

16-108

**AMENDMENT TO MING LAKE TEMPORARY SERVICES AGREEMENT**

**THIS AMENDMENT TO the MING LAKE TEMPORARY SERVICES AGREEMENT** is made and entered into on JUN 08 2016 by and between the **CITY OF BAKERSFIELD**, a charter City and municipal corporation, referred to herein as "CITY" or "BAKERSFIELD," and the **COUNTY OF KERN**, a political subdivision of the State of California, referred to herein as "COUNTY".

**RECITALS:**

**WHEREAS**, on June 9, 1964, the County and the City's Predecessor in title, Pioneer Canal, Inc., entered into the Ming Lake Temporary Services Agreement, hereinafter sometimes referred to as the "Agreement," whereby COUNTY agreed to purchase water from Pioneer, Canal, Inc., for replenishment of water lost from Ming Lake by seepage, evaporation and evapotranspiration; and

**WHEREAS**, on April 12, 1976, the CITY entered into Agreement No. 76-36 with Tenneco West, Inc., the Kern Island Water Company and the Kern River Canal and Irrigating Company, whereby the CITY acquired certain Kern River assets of the other parties and assumed certain rights and obligations of the parties related to the Kern River, including the rights and obligations of Pioneer Canal, Inc., with regard to the Agreement; and

**WHEREAS**, the CITY and the COUNTY desire to amend the Agreement to adjust and update certain provisions of the Agreement, and to add certain provisions to the Agreement.

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

1. Paragraph 2 is hereby amended to read as follows:
  2. CITY shall sell to COUNTY a water supply from the City's Kern River supply, if available, and COUNTY agrees, if needed, to buy from CITY, if available, water to replace and replenish water lost from Ming Lake by seepage, evaporation and evapotranspiration.
2. Paragraph 3 is hereby amended to read as follows:
  3. The price for each acre-foot of water provided to the County and Ming Lake by CITY shall be \$81.46 per acre foot based on the quantity of water delivered to and used by COUNTY at or in connection with Ming Lake. The price per acre-foot shall be adjusted annually based upon the US Bureau of Labor Statistics data for the Producer Price Index for All Commodities (PPIACO) for July of each year. The PPIACO index stood at 194.0 for July 2015. COUNTY shall be notified by CITY as soon as practical after the end of each month as to the net quantity of water delivered to Ming Lake. CITY shall invoice COUNTY after July 1st of each for the net amount of water used the previous 12 months and such invoice shall be payable by COUNTY within 90 days receipt of invoice.

3. Paragraph 4 is hereby amended to read as follows:

4. The quantity of water delivered by CITY to COUNTY pursuant to this agreement shall be calculated based on the inflow amounts from the intake pumps minus the outlet structure return flows back to the Kern River. The parties estimate the Ming Lake facilities will require up to 790 (seven hundred and ninety) acre feet of water per year to meet said evaporation, evapotranspiration and seepage losses. Special circumstances such as draining and refilling of Ming Lake may require additional net water deliveries and CITY and COUNTY agree to accommodate and schedule such activity as far in advance as possible. There shall be no minimum delivery requirement, and the County understands and acknowledges that the City may reduce or suspend deliveries of water pursuant to the Agreement due to environmental, legal, regulatory or water supply limitations. Likewise, the City understands and acknowledges the County may buy less water if other legal or contractual sources are available and those are used by the County.

4. Paragraph 5 is hereby amended to read as follows:

5. Water provided by CITY to COUNTY for Ming Lake shall be delivered to and received by COUNTY at the pumps or intakes on the Kern River channel located near the east end of Ming Lake. An outlet structure at the west end of the lake permits water to return to the Kern River providing a flow through circulation method to assist in maintaining fresh water in the lake. COUNTY shall be responsible for the operation, maintenance, replacement or repairs of intake and outlet facilities. COUNTY and CITY shall agree to the appropriate gauging devices, i.e., meters and methodology in measuring, reporting and accounting of flows under this agreement.

5. The following Paragraphs are hereby added to the Agreement:

9. Water provided herein shall only be used to satisfy the evaporation, evapotranspiration and seepage losses of the Ming Lake facility. Any other point of delivery or use shall be by express written consent of CITY prior to any water diverted, delivered or used at points other than Ming Lake.

10. CITY does not represent or guarantee the quality of the water which is subject to this Agreement. COUNTY understands the water specified for delivery under this agreement, as supplied from the Kern River, is untreated, non-potable and unfit for human consumption as delivered. CITY shall not be responsible for the quality of the water delivered to COUNTY in any way or at any time and COUNTY's failure to properly handle and distribute the water for the Ming Lake facility is not the responsibility of CITY. CITY, to the best of its ability and in a timely manner, shall notify COUNTY of any contamination of the water delivered of which CITY has actual knowledge.

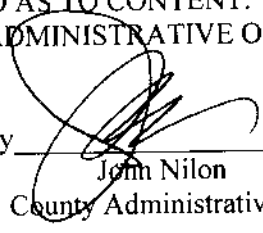
11. COUNTY shall allow CITY access to Ming Lake facilities for periodic inspection of intake and outlet facilities and for verification of flow rates. CITY shall notify COUNTY a minimum of 24 hours in advance of any access requirements.

6. Except as amended or added herein, all provisions of the Ming Lake Temporary Services Agreement shall remain in full force and effect.


CITY OF BAKERSFIELD  
ORIGINAL

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Ming Lake Temporary Services Agreement to be executed the day and year first above written.

APPROVED AS TO CONTENT:  
COUNTY ADMINISTRATIVE OFFICE

By   
John Nilon  
County Administrative Officer

COUNTY OF KERN

By  MAY 17 2016  
Mick Gleason, Chairman  
Board of Supervisors

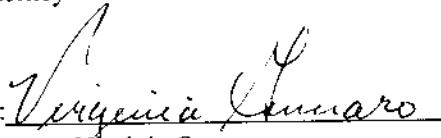
APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL

By   
County Counsel

"CITY"  
CITY OF BAKERSFIELD

By   
Harold Hanson  
Vice-Mayor

APPROVED AS TO FORM:  
VIRGINIA GENNARO City  
Attorney

By   
Virginia Gennaro  
City Attorney

Insurance:

APPROVED AS TO CONTENT:  
WATER RESOURCES DEPARTMENT

By:   
ART CHIANELLO, P.E.  
Water Resources Manager

COUNTERSIGNED:

By:   
NELSON SMITH  
Finance Director

CITY OF BAKERSFIELD  
ORIGINAL