

**WASTEWATER REVOCABLE LICENSE AGREEMENT BETWEEN  
CITY OF TRACY AND  
THE WEST SIDE IRRIGATION DISTRICT**

This Wastewater Revocable License Agreement ("Agreement") is made this 3 day of March 2015 by and between the CITY OF TRACY ("City"), a California municipal corporation and THE WEST SIDE IRRIGATION DISTRICT ("District"), an Irrigation District formed pursuant to Division 11 of the California Water Code.

RECITALS

a. City and District are public agencies of the State of California, duly formed and operating under the laws of the state, and are empowered to enter into contracts to manage the water supply available to them for the benefit of their constituents, and

b. City operates a Wastewater Treatment Plant ("WWTP") and currently discharges treated wastewater into Old River in San Joaquin County. The WWTP treats approximately nine (9) million gallons a day of wastewater and discharges approximately fourteen (14) cubic feet per second ("cfs") on a substantially continuous daily basis (WWTP water).

c. District holds water right License 1381 which was issued by the State Water Resources Control Board ("State Water Board") pursuant to Application 301 (April 17, 1916) on September 29, 1933. The License authorizes District to divert 82.5 cfs from Old River, San Joaquin County from on or about April 1st through October 31 each year for irrigation and municipal and industrial uses.

d. On January 17, 2014, the State Water Board issued a Notice of Surface Water Shortage and Potential Curtailment of Water Right Diversions ("Notice") which may threaten the District's ability to divert flows in Old River. This Notice would not apply to the diversion of the WWTP water as it is reclaimed water discharged as foreign water into Old River. It is anticipated that the State Water Board will issue a curtailment notice for all post-1914 San Joaquin River basin appropriators by the end of April ("Curtailment Notice").

e. City's WWTP discharge point is located upstream from the District's diversion point authorized pursuant License 1381.

f. Pursuant to California Water Code Section 1210, the City as owner of the WWTP holds the right to the WWTP water discharged into Old River. This superior right is as against anyone who has supplied the discharge water, and includes anyone who is using the water. Appropriate rights attach to any water flowing in the stream and District asserts that it is currently legally entitled to divert, and has historically consistently diverted, the WWTP water.

g. The actions contemplated by this Agreement will not result in decreasing the flow in any portion of the Old River downstream of the City's WWTP discharge point.

h. The actions contemplated by this Agreement will not require a change in the point of discharge, place of use, or purpose of use of the City's treated wastewater.

i. The purpose of this Agreement is to ensure that District is given the exclusive right to divert the WWTP water as it asserts it has historically done so that to the extent of the WWTP Water, District can offset shortfalls in its irrigation supply due to the Curtailment Notice.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

#### REVOCABLE LICENSE

1. GRANT OF REVOCABLE LICENSE. City hereby grants a revocable license ("Revocable License") to District to divert the City's WWTP water discharged by the City ("WWTP Water").

2. NATURE OF REVOCABLE LICENSE. This Revocable License is personal to the District and for the express benefit of its agricultural water users and Kimball High School, and, while it is intended to allow District to use all WWTP Water discharged by the City, it is not intended to and does not convey a property interest.

3. TERM. The term of this Agreement will be from April 1, 2015 through October 31, 2015 ("Term").

4. WATER QUANTITY. City hereby grants District the right to divert all WWTP Water City discharges from its WWTP during the Term, which amount may vary on a daily basis, but is estimated to be approximately 14 cfs on a continuous daily basis. The City has no obligation to discharge any particular amount; the City will discharge in accordance with its wastewater treatment plant operations, as determined by the City. Other than as specifically set forth in this Agreement, the City's obligations under this Agreement end upon discharge of the WWTP Water.

5. PURCHASE PRICE. This District shall pay the City Thirty Dollars (\$30.00) per acre foot of WWTP Water discharged by the City.

6. COMMENCEMENT OF DIVERSION. District shall provide the City with written notice ("Commencement Notice") of when it will commence water diversion pursuant to this Agreement, the date of which shall trigger the obligation to pay for the WWTP Water the District will divert pursuant to this Agreement.

7. SCHEDULING AND PAYMENT. Upon issuance of the Commencement Notice, the parties will coordinate on the amount of WWTP Water available for diversion on a weekly basis. City has flow measurement on its effluent pumping station and shall report to District the amount of WWTP Water discharged in acre-feet by City on a monthly basis. Within 15 days of the report, District shall pay in full for the amount of WWTP Water discharged

according to the report, all of which the District is entitled to divert pursuant to this Agreement. This obligation to pay shall survive termination of this Agreement.

8. WATER QUALITY. City makes no warranty or representations as to the quality or fitness for use of WWTP Water. The parties acknowledge that District is familiar with the quality of water received from Old River, and variations based on year type and other factors.

9. DIVERSION POINT. District will divert the WWTP Water at the District's Intake Canal and pump station which is located on Old River. District is exclusively responsible for the diversion and delivery of the WWTP Water.

10. NO ENTITLEMENT TO WATER. District and City agree that the diversion of the WWTP Water pursuant to this Agreement shall not give District a continued exclusive right to divert City WWTP Water beyond the Term. The District understands and agrees that it has no right to require the City to continue its discharges in whole or in part of the WWTP Water.

11. TERMINATION. This Agreement may be terminated by either party upon three (3) days' prior written notice.

12. ENVIRONMENTAL REVIEW. The parties acknowledge that they have completed review under the California Environmental Quality Act for the diversion of WWTP Water pursuant to this Agreement.

13. REGULATORY AND LITIGATION COSTS. District will undertake the defense of the both parties in any litigation or regulatory action involving this Agreement, including without limitation environmental compliance and diversion and delivery by District of the WWTP Water, and any objection to or interference with such diversion and delivery. Within ten days of the date of invoice from the City, the District shall pay all reasonable fees, costs and charges incurred in connection with the preparation, implementation and termination of this Agreement, including without limitation all of the City's legal, consultant and other fees and costs. District will be exclusively responsible in the event of any need to take action against a third party. This obligation shall survive termination of this Agreement.

14. INSURANCE. District shall, throughout the duration of this Agreement, maintain insurance to cover District, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.

a. Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

b. Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

c. Workers' Compensation coverage shall be maintained as required by the State of California.

d. District shall obtain endorsements to the automobile and commercial general liability with the following provisions:

i. The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

ii. For any claims related to this Agreement, District's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the District's insurance and shall not contribute with it.

e. District shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. District shall immediately obtain a replacement policy.

f. All insurance companies providing coverage to District shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

g. District shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.

h. No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, District shall provide a substitute certificate of insurance.

15. GENERAL INDEMNITY. District agrees to protect, defend, indemnify, and hold harmless the City, its officers, agents, servants, employees, and consultants from and against any and all losses, claims, liens, demands and causes of action of every kind and character on account of personal injuries or death or damages to property and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance hereunder. This obligation shall survive termination of this Agreement.

16. FORCE MAJEURE. Except as otherwise provided herein, all obligations of the parties hereto will be suspended so long as, and to the extent that, the performance thereof will be prevented by earthquakes, fires, tornadoes, facility failures, floods, drowning, strikes, other casualties or acts of God. Specifically, the obligations of the District pursuant to this Agreement to pay for discharged WWTP Water shall be suspended as of the date the District ceases to pump at its intake, if the District is unable to operate its pumps and divert the WWTP Water because of

low water levels in Old River. In such event, the District shall provide written notice to the City of the date of cessation of District pumping. The District's obligations pursuant to Section 7 (limited to WWTP Water discharged before the date of cessation), Section 13, and Section 14 shall survive such termination.

17. SERVICE TO KIMBALL HIGH SCHOOL. District agrees to continue its provision of municipal water to Kimball High School during the irrigation season, estimated at 100 acre feet, subject to Kimball High School payment of the municipal water rate and subject to the terms of the District's 2015 Water Delivery Policy. District shall make every good faith effort to provide a sufficient water supply for the Kimball High School purposes.

18. WAIVER OF RIGHTS. Any waiver, at any time, by any party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, will not be deemed to be a waiver with respect to any other breach, default or matter.

19. NOTICES. All notices that are required, either expressly or by implication, to be given by any party to the other under this Agreement must be signed by the party giving the notice. Any notices to Parties required by this Agreement must be delivered or mailed, United States first-class postage prepaid, addressed as follows:

THE WEST SIDE IRRIGATION DISTRICT  
Post Office Box 177  
Tracy, California 95378-0177  
Phone: (209) 835-0503  
Fax: (209) 835-2702

CITY OF TRACY  
Director of Public Works  
520 Tracy Boulevard  
Tracy, California 95376  
Phone: (209) 831-4420  
Fax: (209) 831-4472

Notice will be deemed given (a) two calendar days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile or email, whichever is earlier. The parties will promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein will be deemed sufficient unless written notification of a change of address has been received.

20. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between City and the District and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by all parties to be effective.

21. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement will not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely execute counterparts will be sufficient proof of this Agreement.

CITY OF TRACY

Date: 3-26-15

By:   
Michael Maciel, Mayor

ATTEST:

  
City Clerk

Date: 3/30/15

APPROVED AS TO FORM:

  
Daniel Sodergren, City Attorney of the City of Tracy

Date: 3/24/15

THE WEST SIDE IRRIGATION DISTRICT

Date: 3/16/15

By:   
Jack Alvarez, President

ATTEST:

  
Carol Petz, Secretary

Date: 3/16/15

APPROVED AS TO FORM:

  
Counsel for the West Side Irrigation District

Date: 3/16/15