

AGREEMENT BETWEEN THE  
KINGS COUNTY REDEVELOPMENT AGENCY  
AND THE  
KETTLEMAN CITY COMMUNITY SERVICES DISTRICT

This AGREEMENT ("Agreement") is made as of Dec 22, 2009 by and between the Kings County Redevelopment Agency (the "Agency"), a community redevelopment agency duly formed and existing under the California Health and Safety Code (see the "Community Redevelopment Law", Health and Safety Code section 33000 et seq.), and the Kettleman City Community Services District, a community services district duly formed and existing under the provisions of the California Government Code (see the "Community Services District Law", Government Code section 61000 et seq.), (the "District"). Each of the Agency and District is a Party to this Agreement and together are the Parties to this Agreement.

RECITALS

This Agreement is entered into with reference to the following facts:

A. The Agency is a redevelopment agency organized and existing under the laws of the State of California. As such it is empowered to expend funds for the elimination of blight within, or of benefit to, the Kettleman City Redevelopment Project (the "Project"; the area of the Project is hereafter termed the "Project Area"), to encourage the increase and preservation of employment opportunities for residents of the County of Kings generally and of the unincorporated area of Kettleman City and of the area served by the District (the "District") specifically (altogether, the "Community"), and to expand economic activity within the Community and Project Area.

B. The purpose of this Agreement is to effectuate the redevelopment plan for the Project (the "Redevelopment Plan") adopted by Ordinance No. 635 of the County of Kings (the "County") on July 19, 2005 by facilitating the design, development and construction of a water treatment plant and (the "Water Treatment Plant") and commercial storage tanks (the "Commercial Tanks") on parcels of real property within the Project Area located at Kettleman City, California (the "Site"). Successful completion of the Water Treatment Plant and the Commercial Tanks as contemplated by this Agreement is vital to the continued development of the Project, as there is currently no excess capacity for potable water which would allow additional development in the Project Area.

C. The Water Treatment Plant and Commercial Tanks will improve the economic and physical conditions in the Project Area by allowing for the development of

real property with residential, commercial, industrial, and public uses made possible through the availability of potable water over the term of the Redevelopment Plan and in accordance with its purposes and goals. Completion of the Water Treatment Plan and the Commercial Tanks will allow for the creation of several hundred jobs which will be of benefit to the Project Area and the Community as a whole.

D. The District is an existing community services district organized and existing under the laws of the State of California. District desires to modernize its existing water treatment plant by developing the Water Treatment Plant in two phases. Phase 1 shall be the design, development and construction of the Water Treatment Plant, and Phase 2 shall be the design, development and construction of the Commercial Tanks.

E. The District has secured partial financing for the Water Treatment Plant from the County of Kings (the "County") and from the Agency in the amount of three million dollars (\$3,000,000) (the "Agency Funds"), which has been loaned by the County to the Agency (the "Agency Loan") and which will be used by the Agency and the District for the initial costs of development of the Water Treatment Plant project under the terms of this Agreement. It is in the best interests of the citizens of the Community and of the Project Area for the Agency to assist the District in its endeavor to develop the Water Treatment Plant for the reasons provided above. The assistance provided by the Agency through the Agency on the terms described in this Agreement is made for the common benefit of the Parties hereto and the residents and taxpayers of the Project Area and the Community.

F. The Agency Loan will be repaid by the Agency to the County through the payment of a portion of the tax increment accruing to the Agency after completion of the Project. The District shall not be responsible in any way for the repayment of the Agency Loan. Nonetheless, the County and the Agency have an ongoing interest in maintaining the viability of the Agency Loan by assuring themselves, to the extent possible, that District: i) maintains the Water Treatment Plant, the Commercial Tanks and its water distribution facilities in the highest order; ii) continues to provide appropriate service to its rate payers; and iii) maintains its own fiscal solvency during the term of the Agency Loan.

G. The Phase 1 Water Treatment Plant and the Phase 2 Commercial Tanks projects are in compliance with the goals and objectives of the Implementation Plan provided in Section 8 of the Report to the County Board of Supervisors approved as a part of the adoption of Ordinance No. 635.

NOW, THEREFORE, in consideration of the mutual covenants, representations,

and warranties set forth in this Agreement, the parties agree as follows:

## ARTICLE 1

### CONSTRUCTION OF THE WATER TREATMENT PLANT AND COMMERCIAL TANKS PROJECTS

District shall take all actions necessary to complete Phases 1 and 2 of the project in a timely fashion and in conformance with a schedule of performance to be adopted by the Parties (the "Schedule of Performance"). The Schedule of Performance shall be developed by the Parties based upon the estimates provided by the District's engineers and consultants and shall provide for completion of the project within a fixed period of time. The Schedule of Performance shall be updated and revised by the Parties based upon the recommendations provided by the District's engineers as and when required. The District shall advise the Agency in writing whenever there is a contemplated or anticipated change in the Schedule of Performance.

## ARTICLE 2

### TERMS AND CONDITIONS OF AGENCY PROVISIONS OF FUNDS TO THE DISTRICT

Agency shall provide to the District the Agency Funds when needed by the District in amounts necessary to meet the costs incurred for the Project under the terms and conditions of this Article. The Agency shall deposit in the Kings County Treasury the Agency Funds as requested by the District in writing on an ongoing basis in amounts needed to meet projects costs for the ensuing six-month period. The Kings County Treasurer shall hold such funds on deposit in a special account to be paid to the District upon requisition therefor as and when needed to meet the project costs. The Kings County Treasurer shall act as the District's treasurer under the provisions of Government Code sections 61050 and 61052 for the specific purpose of holding on deposit and paying out the Agency Funds for the project purposes. It is anticipated at the time of execution of this Agreement by the Parties that the District will require four hundred and ten thousand (\$410,000.00) to meet the District's costs for the project in the next six-month period, and upon execution of this Agreement by the Parties, Agency shall cause such amount to be deposited in the special account to be created in the Kings County Treasury for the project costs. District may request, and Agency shall authorize, additional deposits on a monthly basis as needed by the District to meet its reasonably anticipated costs up to the total amount of the Agency Funds.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF DISTRICT

District warrants that it has complied with all laws and regulations concerning its organization, existence and transaction of business and is fully empowered to carry out its obligations as set forth in this Agreement. All financial information delivered to Agency fairly and accurately represents the financial condition of District.

District warrants that, during the term of the Agency Loan, it will neither reduce user fees below nor fail to increase fees up to an amount which would allow District to maintain the water treatment plant and its water distribution facilities to industry standards as described in Article 4 hereof. In the event Agency, in its reasonable discretion and based upon evidence before it, finds that user fees either have been reduced below or not increased up to an amount which would allow District to maintain existing services and facilities, it may declare a default pursuant to Article 6 below.

### ARTICLE 4

#### COVENANT TO MAINTAIN AND OPERATE THE WATER TREATMENT PLANT

As further consideration, the District covenants to continuously maintain and operate the Water Treatment Plant, the Commercial Tanks and its water distribution system during the term of the Agency Loan in full conformance with industry standards. "Industry standards" is herein meant to include: i) ongoing compliance with all appropriate federal, state and County standards, rules, and regulations relating to water treatment plants and distribution systems of similar size and function.

District shall establish and maintain during the term of the Agency Loan a reserve account in its accounting system (the "Maintenance Reserve Account") for the purpose of assuring the future operation, maintenance and repair of the Water Treatment Plant, the Commercial Tanks and its water distribution facilities to industry standards. The Maintenance Reserve Account shall be funded from receipt of all fees and other non-dedicated income up to an amount equal to the annual cost of maintenance of said plant and facilities averaged over the five years immediately prior to each annual funding of the Maintenance Reserve Account.

## ARTICLE 5

### ONGOING COMPLIANCE

During the term of this Agreement and until such time as the Agency Loan has been paid in full, District shall:

- A. Within thirty days of District's acceptance of its annual audit provide Agency a copy of such audit.
- B. Provide to Agency, at Agency's sole option and as often as Agency elects, all maintenance, operation, and debt service records relating to the project and the District's operations.
- C. Calculate, maintain and impose a fee schedule for all new connection services reasonably determined by the District to be necessary to ensure continued operation of the District's facilities.

## ARTICLE 6

### DEFAULT PROVISIONS

The occurrence and continuance of any one or more of the following events shall constitute a default ("Default") under this Agreement:

- A. The breach by District of any of the terms or provisions of this Agreement which breach is not remedied within fifteen days after notice of the occurrence thereof.
- B. District's failure to comply with the Schedule of Performance, including, without limitation, cessation of construction of the Water Treatment Plant or the Commercial Tanks projects.
- C. District's cessation of the operation of the Water Treatment Plant if the Agency Loan has not been retired.
- D. District, whether voluntarily or involuntarily, shall have assigned this Agreement, or any portion of it, without the prior written consent of Agency, which consent may or may not be given in Agency's sole discretion.

In any Default occurs, then Agency may pursue any or all of the rights and

remedies available to Agency by law or as provided in this Agreement, all of which remedies shall be cumulative. All expenses (including, without limitation, attorney's fees) incurred by Agency in pursuing its remedies hereunder shall be paid by District. Agency shall in no way be liable for any acts or omissions of District or any person furnishing labor and/or materials used in or related to construction of the Water Treatment Plant or the Commercial Tanks projects.

District shall indemnify, defend, protect, and hold harmless the Agency and the County of Kings from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses arising from or in connection with, or caused by any act, omission or negligence of District or District's contractor.

## ARTICLE 7

### GENERAL TERMS

District acknowledges that its identity and experience is of particular concern to Agency, and it is because of District's identity and particular experience that Agency has entered into this Agreement with District. Therefore, District shall not voluntarily or involuntarily assign or transfer this Agreement or any right hereunder, and any such transfer or assignment shall not be binding upon or in any way affect Agency without Agency's prior written consent which consent may or may not be given in Agency's sole and independent discretion.

Time is of the essence of this Agreement, provided, however, that if Agency does not demand performance when due of any obligation of District under this Agreement, then Agency shall continue to have the right to demand performance at a later date.

The County, the Agency, and officers, agents and representative of the County and Agency shall enjoy free and unfettered access to the Site at all reasonable periods of time both during construction and operation of the Site so long as the Agency Loan has not been retired. The County and Agency, and their officers, agents and representatives, shall have the absolute right to conduct any tests, review any construction or operations, or complete any additional due diligence which, in the sole opinion of the County or the Agency, or both of them, shall be necessary to guarantee the continued development or maintenance of the Site, the Water Treatment Plant and the other District facilities. Nothing contained in this paragraph, or in this Agreement, will in any way act to limit, or expand, the authority of Kings County building or community development agencies, or any other responsible County agency, in pursuing their required roles in enforcing County, State or Federal building and development laws and regulations.

District shall not permit or allow any discrimination against or segregation of any person, or group of persons, on account of sex, marital status, age, handicap, race, color, religion, creed, national origin or ancestry in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the services provided by the District as a community services district, and shall not establish or permit any such practice or practices of discrimination or segregation in the provision of such services to the residents and property owners within the Project Area. Moreover, there shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, age, handicap, color, religion, creed, national origin or ancestry in the use or occupancy of the Water Treatment Plant, the Commercial Tanks or the remainder of the District's water distribution facilities, nor shall any person claiming under or through District, establish or permit any such practice or practices of discrimination or segregation with reference to the provision of such services.

The terms and provisions of this Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties.

This Agreement constitutes the entire agreement between the Parties with respect to the provision of Agency Funds to the District and supersedes all prior agreements, oral and written, between the Parties to this Agreement with respect to the subject matter of this Agreement.

This Agreement may not be amended, modified, or supplemented except by written agreement in writing signed by the Party against which the enforcement of the amendment, modification, or supplement is sought. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision. No waiver shall be binding unless executed in writing by the Party making the waiver.

If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in the action or proceeding, in addition to any other relief to which the prevailing party may be entitled.

This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one counterpart has been signed by each party and delivered to the other party hereto.

This Agreement shall be governed by and construed under the laws of the State of California.

In the event any provision of this Agreement is deemed to be invalid, illegal, or

unenforceable, all other provisions of the Agreement that are not affected by the invalidity, illegality, or unenforceability shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Agency:

By: Joe Neves  
Joe Neves  
Chairman, Kings County Redevelopment Agency  
DEC 22 2009

District:

By: Aletha C. King  
[Name of signatory]  
Chairman, Kettleman City Community Services District  
Board of Directors

## ATTACHMENT NO. 1

### SCOPE OF DEVELOPMENT

[Scope of Development to include specific materials, textures, schematic plans, etc.]

The Water Treatment Plan shall be developed in two phases as follows:

Phase 1: Proposed Water Treatment Plant. The Surface Water Treatment Plant would treat water from the California Aqueduct. A new turnout would be constructed where the raw water supply would be metered, boosted with variable speed pumps, cleaned with an automatic self cleaning strainer and treated with a membrane filtration and choramine disinfection treatment process. The proposed capacity of the treatment facility is 900 gallons per minute (gpm) or 1.3 million gallons per day (MGD). The membrane filtration plant will consist of a package micro filtration or ultra filtration water treatment facility. The use of chemicals in the water treatment process will be minimal. There will be chemicals used to remove total organic carbon, remove arsenic from groundwater supply when necessary, membrane cleaning and chlorine used as a disinfectant, which will be injected in the water as it leaves the water treatment system. The treated water would be retained on site time in a storage tank or storage tanks to allow adequate contact time. The treated water will then be boosted to KCCSD water storage tanks or the distribution system depending on demand. The membrane package plant, chemical feed equipment, office and work area will be enclosed in a metal building. There will be storage tanks for the ammonia, liquid chlorine and membrane cleaning solution. There will also be sludge ponds for discharge of the waste particles that have been removed from the raw water.

Phase 2: Proposed Commercial Tank Facility. The Commercial Tank Facility shall include two (2) each 250,000 gallon welded steel water storage tanks, vertical centrifugal booster pumps, PVC pipelines, electrical control building, emergency diesel generator, compacted embankment, aggregate base, reinforced concrete, oiled sand, fabricated steel manifolding, drainage system and miscellaneous appurtenances. Available site locations will be reviewed. The water storage tanks shall be placed at equal elevations to the other facilities.