

2010 DRAINAGE AGREEMENT
BETWEEN THE CITY OF TRACY
AND THE WEST SIDE IRRIGATION DISTRICT

This 2010 Drainage Agreement ("2010 Agreement") is entered into this ^{December} ~~21st~~ day of ~~November~~, by and between the WEST SIDE IRRIGATION DISTRICT ("District"), a political subdivision of the State of California, and the CITY OF TRACY ("City"), a municipal corporation.

RECITALS

This 2010 Agreement is based on the following facts:

- A. District operates a drainage system pursuant to Division 11 of the California Water Code; and
- B. The City of Tracy is a general law City duly organized as a municipal corporation which operates a storm drain system; and
- C. District and City are parties to a sequence of agreements beginning in 1972 which provide for the joint use of certain drainage systems:
 - (1) a Prior Agreement (date not known). See Section 11 below.
 - (2) an Agreement dated October 4, 1972, which provides for joint use of certain drainage systems ("Original 1972 Agreement");
 - (3) Amendment No. 1, entered into on September 8, 1999;
 - (4) Amendment No. 2, entered into on December 6, 1999;
 - (5) Amendment No. 3, entered into on December 12, 2001; and
 - (6) Integrated Amended 1972 Drainage Agreement, entered into in June, 2002, that consolidated terms from the Original 1972 Agreement and Amendments for ease of reference.
- D. The parties have negotiated additional terms that they wish to incorporate into this 2010 Agreement. This 2010 Agreement supersedes the Original 1972 Agreement, Amendments 1, 2 and 3, and the Integrated Amended 1972 Drainage Agreement, all referenced in Recital Section C (2) through (6) above.

NOW THEREFORE, the parties agree as follows:

- 1. Definitions. In this 2010 Agreement unless the context otherwise requires:
 - a. "Connection Fees" means the initial fee that has already been paid by City to District for the Westside Channel Area (\$800,000) and the fee being paid pursuant to this 2010 Agreement for the Lammers Area (\$240,000) as a part of obtaining authorization for discharges to District facilities. See Sections 3, 5.a and 7.
 - b. "Drainage Fee" means the fees paid from City to the District regarding the Lammers Area, under Section 5.b of this 2010 Agreement.
 - c. "Eastside Channel" means the City owned and operated open channel that generally serves as the storm drainage outfall for the east half of the City, discharging into Old River via the Sugar Cut.

d. "Lammers Area" means the portions of the Lammers Watershed shown on Exhibit A, attached.

e. "Main Drain" means the District's owned and operated Main Drain Outfall System of which the primary function has been for the collection and conveyance of irrigation tailwater for eventual discharge into Old River at the Wicklund Road outfall, near Wicklund Road and Bethany Road northwest of the City. The Main Drain consists of underground storm drains located within the Westside Channel Area, an underground 72" storm drain extending west along Grant Line Road toward Lammers Road, an open ditch that extends northwesterly from the end of the 72" storm drain to the Wicklund Road outfall, and the Drainage Improvements constructed by the City under Section 4.

f. "O & M Fees" means the fees paid by the City to the District for operation, maintenance and repair of the District's Main Drain, in the Westside Channel Area, as set forth in Section 3 of this 2010 Agreement.

g. "Option Fee" means the fee paid by City to the District regarding the Lammers Area, under potential circumstances described Section 5.d.

h. "Sub-Main Drain" means the District's owned and operated Sub-Main Drain tributary to the Main Drain of which the primary function has been for the collection and conveyance of irrigation tailwater for eventual discharge to the Main Drain. The Sub-Main Drain consists of a 60" irrigation pipeline extending underneath Interstate 205 from Lammers Road just south of Byron Road, discharging to an open ditch that extends northwest and parallel to the south side of Byron Road and then north along the east side of San Jose Road, joining the Main Drain roughly 1,800 feet north of Byron Road.

i. "Westside Channel Area" means roughly a 2-square mile area occupying the northeastern most quadrant of the Westside Channel Watershed as defined in the City's Storm Drainage Master Plan. The majority of the property to be served is west of Tracy Blvd., south of 1-205, east of ½ mile west of Corral Hollow Road and north of 11th Street. Another portion extends south of 11th Street for roughly ¾ mile on both sides of Tracy Blvd. The Westside Channel Area is depicted on Exhibit "A", attached.

2. Discharge Limits. Each party may discharge up to the following amounts of storm water runoff, in cubic feet per second (cfs), subject to the terms of this 2010 Agreement:

a. City may discharge:

- (1) 20 cfs into the District's Main Drain, as an irrevocable license to discharge originally established under the Original 1972 Agreement and continuing under this 2010 Agreement; and
- (2) an additional 125 cfs into the District's Main Drain; and
- (3) up to 30 cfs from the Lammers Area to District's Sub-Main Drain, subject to Section 5, as long as the maximum City discharge to the Main Drain from all sources (below the Sub-Main Drain), does not exceed 145 cfs.

b. District may discharge:

- (1) 20 cfs into the City's Eastside Channel, as an irrevocable license to discharge originally established under the Original 1972 Agreement, and continuing under this 2010 Agreement; and
- (2) an additional 15 cfs into City's Eastside Channel.

c. Point of Discharge. Regarding the Westside Channel drainage rights granted pursuant to the Original 1972 Agreement, the City may discharge its water into the facilities of the District at any point(s) west of Tracy Boulevard, and the District shall discharge its water at the eastern end of the extension of the 48" drain line of the Southern Pacific Company, located on Grant Line Road east of the Southern Pacific Spur. In this regard, District has constructed an extension of the 48" line of the Southern Pacific Company, 545 feet to the east of its eastern end, and has dedicated the line to the City. District has entered into a number of agreements permitting residential developers to discharge into portions of its Main Drain system. Except as specifically set forth in this 2010 Agreement, District agrees that it will not enter into additional such agreements with developers within the Westside Channel Area or Lammers Area without the written consent of the City.

3. Westside Channel Area, Main Drain: Connection Fee and O&M Fees.

City has paid to the District a one-time Connection Fee of \$800,000, in 1999. In addition, the City shall make the following payments to the District as its agreed upon contribution towards operation and maintenance (O&M) of the District's drainage facilities serving the Westside Channel Area. City has the right, but not the obligation, to periodically inspect the downstream channel system to assure that maintenance is adequate. So long as the channel downstream of the Main Drain is maintained by District, City shall have no authority to direct how the District uses the O&M Fees.

a. O&M Fees through 2020. City paid District \$200,000 before December 31, 1999, constituting payment in advance of O&M Fees through December 31, 2009. City paid District \$300,000 before December 31, 2009, constituting payment in advance of O&M Fees through December 31, 2020.

b. O&M Fees after 2020. On or before December 31, 2020, and on or before each December 31 thereafter, City shall make annual payments to District in advance for routine O&M Fees for the following calendar year. The initial annual payment shall be in the amount of \$35,000 and this amount shall be increased by a rate of \$1,000 every two years. The parties further agree that these sums are the best estimate of the actual, routine O&M fees that will be expended by the District.

c. Extraordinary O&M after 2020. The parties acknowledge that after 2020 District may be required to undertake extraordinary maintenance expenditures with regard to the District's Drainage Facilities, due to the occurrence of circumstances which are not foreseeable. City agrees that it shall be responsible for paying the costs associated with any required extraordinary maintenance. District shall advise City of its intention to perform any extraordinary O&M. Within 30 days of the end of the calendar year for which such extraordinary maintenance was undertaken, District shall provide City with an invoice and supporting documentation for amounts actually spent by District for extraordinary maintenance of the Main Drain and related facilities during the preceding year, and City shall reimburse District for any such amounts within 30 days of the invoice.

d. Payments for Upgrades. City shall be responsible for paying the costs associated with any required upgrades to the District's Main Drain and Related Facilities necessary to comply with any local, state or federal mandated requirements on municipal and industrial dischargers.

4. Westside Channel Area Drainage Improvements. The City was required to and did (at its own expense) construct the following Drainage Improvements associated with discharge to the District's Main Drain. District has accepted these improvements and City warranted the improvements against defects in materials or workmanship for a period of one year from the date the improvements were completed and accepted by District.

a. Drainage Structure Crossings: City enlarged the following drainage structure crossings of

the Main Drain: (1) at the Grant Line Road/Lammers Road intersection; (2) at a farm access road located roughly 1000 feet west of Lammers Road; (3) at San Jose Road; and (4) at Reeve Road. In each instance, the existing drainage structures were replaced with a new 72" reinforced concrete pipe.

b. Additional Drainage Structure Crossing: The City constructed an additional Farm Road Culvert Crossing northwest of Reeve Road, as shown on PP-5 of the Design Package for Drainage Improvements along the WSID Main Drain, Project 84010017 dated 10/22/01.

c. Intake Canal: City replaced an existing 60" pipe with a 72" reinforced concrete pipe at the outlet of the Main Drain into the Intake Canal. The City also installed stabilization material at the inlet and outlet of the existing drainage structure entering the District's Intake Canal, and provided similar stabilization on the opposite west bank of the Intake Canal for a length of less than 100 feet.

d. Old River Pump Station: The City constructed and installed a pump station at Old River, as shown in PS-1-11 of the Design Package for Drainage Improvements along the WSID Main Drain, Project 84010017 dated 10/22/01.

e. Byron Road: During the construction of the City's Outfall Project, the City replaced District's existing structure extending between Byron Road and Lowell Avenue (a distance of roughly 1,000 feet along an alignment roughly 800 feet west of Corral Hollow Road) with a 36" RCP.

f. Lammers Road Interflow Structure: During the construction of the City's Outfall Project, the City installed a pipe connection between the City's Outfall Project's 84" SD pipeline and the District's Main Drain at a location where the two facilities align adjacent to each other along Lammers Road approximately 1,300 feet north of Grant Line Road. This pipe connection will essentially operate as an interflow structure for the City and/or the District to use to divert flow from one system to the other in the event of an emergency or to facilitate maintenance. The interflow structure may be regulated by a manually operated sluice gate, with secured use only allowed by City and District personnel. The sluice gate shall remain shut during all times when interflow releases are not needed for emergency or maintenance purposes. City and District shall inform each other, and a representative of each party shall be present when they are proposing to open the sluice gate; unless the other party representative is not present upon two hours prior telephonic notice. City and District shall be held responsible for any adverse downstream impacts caused by their respective opening and use of the sluice gate governing the interflow structure.

g. Byron Road/Belconte Drive Interflow Structure: During the construction of the City's Outfall Project, the City installed a 36" pipe connection between the City's Outfall Project junction structure at the Byron Road/Belconte Drive intersection and the City's open channel segment to the north that drains to District facilities at Grant Line Road and ultimately discharges into the District's Main Drain. The purpose of this interflow structure will be to allow the City to divert a portion of flow from the City's Outfall Project to the District's Main Drain in the event of an emergency, provided that all such flow shall be within the parameters allowed by Section 2(a) of this 2010 Agreement. The interflow structure may be regulated by a manually operated sluice gate, with secured use allowed only by City personnel. The sluice gate shall remain shut at all

times when interflow releases are not needed for emergency purposes. City shall immediately inform District, and a representative of each party shall be present when the City is proposing to open the sluice gate; unless the other party representative is not present upon reasonable prior telephonic notice. This interflow structure shall be owned and operated by the City, and City shall be held responsible for any adverse downstream impacts caused by their respective opening and use of the sluice gate governing the interflow structure.

h. District Open Ditch Adjacent to Plasencia Field: The City allowed the filling in of the District's existing, narrow open ditch extending along the west edge of Plasencia Field and placement of an underground pipe within and parallel to the west edge of Plasencia Field to accommodate the District's operational spill and drainage flow.

5. Lammers Area Provisions. The City's discharge of storm water into the District's Sub-Main Drain authorized by this 2010 Agreement is further subject to the terms of this Section 5.

a. Connection. Before the City makes a physical connection to discharge into the District's Sub-Main Drain, City shall:

(1) construct (at its own expense) a new 42" SD culvert crossing of Von Sosten Road at the District's Sub-Main Drain. The District shall have the right to review, and shall approve the construction plans for the new culvert crossing in writing prior to City's initiation of construction. The parties agree to coordinate construction activities to avoid undue interruption to District or City operations. City warrants the construction of the new culvert crossing against defects in materials or workmanship for a period of one year from and after the date of completion and acceptance by District. During this period, the City shall replace any defective component of the construction at its own expense; and

(2) pay the District a one-time Connection Fee of \$240,000.

b. Drainage Fees. Drainage fees are the fees the City pays the District regarding the Lammers Area. The City shall prepay Drainage Fees to authorize discharges for the following blocks of time:

- (1) Years 1 through 10 – \$480,000 due before connection and initial discharge;
- (2) Years 11 through 20 – \$600,000 due before the beginning of Year 11; and
- (3) Years 21 through 30 – \$720,000 due before the beginning of Year 21.

The trigger dates for required Drainage Fee payments shall be the date that the City's physical discharge "connection" is made to the District's Sub-Main Drain and its subsequent applicable anniversary dates.

c. Term; Extension Option. The term of the City's Lammers Area discharge rights granted pursuant to this 2010 Agreement shall be 30 years. The City has the option to negotiate a second 30-year term with the District for Lammers Area discharge rights prior to the end of the initial 30-year period. The parties agree to come to reasonable terms as part of the negotiation process.

d. Interim Drainage Agreements/Option Fee. If the District is approached by a private party requesting a discharge allocation to the District's Sub-Main Drain that will reduce the discharge allocation available to the City prior to City payment of the Lammers Area Connection Fee and the initial Lammers Area Drainage Fee, the District shall extend to the City the Right of First Refusal to preserve its discharge allocation. In order to exercise its Right of First refusal, the City

shall pay, within 30 days of written notice by District of the City Right of First Refusal, an initial Option Fee of \$35,000 and shall pay Option Fees in that same amount annually until such time as the City formally exercises its discharge rights by payment of the Connection Fee and initial Drainage Fee.

If the City elects not to exercise its Right of First Refusal by payment of the Option Fee, the District shall have the right to negotiate interim drainage agreements with private parties before the City acquires its drainage rights (by paying the initial Connection Fee and Drainage Fee described in this Section). However, the interim drainage agreements shall not interfere with the City's installation of improvements and shall terminate on the date that the City's physical "connection" is made to the District's Sub-Main Drain. To facilitate this section, City shall provide District with written notice of its intent to install improvements at least 12 months prior to beginning installation of improvements.

e. Disconnection. If at any time the City does not satisfy the Drainage Fee or Extension Option provisions of this Section, and in the absence of other provisions or circumstances that facilitate a continuing right to discharge, the City shall disconnect its storm drainage facilities and cease further discharge to the District's Sub-Main Drain until subsequent authorization for resumption of discharge is formally given by the District.

6. Routine Maintenance. Except as specifically provided in this 2010 Agreement to the contrary, both the City and District shall maintain their respective facilities at all times so that the other may discharge the quantities of drain water specified in Section 2 into the facilities of the other in perpetuity. Each of the parties agrees to maintain its respective drainage facilities at its own cost and expense.

7. Connection Costs. Except as specifically provided in this 2010 Agreement to the contrary, each of the parties shall bear the expense of connecting to the other's drainage facility (and shall bear the expense of installing and maintaining any metering devices). The other party shall approve the connections (and meters) before they are completed and/or installed.

8. Meters. The parties each contemplate that the other will maintain drainage pursuant to this 2010 Agreement within the cfs limitations specified in Section 2. However, if either party expresses concerns that the other is meeting or exceeding the cfs limitations, it may demand a meeting with the other party, and request assurances in that respect. If the requesting party continues to express concerns that the other is meeting or exceeding the cfs limitations after the meet and confer process, it shall have the right to demand that the other party install meters, at the other party's sole cost, upon three months' prior written notice.

9. Water Quality.

a. Each of the parties will insure at all times that the drainage water to be discharged into the facilities of the other meets the water quality standards and waste discharge requirements prescribed by the State of California, the United States Government, any department or agency of either of them and any other governmental agency or authority which has or shall have jurisdiction or prescribe and enforce water quality standards and waste discharge requirements. The discharge of each party shall meet the requirements imposed upon the receiving party.

b. The parties agree that urban and agricultural discharge constituents are generally different and governed by different regulatory requirements. The parties agree that neither party shall discharge water into the other's system at any time or in any amount, that will create a risk of harm to property of any kind or character from flooding or otherwise. The parties further agree that neither party shall discharge water into the other's system that is deleterious to plant or animal life.

10. Restrictions on Relocation. After the construction and installation of connections to the respective drainage facilities, the entity owning the drainage facility shall not relocate or otherwise change the facility without concurrently changing the location of the connections (and meter, if any) at the cost and expense of the entity relocating the facility, including but not limited to the acquisition and dedication of any and all easements and rights of way necessary for the relocation and improvement.

11. Prior Agreement. City and District acknowledge that prior to entering into the Original 1972 Agreement they entered into a drainage agreement on an acreage basis whereby City is permitted to drain a certain number of acres into the District's drainage facility for a specified price per acre. It is mutually agreed that: the former drainage agreement shall remain in full force and effect; there are approximately 30 acres that can be drained under the former drainage agreement; and the drainage of all of the acres covered by the former drainage agreement does not affect the quantity of drainage provided for in this 2010 Agreement.

12. Disputes. If a dispute occurs between the parties as to any right, alleged right, obligation or alleged obligation under this 2010 Agreement, the parties shall make a good faith effort to resolve the dispute. Notice of such dispute shall be given in writing to the other and shall include a description of the disputed issue or issues, a description of the possible solutions or resolutions to the dispute and the course of action or solution advocated by the party declaring the dispute. The party receiving the notice of dispute described shall respond in writing within 30 days. The response shall contain that party's response to the issues raised and the responding party's proposed resolution to the dispute. The parties shall then meet within 30 days and attempt to resolve the dispute.

13. Attorneys Fees. If legal action is necessary to enforce any of the provisions of this 2010 Agreement, the losing party agrees to pay the prevailing party (as a part of the damages) reasonable attorney fees and court costs established by a court of competent jurisdiction.

14. Right of First Refusal. Upon dissolution of the District or the District's discontinuation of providing drainage through the Main Drain and Sub-Main Drain, the City is hereby granted the Right of First Refusal to acquire the Main Drain and Sub-Main Drain.

15. Hold Harmless. Each party shall indemnify, defend, and hold harmless the other (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs and expenses (including court costs and attorney's fees) resulting from or arising out of the performance of this 2010 Agreement except for the negligent acts of the other party.

16. Modifications. This 2010 Agreement supersedes all prior negotiations and agreements of the parties, including, but not limited to the Original 1972 Agreement and Amendments, and contains the entire agreement of the parties on the matters covered here. This 2010 Agreement may not be modified orally, or in any other manner, other than by an agreement in writing signed by the parties.

17. Binding on Successors. This 2010 Agreement shall inure to the benefit and bind the successors and assigns of the parties.

IN WITNESS WHEREOF the parties agree to the full performance of the terms set forth in this 2010 Agreement.

*** SIGNATURES CONTAINED ON NEXT PAGE***

THE WEST SIDE IRRIGATION DISTRICT
A Political Subdivision of the State of California

By: Jack Alvarez
Jack Alvarez, President

ATTEST:
By: Barbara Kleinert
Barbara Kleinert, Secretary

By: [Signature]
Attorney for District
Approved as to Form

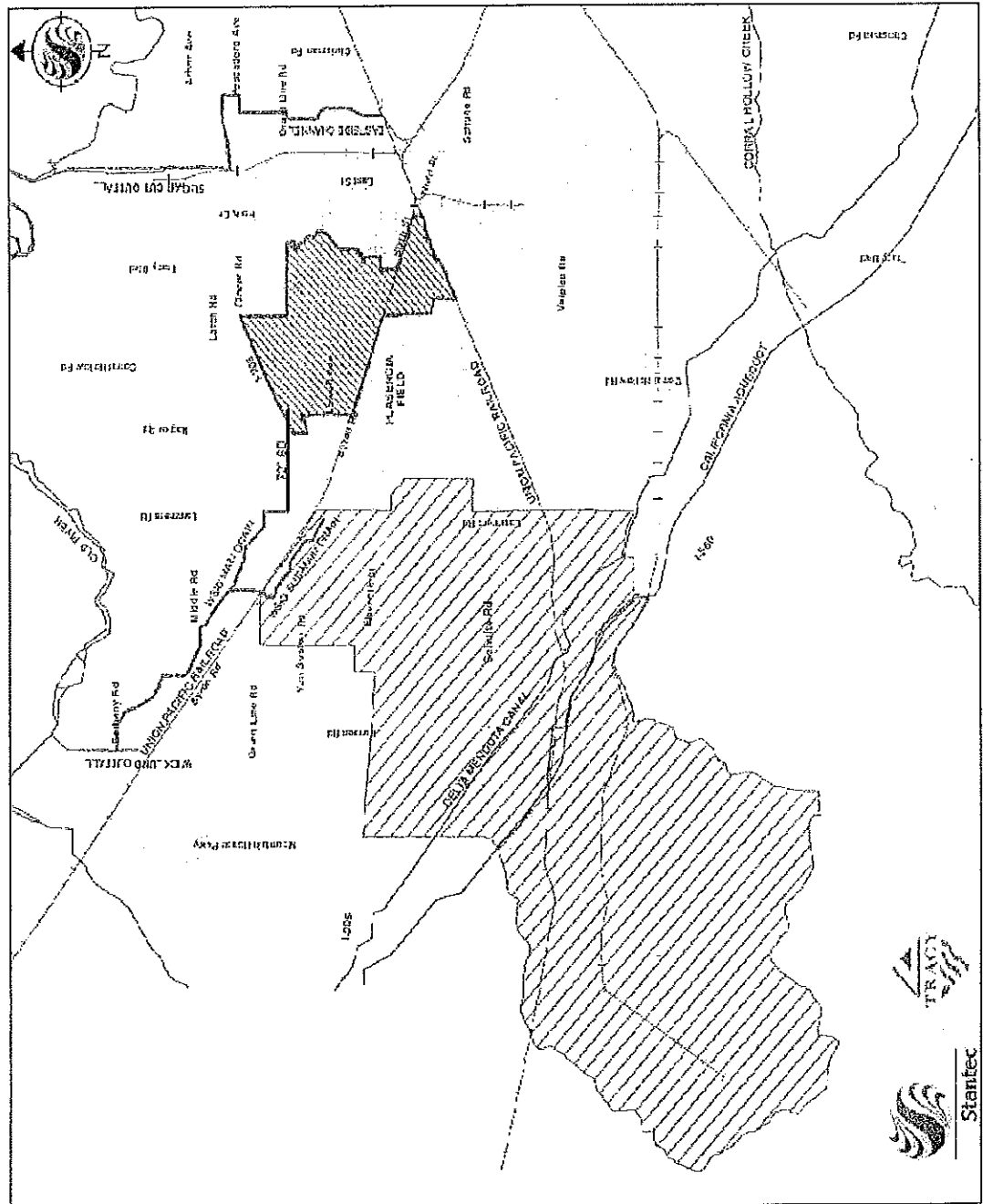
THE CITY OF TRACY
A Municipal Corporation



By: [Signature]
Mayor

ATTEST:
By: Sandra Edwards
City Clerk

By: [Signature]
City Attorney
Approved as to Form

Exhibit A: Diagram Showing Defined Areas, Channels and Drains

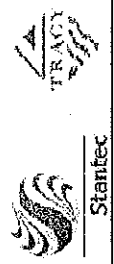


Legend
 Westside Channel Area
 Lammers Area
 NOTE: Area boundaries are approximate

2010 DRAINAGE AGREEMENT
 BETWEEN THE CITY OF TRACY AND
 THE WEST SIDE IRRIGATION DISTRICT

EXHIBIT A

THIS
**DIAGRAM SHOWING
 DEFINED AREAS,
 CHANNELS AND DRAINS**
 SEPTEMBER 2010
 SCALE 1" = 7000'



DATE: 09/15/10 10:20 AM