

EXHIBIT D

EXHIBIT D

PLEASE RETURN TO:
Office of City Clerk
City Hall
431 Prater Way
Sparks, Nevada 89431

A-2275
A.I. 6.5
2/12/96

AGREEMENT FOR THE SALE AND USE OF TREATED EFFLUENT

THIS AGREEMENT is made and entered into by and among the CITY OF SPARKS ("City"), a municipal corporation of the State of Nevada; the RENO-SPARKS CONVENTION AND VISITORS AUTHORITY ("RSCVA"), a creation of Washoe County, Nevada; and WASHOE COUNTY ("County"), a political subdivision of the State of Nevada.

RECITALS

A. City intends to develop and construct an effluent reuse distribution system to deliver treated effluent from the Truckee Meadows Water Reclamation Facility to various public and private facilities for use as an irrigation water supply.

B. RSCVA operates the Wildcreek Golf Course and desires to improve golf course operations and conditions through the acquisition of a more reliable source of irrigation water.

C. RSCVA desires to purchase from City certain designated quantities of treated effluent to irrigate the Wildcreek Golf Course in lieu of using water diverted from the Truckee River via the Orr Ditch.

D. City is willing to sell treated effluent to RSCVA and to construct a pipeline to the Wildcreek Golf Course for the delivery of said treated effluent.

E. County holds title on behalf of RSCVA to at least 500 acre feet of valid, decreed Truckee River water rights.

F. County is willing to transfer and convey to City from the water rights referenced in Recital "E" a number of said water rights equal to the amount of treated effluent delivered to RSCVA by City.

AGREEMENT

NOW, THEREFORE, based upon the foregoing and the mutual covenants contained herein, the parties hereto do agree as follows:

1. SALE OF TREATED EFFLUENT. Beginning on April 1, 1997, or as soon thereafter as allowed by the delivery pipeline construction and/or the issuance of all required permits by any regulatory authority having jurisdiction over the construction and operation of City's effluent reuse system or associated water rights, City agrees to sell annually to RSCVA not more than 500 acre feet of treated effluent for use as irrigation water only at Wildcreek Golf Course.

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2. TERM AND TIME FOR DELIVERIES.

- a. City agrees to deliver treated effluent to RSCVA for a term of 25 years commencing on or about April 1, 1997 and ending March 31, 2022.
- b. City agrees to provide RSCVA with treated effluent at Wildcreek Golf Course between April 1 and October 31 of each year during the term of this agreement.

3. METER INSTALLATION. City agrees to install a meter at an appropriate location to measure instantaneous flow and cumulative flow to RSCVA and to report such flow data at least monthly to RSCVA.

4. ADDITIONAL TEMPORARY FLOWS. City agrees to make available to RSCVA additional temporary flows of treated effluent above the 500 acre feet referenced in paragraph 1. if (a) sufficient treated effluent is available to City, (b) additional water rights in an amount equal to the amount of additional effluent delivered have been transferred and conveyed to City and © the special rate referenced in paragraph 10. is paid to City for additional treated effluent temporarily delivered to RSCVA in excess of 500 acre feet annually.

5. ADDITIONAL REGULAR FLOWS. If RSCVA should desire to purchase more than 500 acre feet annually of treated effluent annually on a regular, continuing basis, City agrees to renegotiate those portions of this agreement relating to the maximum amount of treated effluent to be delivered and the purchase price of said amount, provided that sufficient treated effluent is available to City and provided, further, that nothing contained in this paragraph is intended to allow RSCVA to purchase less than 500 acre feet annually or pay less than the then current base rate or adjusted base rate for said amount.

6. PURCHASE OF TREATED EFFLUENT AND RATES. RSCVA agrees to purchase from City 500 acre feet of treated effluent per year and pay to City a base rate of \$300,000 annually, to be paid in not less than 12 equal monthly installments. The base rate shall be adjusted at the beginning of the sixth, eleventh, sixteenth, and twenty-first years of this agreement based on the results of the percentage increase in the cost of Truckee Meadows water rights purchased and/or sold by Sierra Pacific Power Company or its successor during the preceding 5-year period. If other customers are added to the effluent reuse system and they are required to make a contribution to capital in connection with the same facilities being used to serve Wildcreek Golf Course, the rates charged under this paragraph shall be adjusted to reflect said contribution to capital so long as the total revenues to Sparks remain sufficient to meet the financing, operating, and maintenance costs of the system.

7. CONVEYANCE OF WATER RIGHTS. RSCVA and County agree to transfer and convey to City 500 acre feet of valid, decreed Truckee River water rights from Claim No. 313 and/or other claims as may be required for water ordinarily diverted from the Truckee

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River. RSCVA and County agree to cooperate with City in any proceedings before the Nevada State Engineer for changes in the point of diversion or place and manner of use of said Truckee River water rights.

8. RECONVEYANCE OF WATER RIGHTS. Upon termination of this agreement, any water rights transferred and conveyed to City by RSCVA/County shall be transferred and reconveyed by City to RSCVA/County within 30 days of said termination.

9. ANNUAL FLOW PROJECTIONS. RSCVA agrees to provide City with a projection of its required treated effluent flows on or before April 1 of each year; however, regardless of whether RSCVA anticipates using the entire 500 acre feet of flow, or a higher amount mutually agreed to, RSCVA, as part of this "take or pay" agreement will pay to City annually the entire base rate, adjusted base rate or special rate for the year in question.

10. SPECIAL RATE FOR ADDITIONAL TEMPORARY FLOWS. If City provides to RSCVA additional temporary flows of treated effluent above 500 acre feet annually under paragraph 4. above, RSCVA agrees to pay City for each additional acre foot or, fraction thereof, a rate of 125% of the average acre foot cost calculated from the then current base rate or adjusted base rate. (Example: 500 acre feet @ \$300,000 = \$600/acre foot and 125% of \$600 = \$750/acre foot.)

11. PERMITS REQUIRED OF RSCVA. RSCVA agrees to acquire, comply with and maintain in effect any and all federal, state, or local regulatory permits required for it to use treated effluent for irrigation at Wildcreek Golf Course and to use and manage the treated effluent in a manner consistent with best management practices and any approved effluent management plan in effect at the time of delivery.

12. INDEMNIFICATION. RSCVA agrees to indemnify and hold City, its officers, employees and agents harmless from any liability for damage or claims for damage for personal injury, including death, as well as for claims for property or personal damage which may arise from RSCVA's use of treated effluent for irrigation at Wildcreek Golf Course. RSCVA further agrees to defend City, its officers, employees and agents from any and all suits and actions at law or in equity for damage caused, or alleged to have been caused, by reason of RSCVA's use of treated effluent for irrigation at Wildcreek Golf Course.

13. COOPERATION WITH CITY. RSCVA and County agree to cooperate with City in obtaining any regulatory permits required of City relating to the construction and operation of its effluent reuse distribution system.

14. TERM OF PURCHASES BY RSCVA. RSCVA agrees to purchase treated effluent from City for a term of 25 years commencing on or about April 1, 1997 and ending March 31, 2022.

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15. INTERRUPTION OF DELIVERIES.

a. City shall not be liable for any failure to deliver treated effluent under the terms of this agreement due to acts of God, orders from regulatory authorities or any other cause whatsoever, except City's own voluntary act or any neglect by City to exercise reasonable care and diligence in the performance of this agreement. If delivery of treated effluent is temporarily interrupted or reduced due to one or more of the conditions set forth above, payment by RSCVA of the operations and maintenance (O&M) portion of the base rate or adjusted base rate only shall be abated beginning on the 15th day of interruption or reduction of deliveries and shall remain abated until deliveries are resumed. The O&M portion of the base rate or adjusted base rate is 5% of said rate.

b. City may temporarily interrupt or reduce deliveries of treated effluent if City determines that such interruption or reduction is necessary or desirable in case of system emergencies, or an order to install equipment in, make repairs to, make replacements within, make investigations and inspections of, or perform other maintenance work on, City's or RSCVA's facilities. Except in case of emergency and in order that RSCVA's operations will not be unreasonably interfered with, City shall give notice to RSCVA of any such interruption or reduction, the reason for such interruption or reduction, and the probable duration of such interruption or reduction to the extent of City's knowledge of the situation. City shall effect the use of temporary facilities or equipment to minimize the effect of any such interruption or reduction to the extent reasonable and appropriate.

16. SEVERABILITY. If any term or provision of this agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this agreement shall be valid and shall be enforced to the extent permitted by law.

17. ATTORNEYS' FEES. If any party hereto shall institute any action or proceeding against the other or others arising out of or relating to this agreement, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, its reasonable attorneys' fees as fixed by the court in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees.

18. ENTIRE AGREEMENT. This agreement constitutes the entire agreement among the parties hereto and integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements among the parties with respect to all or any part of the subject matter hereof.

19. SALE OF WILDCREEK GOLF COURSE. If at any time during the term of this agreement RSCVA proposes to sell Wildcreek Golf Course to another entity, RSCVA shall

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give to Sparks not less than 120 days' prior written notice of its intentions and shall thereafter consult with Sparks regarding any such proposed sale and its possible consequences.

20. ASSIGNMENT. No right, duty, responsibility or obligation arising under this agreement may be assigned by any party hereto except upon written approval of the other parties, and said approval shall not be unreasonably denied.

21. SUCCESSORS AND ASSIGNS. This agreement shall be binding upon and for the benefit of the parties, their officers, employees, agents, successors and assigns.

22. AMENDMENT OF AGREEMENT. This agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by an authorized representative of each of the parties.

23. DRAFTING OF AGREEMENT. The language of this agreement shall be construed as a whole, according to its fair meaning and intendment, and not strictly for or against any party, regardless of who drafted or was principally responsible for drafting the agreement or any specific term or condition hereof. This agreement shall be deemed to have been drafted by all the parties, and no party shall urge otherwise.

24. HEADINGS. The headings in this agreement are for convenience only. They in no way are intended to limit, alter, or affect the meaning of this agreement.

25. CONSTRUCTION AND ENFORCEMENT. This agreement shall be construed and enforced pursuant to the laws of the State of Nevada in courts of appropriate jurisdiction in the State of Nevada.

26. EFFECTIVE DATE. This agreement shall become effective when the last party hereto signs and dates said agreement.

IN WITNESS HEREOF, the parties have executed this agreement as of the last date set forth below.

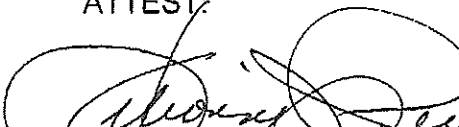
CITY OF SPARKS

By: 

BRUCE H. BRESLOW, Mayor

Date: March 4, 1996

ATTEST:


DEBORINE J. PEEBLES, City Clerk



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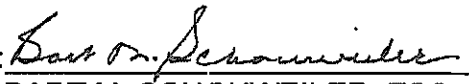
APPROVED AS TO FORM:


STEVEN P. ELLIOTT
City Attorney

RENO-SPARKS CONVENTION AND
VISITORS AUTHORITY

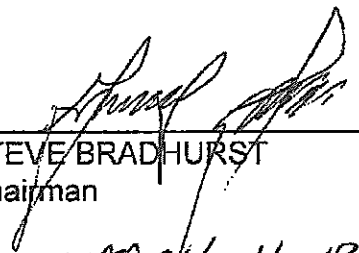
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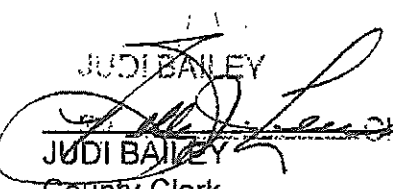
By: 
BRUCE H. BRESLOW, Chairman
Date: March 5, 1996

By: 
BART M. SCHOUWEILER, ESQ.
Authority Counsel

COUNTY OF WASHOE

ATTEST:

By: 
FOR STEVE BRADHURST
Chairman
Date: MARCH 11, 1996
meeting of Dec. 27, 1996


JUDI BAILEY
County Clerk

APPROVED AS TO FORM:

RICHARD GAMMICK
DISTRICT ATTORNEY

By: 
Deputy District Attorney

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