

AGREEMENT NO. **98-224**  
*Approved 9/23/98*

**OPERATIONAL AGREEMENT  
NORTHEAST WATER SUPPLY PROJECT**

**THIS OPERATIONAL AGREEMENT**, is made and entered into this 15th day of September, 1998, by and between the **CITY OF BAKERSFIELD**, a municipal corporation and charter city ("CITY" herein), and the **COUNTY OF KERN**, a political subdivision of the State of California ("COUNTY" herein),

**RECITALS**

**WHEREAS**, CITY and CALIFORNIA WATER SERVICE COMPANY ("CAL WATER" herein) are cooperating to develop water service to CITY residents in the northeast Bakersfield area, and

**WHEREAS**, COUNTY leases property to the COUNTY BOARD OF EDUCATION for the benefit of CALIFORNIA LIVING MUSEUM ("CALM" herein) for non-profit purposes; and

**WHEREAS**, COUNTY AND CALM see benefits to both parties in developing the northeast water supply as set forth in this Agreement and in cooperating with the CITY and CAL WATER in granting easements for its development; and

**WHEREAS**, the water facilities to be constructed include, but are not limited to, access, diversion works, headworks, headgates, pump stations, canals, water storage facilities, settling reservoirs or ponds, turnouts, pipelines, filtration plants, and other related facilities ("Water Facilities" herein); and

**WHEREAS**, CAL WATER is currently engaged in purveying domestic water to, among others, residents and citizens within the CITY's incorporated area; and

**WHEREAS**, that portion of the Kern River County Park, owned by the COUNTY consisting of CALM, Kern County Soccer Park, and Hart Memorial Park would benefit from an improved water delivery service from the Kern River; and

**WHEREAS**, CITY and CAL WATER desire to cooperate and effect a project to provide high quality domestic water service using Kern River water to residents and citizens of the CITY in the northeast Bakersfield area.

**NOW, THEREFORE**, incorporating the foregoing recitals herein, CITY and COUNTY mutually agree as follows:

1. **OWNERSHIP OF WATER.** CITY shall own all water diverted into the Transfer Facilities which shall start with the Kern River intake or headworks, except for water diverted for COUNTY use under the existing March 17, 1934 agreement. CITY may sell or otherwise put its water to beneficial use. Notwithstanding the foregoing, the existing March 17, 1934 agreement for supplying water to Hart Memorial Park shall remain in full force and effect and shall not be modified by this Agreement. In addition, CITY agrees to provide to County (at no cost) up to a maximum of 648 acre feet of City water annually for use on County property which is currently under lease to CALM and the Kern County Soccer Foundation, in addition to water diverted under the March 17, 1934 agreement.

2. **OPERATION AND MAINTENANCE.** CITY shall be responsible for the design, construction, operation and maintenance of the new Kern River intake structure, low-lift pump station, pipelines connecting CITY's facilities, canal and raw water storage reservoirs and settling ponds, including the turnouts (head gates) to Hart Memorial Park, the Kern County Soccer Park and CALM, and the required service roads and security fencing. CITY shall maintain a minimum of 150 feet of unobstructed public access paralleling the south shoreline of the Kern River (as measured from the mean high water mark) to allow public access to and along the Kern River. Notwithstanding the foregoing, CITY may preclude public access to the Kern River along the length of the intake structure (for public safety reasons). Portions of the intake structure may encroach south of the mean high water mark, however, unobstructed public access along the south side of the intake structure shall be at least 150 feet in width. CITY shall provide suitable screening of the Kern River intake structure, including but not limited to, native vegetation, trees, berms and other landscapes that compliment the natural surrounding. Under CITY's direction and control, CAL WATER shall be responsible for the design, construction, operation and maintenance of the high-lift pump station and metering facility, pipelines connecting to CAL WATER's facilities located at the south end of the future reservoir sites. Neither COUNTY, the Kern County Soccer Foundation or CALM will have maintenance, repair, or operation responsibility of any kind or nature concerning the Water Facilities, including without limitation, all electrical costs associated with the operations of the low and high-lift pump stations.

3. **RECORDS AND SCHEDULING.** CITY shall maintain records of all water diverted via Water Facilities head works. All water to be diverted shall be scheduled Twenty-four (24) hours in advance through the CITY Water Dispatcher. CITY, as owner and operator of the head works, shall have sole control of same. Notwithstanding the foregoing, CITY will provide such water as COUNTY is entitled to in Section 1 hereof, on an uninterrupted basis (except for circumstances beyond CITY's control) unless notified to the contrary by COUNTY.

4. **TERM.** The term of this Agreement shall commence the day and year first-above written and the same shall continue thereafter in full force and effect unless terminated. This Agreement terminates if the easement reverts to the COUNTY for failure to engage in the uses specified therein.

5. **ASSIGNMENT.** This Agreement shall not be assigned by any party, or any party substituted, without prior written consent of all the parties.

6. **BINDING EFFECT.** The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their heirs, administrators, executors, personal representative, successors and assigns.

7. **CITY INSURANCE.** CITY, in order to protect COUNTY, its governing board, commissions, officers, agents and employees against all claims and expense for death, injury, loss, or damage as a result of CITY's use of and activities on the premises or in connection therewith, shall secure and maintain in force during the life of the Agreement and covering all of CITY's operations and activities on the premises, the following insurance:

CITY represents it is self-insured with certain excess coverage and will, throughout the term of this Agreement, maintain self-insurance limits of One Million Dollars (\$1,000,000) with a minimum of excess insurance coverage to Ten Million Dollars (\$10,000,000). CITY warrants that, at all times during the term of this Agreement, it shall have and maintain worker's compensation insurance in compliance with the Labor Code of the State of California.

8. **JOINT LIMITATION ON LIABILITIES AND INDEMNIFICATION.**

8.1 No party shall be liable to any other party for any loss, damage, liability, claim or cause of action for damage to or destruction of property or for injury to or death of persons arising solely from any act or omission of any other party's officers agents or employees.

8.2 CITY and COUNTY agree to indemnify, defend and hold each other harmless from any and all claims, demands liabilities, losses or causes of action which result from its own acts or omissions (either directly or through or by its agents, officers, or employees) to such extent and in such part as the respective parties are found by reason of law to have proximately caused the injury or damage.

8.3 The party against whom any claim arising from any subject matter of this Agreement is filed shall give prompt notice of the filing of the claim to all other parties.

9. **CORPORATE AUTHORITY.** Each individual executing this Agreement represents and warrants they are duly authorized to execute and deliver this Agreement on behalf of the corporation or organization, if any, named herein and this Agreement is binding upon said corporation or organization in accordance with its terms.

10. **EXECUTION.** This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

11. **EXHIBITS.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set

forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

12. **FORUM.** Any lawsuit pertaining to any matter arising under, or growing out of this Agreement shall be instituted in Kern County, California.

13. **MERGER AND MODIFICATION.** This Agreement sets forth the entire Agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the Kern County Board of Supervisors and the CITY Council.

14. **NON-INTEREST.** No officer or employee of the CITY shall hold any interest in this Agreement (California Government Code section 1090).

15. **NOTICES.** All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

CITY: CITY OF BAKERSFIELD  
Water Resources Dept.  
1000 Buena Vista Road  
Bakersfield, CA 93311

COUNTY: County of Kern  
Parks and Recreation Dept.  
1110 Golden State Ave.  
Bakersfield, CA 93301

16. **WAIVER OF DEFAULT.** The failure of any party to enforce against another a provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

"CITY"

"COUNTY"

CITY OF BAKERSFIELD

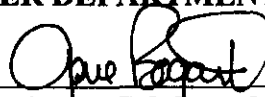
COUNTY OF KERN

By   
BOB PRICE, Mayor

By   
PETE H. PARRA, Chairman,  
Board of Supervisors

APPROVED AS TO CONTENT:  
WATER DEPARTMENT


APPROVED AS TO CONTENT:  
PARKS & RECREATION DEPT.


By   
GENE BOGART  
Water Resources Manager

By   
ROBERT D. ADDISON, Director

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

APPROVED AS TO CONTENT:  
COUNTY ADMINISTRATIVE OFFICE

By   
ALAN D. DANIEL  
Assistant City Attorney

By   
WILLIAM A. WILBANKS, Assistant  
County Administrative Officer for General  
Services

COUNTERSIGNED:

APPROVED AS TO FORM:  
OFFICE OF THE COUNTY COUNSEL

By   
GREGORY J. KLIMKO  
Finance Director

By   
BRUCE DIVELBISS, Deputy

