

Dewatering Indemnity Agreement

This Agreement is made and entered into as of the ____ day of _____, 2013, by and between the CITY OF MANTECA, a municipal corporation ("City") and [*insert developer name*], ("Developer").

1. Background. Developer desires to construct the [*insert development project name*] ("Project") within City limits.
 - a. The Project includes the construction of public infrastructure, including underground infrastructure, which will become the property of the City upon acceptance by the Manteca City Council.
 - b. Developer desires to lower groundwater levels in the Project area to facilitate construction of the underground infrastructure.
 - c. The South San Joaquin Irrigation District (SSJID) owns and operates a system of underground conveyance and drainage facilities (facilities) that is used for distributing irrigation water to property owners. The facilities are located throughout the developed and undeveloped areas of the City, and the facilities ultimately drain to the French Camp Slough and the San Joaquin River.
 - d. Existing SSJID facilities are adjacent to the Project area. Developer desires to discharge extracted groundwater from the Project area to SSJID's facilities for disposal to the San Joaquin River.
 - e. Developer has obtained approval from the Central Valley Regional Water Quality Control Board to discharge extracted groundwater from the Project area to the San Joaquin River via SSJID's facilities. A copy of the permit is enclosed as Attachment 1 (Groundwater Discharge Permit).
 - f. SSJID desires that the City authorize the Developer to discharge extracted groundwater from the Project into SSJID facilities under the terms and conditions of the SSJID/City Storm Drainage Agreement (Drainage Agreement), dated February 14, 2006, and as amended. This Drainage Agreement contains certain water quality requirements and hydraulic capacity and availability requirements.
2. Indemnification. In return for the City granting Developer permission to discharge extracted groundwater from the Project into SSJID facilities under the terms and conditions of

the Drainage Agreement, Developer agrees to defend, indemnify and hold harmless the City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs, expenses and fees of litigation in connection therein), arising out of the performance of its Groundwater Discharge Permit or its failure to comply with any of its obligations contained in the Groundwater Discharge Permit or failure to comply with the hydraulic capacity and availability requirements in the Drainage Agreement.

3. Insurance. Developer, at Developer's own cost and expense, shall, procure and maintain, for the duration of the Agreement, the following insurance policy.
 - a. General Liability Coverage. Developer shall maintain commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
 - b. Endorsements. Each general liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:
 - i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Developer, including materials, parts or equipment furnished in connection with such work or operations.
 - ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.
 - iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.
 - v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

- vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.
- vii. Acceptable forms for Additional Insured endorsement are forms CG 20 10 10 01, CG 20 37 10 01 or earlier.
- c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Developer shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- d. Certificates of Insurance. Developer shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

4. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Manteca
 1001 W. Center Street
 Manteca, CA. 95337
 Attention: **[insert contact name]**

If to Developer: **[insert developer name]**
 [insert street address]
 [insert city, state, zip]
 Attention: **[insert contact name]**

5. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Developer. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

6. Amendments. This Agreement may be modified or amended only by a written document executed by both Developer and City and approved as to form by the City Attorney.

7. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

8. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

9. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of San Joaquin.

10. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF MANTECA:

DEVELOPER:

KAREN L. MCLAUGHLIN, CITY MANAGER

By:_____

Print Name:_____

Title:_____

ATTEST:

Address:_____

JOANN L. TILTON, CITY CLERK

Telephone No:_____

APPROVED AS TO FORM:

JOHN D. BRINTON, CITY ATTORNEY