRICT's consent during the period from February 2, 2015 to October 31, 2015, except as required during an emergency.

(c) If, during an emergency or unplanned shutdown, the Treatment Plant is unable to accept water already scheduled for delivery that cannot be diverted elsewhere, DISTRICT shall route such water through the Gould Canal to the CITY's recharge facility at Leaky Acres. CITY shall maintain a reserve capacity in Leaky Acres as necessary to receive such excess flows, based on twelve (12) hours at then-current rates of delivery to Treatment Plant. DISTRICT shall reserve a corresponding capacity to accept such excess flows in the Gould Canal.

5. Water Quality.

(a) DISTRICT makes no representation or warranty regarding the quality of the water delivered hereunder or its compliance with applicable standards or guidelines for public domestic water supply systems. DISTRICT does not guarantee in any respect or assume any responsibility for the chemical, bacterial, or other content or quality of water made available to the Treatment Plant. The CITY acknowledges that storm waters and aquaticides (as described in Section 5(d) below) are occasionally present in the DISTRICT's conveyance system, including the District Facilities.

(b) Treatment of water delivered to make it potable shall be the sole responsibility of the CITY, and the CITY shall assume all risk and responsibility therefor. Notwithstanding any other provision of this Agreement, CITY shall defend, indemnify, and hold DISTRICT harmless from and against any claims regarding failure of water

produced by the Treatment Plant to meet drinking water standards, however arising, and regardless of any negligence by DISTRICT in the delivery of water to the Treatment Plant.

(c) In the event of a circumstance occurring in DISTRICT's delivery system that would negatively affect the CITY's ability to treat the water delivered for potable water, but would otherwise be allowable for agricultural purposes, DISTRICT will notify the CITY of the circumstance, and the Parties will meet and confer as necessary to attempt to resolve the matter. CITY shall reimburse DISTRICT for any expenses incurred to increase the quality of water delivered to the Treatment Plant to higher levels than required for agricultural purposes.

(d) DISTRICT reserves the right to treat its conveyance system, including the District Facilities, with copper sulfate, Magnacide (acrolein) and other aquaticides as permitted by law and consistent with good irrigation agency practice. Except in emergencies, DISTRICT will provide CITY with five (5) days' notice prior to the application of any aquaticides that might reasonably be expected to reach the Treatment Plant. In emergencies, DISTRICT shall notify CITY as soon as reasonably possible. Notice shall be provided by e-mail as described in Section 6 below.

6. Notifications. In the event of Treatment Plant shutdown or interruption of deliveries through District Facilities, the Parties shall notify each other by telephone and email as follows:

To DISTRICT: Jim Irwin, Watermaster  
Telephone: (559) 233-7161  
E-mail: jirwin@fresnoirrigation.com

To CITY: Ken Heard, Water Production Chief  
Telephone: 559-621-5350  
E-mail: ken.heard@fresno.gov

Any other communications not specified to be given by telephone or email shall be given in writing, shall be effective (i) when personally delivered, (ii) when sent by facsimile on a business day between the hours of 8 a.m. and 5 p.m. (with written confirmation of transmission) at the numbers set forth below, provided that a copy is mailed as indicated below, or (iii) three business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as follows:

To DISTRICT: Bill Stretch, Assistant General Manager  
Fresno Irrigation District  
2907 South Maple Ave  
Fresno, CA 93725-2218  
Facsimile No.: (559) 223-8227

To CITY: Thomas Esqueda, Director of Public Utilities  
City of Fresno, Department of Public Utilities  
2600 Fresno Street  
Fresno, CA 93721  
Facsimile No.: (559) 488-1024

7. Telemetry. CITY shall provide DISTRICT with real-time information regarding Treatment Plant Operations, including, but not limited to, flow rate, water quality (i.e. turbidity), times of operation and non-operation, via access to CITY'S SCADA system or other reasonable means.

8. Maintenance Patrols. The District Facilities shall be added to and included within the existing Enterprise Canal patrols currently done by the cities of Clovis and Fresno for the purpose of monitoring, removing trash and debris, etc.

9. Payments for Operations and Maintenance Costs.

(a) CITY shall pay DISTRICT the sum of \$4,000 for the cost of preparing this agreement. This is a one-time fee to cover FID's Legal and Staff time. District shall include this cost in the first invoice sent to the City.

(b) CITY shall also pay DISTRICT the sum of \$ 65.00 per day for water delivered prior to May 1, 2015 and after October 31, 2015, to compensate DISTRICT for additional labor to run the District Facilities when the rest of the DISTRICT'S conveyance system is normally shut down. DISTRICT shall invoice CITY monthly for water delivered under this Agreement

(c) All amounts owing from CITY to DISTRICT under this Agreement shall be immediately due and payable, and delinquent if not paid within thirty (30) days. Delinquent amounts shall bear interest at the rate of ten percent (10%) per annum.

10. Ownership of Facilities. All District Facilities and related improvements historically owned and operated by DISTRICT shall remain the property of DISTRICT. The Treatment Plant and related improvements constructed by the CITY shall remain the property of the CITY. Neither Party shall have any ownership interest in or responsibility for the property of the other Party.

11. Indemnity.

(a) CITY shall indemnify, hold harmless and defend DISTRICT and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by DISTRICT, CITY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from (i) the operation of the Treatment Plant, (ii) the negligent or intentional acts or omissions, or willful misconduct,

of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by CITY of governmental immunities including California Government Code section 810 et seq.

(b) In the event of concurrent negligence on the part of CITY or any of its officers, officials, employees, agents or authorized volunteers, and DISTRICT or any of its directors, officers, employees, agents or authorized volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

(c) It is understood and agreed that CITY and DISTRICT maintain insurance policies or self-insurance programs to fund their respective liabilities. The Parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other Party and each of its officers, officials, agents, employees and volunteers. Evidence of Insurance, e.g., Certificates of Insurance or other similar documentation, shall not be required of either Party under this Agreement.

(d) This section shall survive expiration or termination of this Agreement.

12. No Precedent. The Parties expressly agree that (a) they have entered into this Agreement solely for the 2015 calendar year for the operation and maintenance of the Treatment Plant and the District Facilities, and (b) that no precedent or obligation regarding DISTRICT delivery of CITY water for surface water treatment purposes (including, but not limited to, the operation and maintenance of the Treatment Plant or the District Facilities) is established hereby. The Parties shall remain obligated to develop the separate operation and maintenance agreement contemplated at Section 9 of the Reimbursement Agreement.

13. Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the Parties, at its own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other Party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by the other Party, to evidence or carry out the intent of this Agreement.

14. Costs. The costs and expenses incurred for the preparation of this Agreement shall be paid by the respective Parties.

15. Time and Computation of Time. Time is of the essence of this Agreement and each and all of its provisions. The Parties agree that the time for performance of any action permitted or required under this Agreement shall be computed as if such action were "an act provided by law" within the meaning of California Civil Code §10,

which provides: "The time in which any act provided by law to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded."

16. Effect of Headings. The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the Parties hereto.

18. Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

19. Counterparts; Fax and Email Signatures. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument. Facsimile and electronic mail signature pages shall constitute originals, however, without affecting the enforceability of such signatures as originals, each party shall provide original signature pages to the other Parties within five (5) business days of the execution of this Agreement.

20. Assignment; Binding Effect. Neither Party shall assign any interest in this Agreement without the express written consent of the other Party, which shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the Parties hereto.

21. Interpretation. It is agreed and acknowledged by the Parties that this Agreement has been arrived at through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

22. Professionals' Fees. Should any action or proceeding be commenced between the Parties hereto concerning this Agreement, or the rights and duties of any Party in relation thereto, the Party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing Party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

23. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

24. Construction. All words used in this Agreement shall be construed to include the plural as well as the singular number and vice versa. Words used herein in the present tense shall include the future as well as the present, and words used in the masculine gender shall include the feminine and neuter genders.

25. Parties in Interest. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any persons other than the Parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any Party to this Agreement, nor shall any provision give any third person any right of subrogation or action over and against any Party to this Agreement.

26. Survival. Each of the terms, provisions, representations, warranties, and covenants of the Parties shall be continuous and shall survive the closing or other consummation of the transactions contemplated in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first above written.

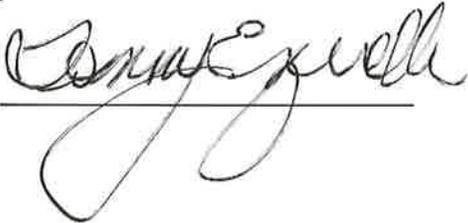
CITY

DISTRICT

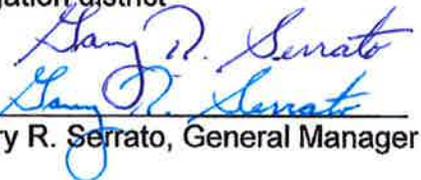
City of Fresno, a California municipal corporation

Fresno Irrigation District, a California irrigation district

By



By

  
Gary R. Serrato, General Manager

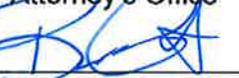
ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By:

  
Deputy 1/29/2015

APPROVED AS TO FORM:  
City Attorney's Office

By:

  
Brandon M. Collet 1/29/15  
Deputy City Attorney Date