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DEPARTMENT OF
PUBLIC WORKS

ENGINEERING DIVISION

THOMAS M. FINLEY
ENGINEERING DIVISION MANAGER

CITY OF SACRAMENTO
CALIFORNIA

May 24, 1988

927 TENTH STREET
ROOM 200
SACRAMENTO, CA
95814-2705

916-449-8220

CONSTRUCTION SECTION
640 BERKUT DRIVE
SUITE B
SACRAMENTO, CA
95814-0131

916-449-5282

APPROVED
BY THE CITY COUNCIL

MAY 24 1988

OFFICE OF THE
CITY CLERK

City Council
Sacramento, California

Honorable Members in Session

Subject: Laguna Creek Assessment District (JN:9671) - Agreements with Sacramento County Sanitation District No. 1, Sacramento County Water Agency, and Sacramento Regional County Sanitation District

SUMMARY

Portions of the improvements for the Laguna Creek Assessment District are to be paid for by the Sacramento County Sanitation District No. 1 (CSD No. 1) and the Sacramento County Water Agency. Also, a portion of the improvements are to be constructed on Sacramento Regional County Sanitation District (SRCSD) lands. Agreements are required with CSD No. 1 and the County to establish the amounts and methods of repayments for their respective portions of the project. An agreement is required with SRCSD to establish conditions for the use of their lands. Attached is a resolution authorizing the execution of these agreements and approval is recommended.

BACKGROUND

The City of Sacramento is currently conducting assessment proceedings to provide improvements to the area north of Sheldon Road and between Franklin Boulevard and Bruceville Road known as Laguna Creek Assessment District. This area is within the City, however it is also within the service boundaries of Sacramento County. Improvements for the Laguna Creek Assessment District include the construction of sewer and drainage trunk pipelines and floodway modifications which will benefit County lands. In recognition of these benefits, CSD No. 1 and the County Water Agency, respectively, have agreed to contribute towards the design and construction of the sewer and drainage trunk pipelines and the floodway modifications. The Sacramento County Board of Supervisors approved the CSD No. 1 agreement on Tuesday, April 26, 1988 which addresses the trunk sewer facilities proposed to be constructed. The County Water Agency agreement, scheduled to be considered by the Board of Supervisors at their June 14, 1988 meeting, addresses the storm drainage and floodway improvements proposed to be constructed. These agreements have been attached for information.

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City Council
Laguna Creek Assessment District (JN:9671)
May 24, 1988
Page 2

The SRCSD agreement, scheduled to be considered by the district's Board of Directors at their June 14, 1988 meeting, addresses the conditions for use of their lands for the construction of vernal pools and a portion of the realigned floodway channel. The assessment district will compensate SRCSD for the land used for vernal pool mitigation; SRCSD will agree to operate and maintain a wetlands pump station required as a portion of the environmental mitigation at County expense. The required post-construction environmental monitoring will be paid by the Laguna Creek Maintenance District which is to be formed.

FINANCIAL

The City will not incur any cost as a result of these agreements. All costs associated with these agreements have been included with the assessment district formation.

CSD No. 1 has agreed to contribute a not-to-exceed amount of \$232,727 for the trunk sewer pipelines; the County Water Agency will agree to contribute a not-to-exceed amount of \$711,000 for drainage trunk pipelines and floodway modifications. These amounts include costs for construction, engineering, and contingencies. CSD No. 1 and the County Water Agency have reserved the necessary funds to cover these commitments.

RECOMMENDATION

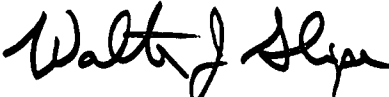
It is recommended that the City Council approve the agreements with CSD No. 1, the County Water Agency, and authorize the City Manager to negotiate and execute an agreement with SRCSD by adoption of the attached resolution.

Respectfully submitted,



THOMAS M. FINLEY
Engineering Division Manager

Recommendation Approved:



WALTER J. SLIPE
City Manager

Approved:



MELVIN H. JOHNSON
Director of Public Works

CSH:eh
ED1-11.E
05.1388.2

May 24, 1988
District 7

Attachment

246

RESOLUTION NO. 88-424

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

RESOLUTION AUTHORIZING
EXECUTION OF AGREEMENTS BETWEEN THE
CITY OF SACRAMENTO AND
THE SACRAMENTO COUNTY SANITATION DISTRICT NO. 1,
SACRAMENTO COUNTY WATER AGENCY,
AND THE SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT
TO FUND IMPROVEMENTS FOR THE LAGUNA CREEK ASSESSMENT DISTRICT
AND PERMIT USE OF SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT LANDS (JN:9671)

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. That the City Manager and City Clerk are hereby authorized to execute the agreement with the Sacramento County Sanitation District No. 1 to provide for reimbursement of costs for the construction of sewer trunkline facilities.
2. That the City Manager and City Clerk are hereby authorized to execute the agreement with the Sacramento County Water Agency to provide for reimbursement of costs for the construction of Drainage trunkline facilities and floodway modifications.
3. That the City Manager and City Clerk are hereby authorized to negotiate and execute an agreement with the Sacramento Regional County Sanitation District to allow construction of floodway modification and vernal pools on the Sacramento Regional County Sanitation District lands.

MAYOR

ATTEST:

CITY CLERK

APPROVED
BY THE CITY COUNCIL

MAY 24 1988

OFFICE OF THE
CITY CLERK

CSH:eh
ED1-11.E

RESOLUTION NO. 88-424

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3. That the City Manager and City Clerk are hereby authorized to negotiate and execute an agreement with the Sacramento Regional County Sanitation District to allow construction of floodway modification and vernal pools on the Sacramento Regional County Sanitation District lands.

MAYOR

ATTEST:

CITY CLERK

APPROVED
BY THE CITY COUNCIL

MAY 24 1988

OFFICE OF THE
CITY CLERK

June 3, 1988

Vic Scotti
Water Quality Division
9660 Ecology Lane
Sacramento, CA 95827

Dear Mr. Scotti:

On May 24, 1988, the Sacramento City Council adopted Resolution No. 88-424 authorizing the execution of City Agreement #87277, regarding Sanitary Truck Sewers at Laguna Creek Assessment District.

Enclosed, for your records, is one fully certified copy of said agreement and authorizing resolution.

Sincerely,



LORRAINE MAGANA
CITY CLERK

LM/cc/24G1
Enclosure

cc: County of Sacramento: Attention Holly
Public Works
Risk Management

COUNTY OF SACRAMENTO
Inter-Department Correspondence

May 6, 1988

AG 87279
5.24-88

TO: F. I. HODGKINS, Chief
Water Quality Division

FROM: MARGARET L. HAGERTY
Deputy County Counsel

SUBJECT: LAGUNA CREEK MODIFIED FLOOD PLAIN AGREEMENT

A draft of the subject agreement, reflecting our discussions to date is enclosed. The second sentence of Paragraph 5.4 on page 10 has been added to address Mr. Lunardini's concerns.

*Item
2463*

Margaret L. Hagerty
MARGARET L. HAGERTY

MLH:st

cc: Jim Dixon
Tom Finley

m-hodgkins

**LAGUNA CREEK MODIFIED FLOOD PLAIN
AGREEMENT**

DRAFT

THIS AGREEMENT, made and entered into this ___ day of _____, 1988, by and between SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT, a political subdivision of the State of California, (hereinafter "SRCSD"), the COUNTY OF SACRAMENTO, a political subdivision of the State of California, (hereinafter "County"), and the CITY OF SACRAMENTO, a municipal corporation, (hereinafter "City").

WITNESSETH

WHEREAS, the Laguna Creek area within City and County periodically experiences inundation from flood waters from the Laguna Creek watershed; and

WHEREAS, the Laguna Creek area within City has no drainage facilities to prevent flooding in such area; and

WHEREAS, existing City and County roads in the Laguna Creek area are periodically overtopped by flood waters, which substantially disrupt ingress and egress from such area; and

WHEREAS, City proposes to lower Laguna Creek, from Sheldon Road to approximately 4,000 feet west of Franklin Boulevard, by construction of the Laguna Creek Modified Flood Plain (hereinafter "the Project"); and

WHEREAS, such lowering of Laguna Creek is of major importance for flood control to both City and County in the Laguna Creek area east of Franklin Boulevard; and

WHEREAS, the Project proposed on the west side of Franklin Boulevard is located on SRCSD Regional Wastewater Treatment Plant buffer lands (hereinafter "the Buffer Lands"); and

WHEREAS, construction of the Project will eliminate some vernal pool areas outside the Buffer Lands; and

WHEREAS, City proposes to mitigate such loss of vernal pool areas by the construction of replacement vernal pools, including approximately 37.029 acres of vernal pool sites on the Buffer Lands; and

WHEREAS, the lowering of Laguna Creek under the Project will interrupt the current regime that periodically irrigates an existing wetlands site on the Buffer Lands, said site having been created by SRCSD as a mitigation for prior SRCSD construction; and

WHEREAS, City proposes to construct an irrigation pump station and drainage pipeline on the Buffer Lands, to irrigate said existing wetlands; and

WHEREAS, City is preparing contract plans and specifications for construction of the Project, which shall include, inter alia, the aforementioned lowering of Laguna Creek, replacement of vernal pools, and wetlands irrigation pump station and discharge pipeline, as well as the planting of native tree species, native grasses and native flowers within the Buffer Lands; and

WHEREAS, County and SRCSD have reviewed City's preliminary plans for the Project; and

WHEREAS, City proposes to form the Laguna Creek Assessment District for the purpose of constructing the Project; and

WHEREAS, City proposes to form the Laguna Creek Maintenance District for the purpose of performing the City's maintenance and monitoring obligations in connection with the Project, including

implementation of the "Laguna Creek Assessment District Final Wetlands Mitigation Program", dated January, 1988, prepared for City by Zentner and Zentner, and approved by the U.S. Army Corps of Engineers by letter dated February 19, 1988, (hereafter "The Mitigation Program"), insofar as such program relates to maintenance and monitoring of trees, landscaping, and vernal pools within the Project.

NOW, THEREFORE, for and in consideration of the promises, conditions, and covenants set forth hereinbelow, SRCSD, County, and City hereby agree as follows:

ARTICLE 1

PROJECT PLANS AND CONSTRUCTION

1.1. City shall prepare, at City's sole cost and expense, final plans and specifications setting forth all necessary elements for construction of the Project, including, without limitation, the lowering of Laguna Creek, the replacement of vernal pools, construction of an irrigation pump station and discharge pipeline on wetlands situated on the Buffer Lands, and the planting of native tree species, native grasses, and native flowers within the Buffer Lands, (hereinafter "the Final Plans").

1.2. Prior to award of the contract for construction of the Project, City shall submit the Final Plans for review and approval by the Director of Public Works of County (hereinafter "the Director") and the District Engineer of SRCSD (hereinafter "the District Engineer").

1.3. Neither SRCSD nor County shall be further bound hereunder unless and until the Final Plans are approved in

writing by both the Director and the District Engineer. In the event that such approval is denied, this agreement shall thereupon terminate in accordance with Section 4.2 hereof.

1.4. Any change to the Final Plans approved pursuant to Paragraph 1.3 hereof that directly or indirectly affects SRCSD property, shall require the written approval of both the Director and the District Engineer, or their respective designee.

1.5. Neither County nor SRCSD, their respective officers, agents, or employees, shall be deemed liable for any defect in Project design or construction, whether latent or patent, by reason of any approval given pursuant to Section 1.3 or 1.4 hereof, inspection of the Project work, acceptance of any part thereof, or otherwise.

1.6. City shall cause the Project to be constructed, without any cost or expense to SRCSD, in accordance with the approved Final Plans, the United States Department of the Army Permit No. 9570, dated November 17, 1987, issued to City by the Sacramento District Corps of Engineers (hereinafter "the 404 Permit"), and any other applicable laws, regulations or permits.

1.7. Project landscaping within the Buffer Lands shall consist of native tree species, native grasses, and native flowers. Such grasses and flowers shall each be of a type which normally grows rapidly, in order to cover and protect exposed earth surfaces.

1.8. Upon written notice as provided for commencement of construction in the approved Final Plans, SRCSD shall provide City, its officers, agents, and employees, with such ingress and

gress on SRCSD property as may be required for construction and maintenance of the Project upon the Buffer Lands.

1.9 It is the intent of the parties hereto that City shall cause the Project to be constructed upon the Buffer Lands in accordance with the Final Plans, as approved pursuant to Paragraphs 1.3 and 1.4 hereof. City shall not accept the Project work from its construction contractor prior to obtaining the District Engineer's written acceptance of such work insofar as it is constructed upon the Buffer Lands. Should City fail to perform its obligations under this Section 1.9, SRCSD's remedies against City shall include, without limitation, the right to cause completion of the Project work upon the Buffer Lands in accordance with said Final Plans, at City's sole cost and expense. In such event, City shall pay SRCSD's actual costs incurred for such completion, upon demand by SRCSD.

ARTICLE 2

EASEMENTS

2.1. City shall cause the proposed vernal pool easements on the Buffer Lands, as shown generally on Exhibit "A", and more particularly described by Exhibit "B", both of which Exhibits are attached hereto and made a part hereof, to be appraised, at City's sole cost and expense, by an independent real property appraiser acceptable to the District Engineer and to City. City shall furnish SRCSD with a written copy of such appraisal. Upon payment by City to SRCSD of the fair market value of such vernal pool easements, as determined by such appraiser, SRCSD shall, by deed, convey such easements to City for the purpose of

construction pursuant to the Project, and the subsequent maintenance and monitoring by City, in accordance with the Mitigation Program, of vernal pools upon the Buffer Lands. City has, or will, make its own investigation of the land comprising said vernal pool easements, and shall make its own deductions and conclusions as to the suitability thereof for construction of vernal pools therein pursuant to the Project, and the subsequent maintenance and monitoring thereof as provided herein. SRCSD makes no representation or warranty respecting such matters, and City accepts full responsibility with respect thereto.

2.2. Upon completion of Project construction upon the Buffer Lands, and acceptance thereof by SRCSD, SRCSD shall, by deed, convey to County a drainage easement, as shown generally on Exhibit "A" hereto, and more particularly described by Exhibit "C" attached hereto and made a part hereof. The construction of the Project upon the Buffer Lands, including, without limitation, distribution upon the Buffer Lands of all spoil excavated therefrom, together with the promises, conditions, and covenants set forth herein, shall constitute good, valuable, and complete consideration to SRCSD for conveyance of such drainage easement to County.

ARTICLE 3

MAINTENANCE AND UTILITIES

3.1. City shall maintain and monitor, at City's sole cost and expense, the vernal pools constructed pursuant to the Project within the easement described by Exhibit "B" hereto, in accordance with the 404 Permit, and any other required permit.

City shall perform such maintenance and monitoring in accordance with the 404 Permit, and any other required permit, for a period of not less than five (5) years following completion of such construction.

3.2. City shall, at City's sole cost and expense, maintain the native trees planted within the Buffer Lands pursuant to the Project, for three years following completion and acceptance of the Project.

3.3. SRCSD shall, at County's sole cost and expense, maintain the wetlands irrigation pump station and discharge pipeline constructed pursuant to the Project upon the Buffer Lands. County shall pay SRCSD the latter's costs of such maintenance, including, without limitation, repairs, replacements, enhancements, adjustments, lubrication, inspection, parts, supplies, labor, overhead, and equipment. County shall pay SRCSD such costs annually, in advance, based upon an estimate furnished by SRCSD. Such estimate shall include an annual inflationary factor, based upon the average of the 20 cities Engineering News-Record construction cost index and the San Francisco Engineering News-Record construction cost index for the prior calendar year. SRCSD shall issue a billing for such costs to County, annually, on or before March 1, which shall be due and payable by County within sixty (60) calendar days thereafter. Provided, however, should such maintenance by SRCSD initially commence later than January 1 of a given year, SRCSD shall bill County for such costs estimated for such partial year, which billing shall be due and payable by County within sixty (60)

calendar days thereafter. SRCSD may adjust its annual billing as deemed necessary by the District Engineer, in his sole discretion, to reflect actual costs incurred by SRCSD and its reasonably anticipated expenses.

3.4. All electrical power utilized for operation of the wetlands irrigation pump station shall be measured by separate meter installed pursuant to the Project, and the actual cost thereof shall be timely paid by County. County shall make arrangements with the utility furnishing such power for such costs to be billed by such utility directly to County.

3.5. County's obligations to make the payments prescribed by Sections 3.3 and 3.4 hereof shall continue until such time, if any, that the District Engineer determines, in his sole discretion, that the wetlands irrigation pump station is no longer necessary or desirable.

3.6. County shall maintain the floodway within the drainage easement described by Exhibit "C" hereto at County's sole cost and expense, in a manner consistent with County's flood protection objectives, while recognizing and furthering to the extent reasonably possible, environmental and aesthetic considerations respecting the native plants and wildlife therein. County shall use reasonable efforts to avoid damaging the vernal pools located within the easement described by Exhibit "B" hereto. If damaged due to County's negligence, County shall restore the vernal pool in accordance with the Mitigation Program.

3.7. SRCSD shall use reasonable efforts to avoid damaging the vernal pools located within the easement described by Exhibit "B" hereto. If damaged due to SRCSD's negligence, SRCSD shall restore the vernal pool in accordance with the Mitigation Program.

ARTICLE 4

EARLY TERMINATION

4.1. City may, at its sole discretion, terminate this Agreement prior to award of the contract for construction of the Project, upon written notice to SRCSD and County.

4.2. This Agreement shall terminate upon written notice to City that either the Director or the District Engineer has determined that approval of the Final Plans pursuant to Section 1.3 hereof shall be denied. In such event, the Director, and/or the District Engineer, as applicable, shall provide such notice.

4.3. In the event of early termination of this Agreement pursuant to either Section 4.1 or 4.2 hereof, the respective parties hereto shall neither have nor assert any right, claim, or cause of action against any other party for any loss, cost, or expense incurred by reason of this Agreement, or such termination hereof.

ARTICLE 5

INDEMNIFICATION

5.1. City shall indemnify, defend and hold harmless SRCSD and County, and each of them, their respective officers, agents and employees, from and against any and all loss, cost, damage, expense, claim, demand or liability arising from any injury to

any person or damage to any property, occurring by reason of the negligence of City, its officers, agents, or employees, under or in connection with this Agreement, the design and/or construction of the Project, or any other obligation or matter within City's jurisdiction with respect thereto.

5.2. Except as to matters described by Section 1.5, SRCSD shall indemnify, hold harmless and defend City, its officers, agents and employees, from and against any and all loss, cost, damage, expense, claim, demand or liability arising from any injury to any person or damage to any property occurring by reason of the negligence of SRCSD, its officers, agents or employees in the performance of this Agreement.

5.3. Except as to matters described by Section 1.5, County shall indemnify, hold harmless and defend City, its officers, agents and employees, from and against any and all loss, cost, damage, expense, claim, demand or liability arising from any injury to any person or damage to any property occurring by reason of the negligence of County, its officers, agents or employees in the performance of this Agreement.

5.4 The parties' respective obligations under this Article 5 shall survive for all applicable statutes of limitations. Provided, however, the parties do not intend, and shall not be deemed, to agree to indemnify, defend or hold harmless any person, firm, corporation or entity who is neither a party to this Agreement nor expressly described by Paragraphs 5.1, 5.2 or 5.3 hereof.

5.5 Should any court of competent jurisdiction or any governmental agency having jurisdiction of the matter require any mitigation measure of any kind or character as a result of the design or construction of the Project on the Buffer Lands, and responsibility for such mitigation is not expressly provided for herein, County shall, at its sole cost and expense, satisfy all such requirements.

ARTICLE 6

ASSIGNMENT BY CITY

6.1. County and SRCSD acknowledge that City intends to create an assessment district to be known as the Laguna Creek Assessment District, for the purpose of constructing the Project in accordance with this Agreement. Said parties further acknowledge that City intends to create a maintenance district, to be known as the Laguna Creek Maintenance District, for the purpose of performing City's maintenance and monitoring obligations hereunder. In the event that such assessment district and/or maintenance district are so created, City may, at City's sole discretion, assign or otherwise delegate to either such district, as applicable, any or all of City's Project construction and/or maintenance/monitoring obligations hereunder. City shall provide SRCSD and County with written notice of the occurrence of any such event.

6.2. Neither the creation of any such assessment or maintenance district, nor the assignment or delegation of any of City's obligations hereunder pursuant to Section 6.1 hereof shall operate to release City from City's obligations hereunder, or

alter the primary liability of City to make the payments required of it hereunder and to perform all other obligations to be performed by City hereunder. In the event of any such assignment or delegation, and subsequent failure of performance by either such assessment district or maintenance district, City shall resume performance of such obligations forthwith and continue the same in accordance herewith.

ARTICLE 7

NOTICES

7.1. Any notice, demand, request, consent, or approval that the respective parties hereto may or are required to give the other(s) shall be in writing, and shall be either personally delivered or sent by prepaid first class mail, addressed as follows:

To County:

Douglas M. Fraleigh
Director of Public Works
827 - 7th Street, Room 304
Sacramento, CA 95814

To SRCSD:

Douglas M. Fraleigh
District Engineer
827 - 7th Street, Room 304
Sacramento, CA 95814

To City:

Mel Johnson
Director of Public Works
915 "I" Street, Room 207
Sacramento, CA 95814

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

SACRAMENTO REGIONAL COUNTY
SANITATION DISTRICT, a
political subdivision of the
State of California

By _____
Chairperson of the Board of
Directors of Sacramento Regional
County Sanitation District

ATTEST:

"SRCSD"

Clerk of the
Board of Directors

COUNTY OF SACRAMENTO, a political
subdivision of the State of
California

By _____
Chairperson, Board of Supervisors
of Sacramento County

ATTEST:

"COUNTY"

Clerk of the
Board of Supervisors

CITY OF SACRAMENTO, a municipal
corporation

By _____

"CITY"

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy County Counsel

APPROVED AS TO FORM:

Deputy City Attorney

MLH:st