

Farmers Union Ditch
May 13th, 2014
Minutes of the Board

Board members present: Lloyd Akins, Joe Watterson, Tom Foster, Dane Vaughn, Ditch Rider, and Jerry Kiser, Attorney for FUD.

Meeting is brought to order at 6:05pm.

First order of business is the issue with the property at 9200 W. Hill Rd., Boise, Idaho regarding Fitzgerald and the claims for damage done to her property. Invoices were presented by Jerry Kiser, from Fitzgerald's attorney, J. Michael Kulchak, wanting FUD to reimburse Fitzgerald for such claims. After much discussion, it is decided that it would be in the best interest of our organization to hand this issue over to our Insurance co., Hartwell. Lisa will contact Marty Koch and send copies of said invoices over to him for his review.

Mr. John Tensen, with Boise City here to discuss with FUD the Lander Project. Mr. Tensen has met with our attorney, Mr. Jerry Kiser, to discuss the project, the timeline that it will take for this project to actually take place. It is decided that it is in the best interest of both parties, that this water be classified as class A water. It could possibly take at least 4 years to make this all work. After reviewing the draft drawn up by our attorney and Mr. Tensen, changes are discussed and another draft will be drawn up again in the near future for approval.

Some of the issues before the board, payment from Boise City to take the discharge. It is determined that the board will receive \$50,000 a year, however, there is discussion as to when the payments will start. More discussion on this later.

It is determined that the City of Boise will pay all attorney fees and other fees and cost up to \$5000.00 incurred by FUD regarding the time that is spent on this project.

Mr. Tensen then discusses the review of the river park. Simplot would like to get started on Simplot park as soon as possible. More discussion on this later as well.

This concludes the meeting for Farmers Union Ditch, and meeting is adjourned.

Lisa Harm
Secretary/Bookkeeper.

**TREATED WASTEWATER DISCHARGE
AND USE AGREEMENT(Rev. 33)**

May 14~~March 21~~, 2014

This Agreement is made and entered into as of the date of the latest signature on the signature pages of this Agreement, by and between the City of Boise City ("City") and the Farmers Union Ditch Company, Ltd ("Farmers") for the purpose of allowing the discharge of treated wastewater from the Boise City Lander Street Wastewater Treatment Facility to the Farmers Union canal.

WHEREAS, City owns, operates and maintains a public wastewater collection and treatment system which provides wastewater and collection services to City patrons; and

WHEREAS, City owns and operates two Wastewater Treatment Facilities (WWTF's), including the Lander Street WWTF located at 790 Lander Street, Boise, ID 83703, to treat collected wastewater; and

WHEREAS, Farmers owns and operates an irrigation canal, located next to the Lander Street WWTF, which provides irrigation water to properties located within the Farmers service area; and

WHEREAS, City currently discharges treated wastewater from the Lander Street WWTF to the Boise River pursuant to an NPDES discharge permit issued by the U.S. Environmental Protection Agency (EPA); and

WHEREAS, the City wishes to have the option to seasonally discharge treated wastewater to Farmers facilities as necessary to assure continued compliance with NPDES permit requirements; and

WHEREAS, Farmers desires to seasonally receive the discharge of treated wastewater from the City to assist it with meeting system irrigation demands; and

WHEREAS, City and Farmers agree that it is in the best interests of the patrons of both City and Farmers to enter into a long-term Agreement providing terms for the discharge and use of treated wastewater from the Lander Street WWTF to the Farmers Canal system.

NOW, THEREFORE, in consideration of the foregoing, it is mutually agreed by the parties that:

SECTION A – CITY OBLIGATIONS

1. City, at its sole cost, shall design, construct and maintain necessary improvements to connect the outflow of the Lander Street WWTF to the Farmers Union Canal. Connection will be made downstream of the Boise Valley Irrigation Ditch Company Diversion as shown on Exhibit "A" attached hereto. Boise shall obtain written approval

of piping and connection plans and designs from Farmers prior to beginning construction of the improvements necessary to make the connection.

2. Upon connection, the City shall be authorized to discharge up to 25 cfs of treated wastewater from April 1 through November 30 of each year of this Agreement. The City is not obligated, nor does it guarantee, to provide any treated wastewater flow to Farmers. The City shall decide, on a weekly basis, based upon WWTF flow and maintenance requirements, NPDES permit requirements or limitations or other system requirements, the amount and duration of any discharge to the Farmers canal. On a weekly basis or upon request by Farmers, City will provide Farmers ditchrider or other designated Farmers operator the estimated flow rates and duration of any anticipated treated wastewater discharge to the Farmers canal. City shall attempt to discharge to the canal as soon as water year 2020.
3. Unless otherwise agreed to in writing by the parties and approved by both EPA and the Idaho Division of Environmental Quality (DEQ), all discharged treated wastewater discharged to Farmer's shall meet or exceed the water quality requirements for Class A Recycled Water requirements as specified in IDAPA 58.01.17 Recycled Water Rules, however, it is understood that all non water quality requirements such as signage, setbacks and recycled water piping will not be applicable. The City shall also be responsible for meeting more stringent requirements if required by applicable agencies such as EPA or DEQ.
4. City, at its sole cost, will be responsible to operate and maintain all piping, pumping and other conveyance facilities from the Lander WWTF to the point of connection to the Farmers canal. City shall ensure that at all times a functioning and accurate measurement device is installed, maintained and operating downstream from the WWTF but upstream from the point of connection to the Farmers canal for purposes of measuring discharges by the city into Farmers canal. Farmers shall have the right to verify measurements performed by the city.
5. City shall comply with all City, state and federal regulations in the construction and maintenance of the connection facilities and in the discharge of treated wastewater to the Farmers Union canal.
6. City shall pay Farmers an annual maintenance assessment fee for the use of the canal. The assessment fee shall be at \$50,000.00 (fifty thousand dollars) annually or the same rate other users of the system pay on a miners inch basis based upon the City peak day flow discharged to the canal whichever is greater. The City shall monitor and record the peak daily flow rates of effluent treated wastewater to the canal. The calculation for

establishing the City annual payment to Farmers shall be as follows: (Maintenance Annual Assessment Fee \$/Miners Inch) x (50 Miners Inch/cfs) x (Peak City Daily cfs Discharge to the Canal). Following the irrigation season, the City shall calculate the make the annual maintenance assessment fee payment to Farmers on or before December 15 based upon the peak daily flow recorded during the preceding irrigation season and provide Farmers the calculation. Farmers shall send City its annual assessment in January of each year using City's calculation to determine the correct assessment amount as set forth herein (Peak Flow x Annual Assessment Fee or \$50,000.00). City shall pay its annual assessment by March 15 of each year. The assessment fee shall not be charged if the City notifies Farmers prior to January 1 that it does not intend to discharge flow to the canal in which case the City shall not be allowed to discharge to the canal during the following irrigation season.

7. The City shall conduct effluent testing in accordance with State and Federal discharge permit requirements. The test results shall be shared with Farmers via electronic media on a monthly basis. The City shall notify Farmers within 24 hours of determination that the City is out of compliance with any Class A Recycled Water quality requirement and shall take steps reasonably necessary to of the discharge permit parameters and shall immediately cease all discharges into the canal until City has established it is able to discharge within Class A permit requirements.

7.8. Up to a maximum amount of \$5,000, City agrees to pay all attorney fees, and any other fees and costs incurred by Farmers from and after April 15, 2014 in connection with the negotiation, preparation and execution of this Agreement and any related agreements and other documents, within twenty (20) days of the City receiving itemized invoices. The billing shall be sent directly to the City, attention John Tensen.

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SECTION B – FARMERS OBLIGATIONS

1. Subject to the provisions of this agreement, Farmers agrees to allow the City to do all things reasonably necessary to connect the outflow of the City Lander Street WWTF to the Farmers Union canal at a point as shown on Exhibit "A" attached hereto. Farmers shall review and provide written comment and/or approval of City prepared piping and connection plans and designs prior to the City beginning construction of the improvements necessary to make the connection. Farmers will grant the City all necessary licenses and easements to allow for construction and maintenance of the connection.

2. Upon connection, Farmers authorizes the City to discharge up to 25 cfs of treated wastewater to the Farmers Union canal from April 1 through November 30 of each year of this Agreement.
3. Farmers acknowledge the City is not obligated, nor does it guarantee, to provide any treated wastewater flow to Farmers. Farmers also acknowledge that the City needs the use of the Canal for effluent temperature mitigation and that, except for irrigation consumption, the City effluent will be in the canal to at least the diversion downstream of Pierce Park Road.

SECTION C – MISCELLANEOUS PROVISIONS

1. This Agreement shall continue in force until terminated by either party as provided herein. The term of this Agreement shall be for 25 years beginning as of the date of the latest signature on the signature pages of this Agreement. This Agreement shall, at the end of the original term, automatically be renewed for successive terms of an additional ten five (105) years unless either party Farmers provides a notice to terminate at least ten five (150) years prior to the expiration of the then current term. After the initial term of this agreement either party may terminate the agreement by giving five years advance notice of termination in writing.

~~1.~~

2. Due to the substantial up-front costs incurred by the City in making the connection and the NPDES compliance requirements, and subject to the provisions of paragraph C.1 of this agreement, during the first twenty five years of this agreement, Farmers may only terminate this agreement if 1) the City is determined to be in material breach of this contract or 2) if the discharge of treated wastewater into the Canal will require Farmers to comply with an NPDES permit for their operations or 3) the acceptance of the effluent will trigger additional requirements such as monitoring or reporting above and beyond what would be required for simply using their irrigation water rights or 4) termination is required pursuant to a legal order or 5) if the discharge of treated wastewater will cause Farmers to be in violation of any law, rule or regulation of any governmental agency having or asserting jurisdiction over Farmers and its activities. After twenty-five (25) years Farmers may terminate this Agreement by providing at least 5 years written notice to the City of intent to terminate. At termination the City will take all necessary steps, at its own expense to disconnect the City piping from the Farmer system.

3. The City may terminate this Agreement if Farmers is determined to be in material breach of this Agreement or, without cause, for any reason upon giving by providing at least one years written notice to Farmers of its intent to terminate.. at any time if City determines to

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~~terminate use of the Lander Street WWTF or, discharges by City no longer enable City to meet requirements of the Idaho Department of Environmental Quality (IDEQ) and the U.S. Environmental Protection Agency (EPA) should Farmers be in material breach or if termination is required by the EPA, IDEQ or by legal order.~~ In the event either party claims a material breach of the contract the parties shall enter into a dispute resolution process, which will include good faith negotiations to resolve the dispute and continue the terms of the Agreement.

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~~3. On or before March 1 of each year, Farmers shall inform the City in writing the maintenance assessment rate for the upcoming irrigation season.~~

4. This Agreement shall be declared null and void should the City fail to obtain written approval of the Idaho Department of Environmental Quality (IDEQ) and the U.S. Environmental Protection Agency (EPA) for the discharge of treated wastewater to the Farmers Union canal.

~~5. The City shall indemnify and save and hold harmless Farmers from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses arising or resulting from the City's obligations and performance under this Agreement and not caused by or arising out of the negligent conduct of Farmers or its employees. Notwithstanding anything herein to the contrary, nothing herein shall be construed as a waiver of City's protections afforded the City under the Idaho Tort Claims Act. City hereby agrees to defend, and save and hold harmless the Farmers from and against any and all losses, claims, actions or judgments brought or obtained against Farmers arising out of or resulting from the failure of any City's maintained structures used to connect the Lander Street WWTF to the Farmers Union canal, or documented damages or injury resulting from any City water quality or NPDES permit violations. For other claims related to the City's discharge of treated wastewater discharge to the Farmers canal, not outlined above, Farmers and the City shall jointly defend and share in all losses, claims, actions or judgments brought against Farmers and or the City. Farmers shall fully cooperate and assist City in the defense of any such claims except for financial contribution.~~

~~5.6. Farmers and City shall cooperatively shall also endeavor to educate and inform the public and Farmers its shareholders of the benefits and advantages, including the minimal risk involved, realized by Farmers and City as a result of this agreement, and the lack of risk to Farmers associated with this agreement if any shareholder questions Farmers entering into this agreement.~~

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6-7. No waiver or modification of this Agreement shall be valid unless it is in writing and signed by each of the parties hereto.

7-8. This Agreement shall be binding upon, and inure to the benefit of, the parties and their successors, assigns, heirs, legal representatives, executors and administrators.

8-9. If either party hereto shall be determined to be in material breach of any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including attorneys' fees, incurred by such party in enforcing the terms of this Agreement.

9-10. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other Agreements, whether or not in writing, between the parties with respect to the subject matter hereof.

10-11. This Agreement shall be subject to and governed by the law of the State of Idaho. Exclusive jurisdiction and venue for the interpretation and enforcement of this Agreement lies in the State Courts of the State of Idaho, in and for Ada County.

11-12. The headings in this Agreement are inserted for convenience only and shall not be considered in interpreting the provisions hereof. The recitals are a part of this Agreement and shall be considered in interpreting the provisions hereof.

12-13. If any term or provision of this Agreement shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law and it is the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall be interpreted to have the meaning which renders it valid.

13-14. All notices shall be given in writing to the other party at their address set forth below, and shall be effective upon receipt:

Farmers: Farmers Union Ditch Company, Ltd
715 N. Clover Dr. P.O. Box 1474
Boise Eagle, ID 83703616
Attn: Legal Counsel

Boise City: City of Boise
PO Box 500
Boise, ID 83701
Attention: Public Works Director

15. This Agreement shall not be effective until approved Board of Directors of the Farmers

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Union Ditch Company and by the City Council and Mayor of the City, as required by applicable law.

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14.16. Whether or not expressly set forth above, the indemnity and other similar obligations shall survive termination of this agreement.

DRAFT

THE PARTIES hereto have executed this Agreement effective as of the latest date of execution set forth below.

THE CITY OF BOISE, IDAHO

Dated _____, 2014

By: _____
David H. Bieter, Mayor

ATTEST:

City Clerk

FARMERS UNION DITCH COMPANY, Ltd

Dated _____, 2014

By: _____
Brian Harm, President

ATTEST:

Tom Foster, Secretary