

by and between the City of Redlands, a municipal corporation of the Sixth Class, party of the first part, and Gene Belk Fruit Packers party of the second part,

WITNESSETH:

1. Party of the first part in consideration of the surrender and cancellation to it of its contract dated 15 Dec 1980 wherein first party there in and herein is required to deliver to Jesse J. Umali and Belle P. Umali, husband and wife, as joint tenants one hundred (100) day inches of water each thirty days under the terms and conditions therein recited

does hereby covenant and agree with second part y to perpetually sell and deliver water to second part y and does hereby grant to second part y the perpetual right to have and receive water from the water system of first party, upon and subject to the following terms and conditions:

(a) QUANTITY OF WATER

The irrigating season of each year shall commence on the first day of May and extend to the 31st day of October, which season of time shall be divided into periods of thirty days each, the surplus days to come onto the last period. The maximum quantity of water which first party shall be required to deliver in each irrigation period of thirty days shall not exceed the equivalent of a flow of

----- One Hundred (100) -----
day inches of water for a period of twenty-four hours. (For the purpose of this contract, one day inch of water is hereby described as a one-fiftieth part of a cubic foot per second constant flow throughout a period of twenty-four hours.)

(b) PLACE OF DELIVERY

Said water shall be delivered to second part y at any regular diversion point on the Mill Creek Zanja which second part y, their assigns or nominees may direct, excepting that delivery of such water cannot be required East of Texas Street in the City of Redlands, nor West of the Mountain View Avenue in the Mission District, which District lies immediately West of and adjacent to the City of Redlands, San Bernardino County, and such delivery point may be changed from time to time upon reasonable notice being given to first party, such changes to be subject to the capacity of a pipeline which may be constructed from the Texas Street wells of first party, Westerly and in general following the course of the present Mill Creek Zanja, to or approximately to, said Mountain View Avenue. Water to be measured at delivery point. There shall be no responsibility upon first party for the con-

4 and the use of water shall be transferrable from one place to another within the area or district herein-
5 after described.

6 (c) PLACE OF USE

7 The place or places of use of all water delivered hereunder shall always be restricted and confined
8 to that certain area or district situate in the County of San Bernardino, State of California, the boundaries
9 of which are particularly described as follows, to-wit:

10 PARCEL I

11 Beginning at the intersection of the center line of Texas Street and Mill Creek Zanja; thence north
12 along the center line of Texas Street to the center line of Redlands Storm Water Drain; thence wester-
13 ly along the center line of said storm water drain to its intersection with a line passing north and south
14 through the center of Block 26, Barton Ranch; thence south along said line passing north and south
15 through the center of said Block 26 to its intersection with the center line of Citrus Avenue; thence
16 west along the center line of Citrus Avenue to its intersection with California Street; thence north
17 along the center line of California Street to its intersection with Colton Avenue; thence west along the
18 center line of Colton Avenue to its intersection with Mountain View Avenue, thence south along the
19 center line of Mountain View Avenue to its intersection with San Timoteo Creek; thence easterly along
20 the center line of San Timoteo Creek to a point 1320 feet east of the west line of Section 32, Town-
21 ship 1 South, Range 3 West; thence North 1320 feet from and parallel with the west line of said
22 Section 32 to a point 660 feet south of the center line of Barton Avenue; thence east, 660 feet from
23 and parallel with the center line of said Barton Avenue, 330 feet; thence north 1650 feet from and
24 parallel with the west line of said Section 32, to the center line of said Barton Avenue; thence east
25 along the center line of Barton Avenue to its intersection with Mill Creek Zanja at or near Tennessee
26 Street; thence along the center line of said Mill Creek Zanja to the point of beginning.

27 PARCEL II

28 Also upon that certain real property situate within said County and described as follows:

29 The south 60 acres of Lot 2, Block 72, Rancho San Bernardino, as per plat thereof recorded in the
30 office of the County Recorder of said San Bernardino County.

31 Wherever in this contract, the words "area" or "district" are used, the same shall in all cases apply
32

4 for use elsewhere than in said area or district, then first party to this contract shall have the right to sus-
5 pend the furnishing of any further water to second part y hereunder without notice.

6 Should second part y, at any time after any such suspension of delivery of water under the
7 above restriction, bring an action against first party to compel delivery of water to second part
8 under this contract, first party shall be entitled in such action as a matter of right, to a permanent in-
9 junction of the court restraining second part y from transporting and conducting any water
10 delivered hereunder out of said area or district for use elsewhere than in said area or district; and in addi-
11 tion to such restraining order or injunction, second part y shall pay to first party a reasonable attor-
12 ney's fee to be fixed by the court for defending against said action, nor shall the furnishing of water
13 hereunder be recommenced until the costs of suit, including attorney's fee, shall have been paid by second
14 part y, provided that upon such costs and attorney's fee being paid, second part y shall be
15 entitled to have the delivery of water by first party recommenced, subject to said injunction.

16 (d) PRICE AND PAYMENT

17 Charges for the delivery of all such water shall be based on whether on not the user pays
18 their proportionate share of the cost of building, constructing and maintaining a certain
19 proposed pipeline extending from the Texas Street pumping plants belonging to the City of Redlands,
20 westerly and in general following the course of the present Mill Creek Zanja to, or approximately to,
21 Mountain View Avenue, through which such water shall be delivered.

22 FIRST: To the user who pay s their proportionate share of the cost of and main-
23 tenance of said pipeline as above mentioned, first party will deliver said water as aforesaid on a base
24 price of thirty cents per day inch, but if the cost of producing and delivering water from wells now or
25 hereafter owned by first party in the vicinity of said Texas Street pumping plants of first party, shall
26 increase or decrease from the base price of thirty cents per day inch hereinbefore designated, there shall
27 be an increase or decrease of the price from thirty cents per day inch, as the case may be, such increase
28 or decrease to be determined in the manner hereinafter specified.

29 SECOND: To those users who have not paid their proportionate share of the cost of and main-
30 tenance of said pipeline as above mentioned, first party will deliver said water as aforesaid on the base
31 price of thirty cents per day inch, plus an additional charge of five cents per day inch as rental for the
32

month to second part y..... as water is used by second part y....., shall, during each irrigation season, be either one or the other of the rates hereinbefore specified, but that at the close of each irrigation season, first party shall definitely determine what its total cost has been during the irrigation season just closed of producing and delivering all water produced from said Texas Street wells or wells in that vicinity and delivered to users within the area or district herein described as place of use, and first party shall also determine the number of day inches delivered from said wells to users within said area or district. From these two figures the average season cost of one day inch of water so produced and delivered shall be determined, and if such determination discloses that said average cost exceeds or is less than the charge of thirty cents per day inch imposed during said irrigation season, then said rate of thirty cents per day inch shall be increased or decreased accordingly. At the close of each irrigation season when first party shall have definitely determined what the average cost during such season has been of producing and delivering one day inch of water hereunder to second part y..... as herein provided, if there be an increase in the price over the base price of thirty cents as herein provided, the number of day inches of water delivered by first party to second part y..... during such season shall be multiplied by such increased price over and above thirty cents per day inch, and first party shall bill second part y..... for such additional sum, and second part y..... shall pay the same within thirty days after presentation of statement, or should there be a decrease in such price, then first party shall, in the same manner determine the total amount of such decrease and shall, within thirty days after making such determination, refund to second part y..... the difference to which said second part y..... entitled over the amount thus determined as the cost of production and delivery and the amount actually paid by second part y..... For the purposes of this contract, the term "cost of production and delivery" of water from said Texas Street wells or wells in that vicinity owned or operated by first party to furnish water hereunder, shall be the proportion of production and delivery cost that the quantity of water furnished from said wells to second part y..... hereunder bears to the total quantity of water produced from all wells owned or operated by first party at said Texas Street plant, from which any water whatsoever is furnished to users within said area or district and to first party as a common source, such proportionate cost to be based on the following cost items:

(A) All power costs and charges.

4 compensation and liability insurance on employees or the public.

5 (E) Depreciation on pumping plant, equipment, wells and buildings at the following rates:

6 Concrete buildings	2% of cost per year
7 All other buildings	5% of cost per year
8 Wells	3% of cost per year
9 Pumps	10% of cost per year
10 Electrical equipment	5% of cost per year
11 Power equipment other than electrical	15% of cost per year

12 (F) All taxes or assessments of whatsoever nature that may be levied and assessed against the
13 wells, pumps, pumping plant, machinery, equipment, and other personal property used in connection
14 therewith, but not taxes levied against the real property on which the same may be situated.

15 Provided, however, that whenever the depreciation charges herein set forth shall have repaid to
16 first party its original capital investment in wells, pumps, pumping equipment, plants and buildings, and
17 any additions made in such capital investment, and first party shall have collected a depreciation fund
18 equivalent to all of its capital investment in such wells, pumps, pumping equipment, plants and build-
19 ings, there shall be no further depreciation charges made until such time as further capital expenditures
20 are made by first party, but upon such further capital expenditures being made by first party, then depre-
21 ciation charges, at the rates hereinbefore set forth shall recommence; likewise, interest charges thereon
22 as provided in subdivision (G) of this paragraph until such time as such capital investment is again re-
23 paid to first party. And similarly, throughout the life of this contract, there shall be depreciation charges
24 made only at such times as first party has a capital investment in said wells, pumps, pumping equipment,
25 pumping plants and houses which has not been repaid to it by means of said depreciation charges.

26 (G) Simple interest at the rate of 6% per year shall be charged by first party on its invested
27 capital in pumping plants, equipment, houses and wells, less the annual depreciation charged off at the
28 rates hereinabove given. (Capital Investment shall not exceed the amount of money that is necessary
29 to install the wells and equipment sufficient to supply water to the parties entitled thereto in the area or
30 district herein described.)

31 (H) Maintenance of wells, pumping plants, equipment and houses. This item to include all ex-
32 penditures for the maintenance of said wells, pumps, pumping plants and houses at an economical and

4 second party as to any item of said production and delivery cost of said water each party to this
5 contract shall select an arbitrator and the question in dispute shall be submitted in writing by each of the
6 two parties to this contract to the said arbitrators. Any decision regarding said disputed matter arrived
7 at and determined upon by the said two arbitrators shall be final and shall be accepted by both parties to
8 this contract, but in the event the two arbitrators are unable to decide said matter, then they (the arbi-
9 trators) shall select a third, and after reviewing said question in dispute, the decision of any two of said
10 arbitrators shall be final and conclusive upon the parties to this contract.

11 Bills for water delivered are to be rendered monthly by first party and payment thereof made with-
12 in thirty days after presentation of statement, and if not so paid, such bills shall become delinquent.
13 First party reserves the right to discontinue service to second party during such delinquency,
14 but upon payment of all delinquent bills, together with interest on balance due from date of delinquency
15 to date of payment at the rate of one per cent per month, service shall be re-established until another
16 delinquency occurs.

17 In addition to all other rights reserved herein by first party to enforce payment for water delivered
18 to second party hereunder, first party shall have the right to bring suit against said second
19 party for the amount of such delinquent bill or bills and interest thereon as herein specified, to-
20 gether with costs, including a reasonable attorney's fee to be fixed by the Court in which such suit may
21 be brought.

22 Provided, however, that those water users who have not paid their proportionate share of the cost
23 of said pipeline, may at any time, purchase an interest in said pipeline from the first party herein which
24 will entitle them to delivery of water under this contract at the thirty cent rate for production and de-
25 livery by paying to the said first party their proportionate share of the cost of said pipeline, such propor-
26 tionate share to be determined upon an acreage basis, that is to say, the total cost of constructing said
27 pipeline shall be divided by the number of irrigable acres within the area or district hereinbefore de-
28 scribed, thus fixing the cost per acre of building said pipeline; and in the event such water user deter-
29 mines to come under the thirty cent rate class herein provided for, they shall pay to first
30 party the initial acreage cost of constructing said pipeline (less a depreciation allowance of 2% per year
31 of the total cost of construction, from date of construction to date of payment) multiplied by the
32 number of acres of irrigable land which the said water user desires to put under the thirty cent rate

they are entitled hereunder and such failure does not arise from any fault or negligence of first party, then, and in that event, such failure shall not entitle the said second part Y to receive, at any time thereafter any such deficiency of water, to the end that no right to cumulate any water deliverable hereunder shall accrue to said second part Y beyond any thirty day period hereinbefore designated. Provided further, if said second party should, at any time receive water from first party in excess of the quantity first party is obligated to deliver hereunder, said second party agree that they shall not acquire, nor will they ever assert any claim to any right to the continued use or delivery of such excess water, and any such use or delivery of such excess water shall always be deemed permissive and not adverse to first party.

(f) WINTER WATER.

Second part Y may in the winter months or non-irrigation season of each year, demand and receive from first party, water to be used for irrigation purposes in the district hereinbefore described upon second part Y giving to first party notice in writing not less than five days before the date on which delivery of such water is required, the place of delivery to be limited to place or places designated in paragraph letter (b) of this contract, and the maximum quantity of water which second party can require in any one period of thirty days shall not exceed the maximum quantity specified in paragraph lettered (a) of this contract. The price which second party shall pay to first party for such water delivered in the non-irrigation season shall be determined on the base rate hereinbefore designated, with the allowance for increase or decrease from such base rate as said water rate has been increased or decreased to second part Y for the water delivered during the irrigation season immediately preceding the time of delivery of such water during the winter season or non-irrigation months. (Excepting as amended in paragraph J, page 9 hereof).

(g) ORDERING WATER AND FIXING SCHEDULE OF DELIVERY

Second part Y shall, yearly, on or before April 1st of each year, notify the Water Department of first party in writing as to the second part Y estimated monthly requirements of irrigation water for the ensuing irrigation season, also as to the approximate monthly date or dates of delivery best suited to second part Y need, and the points of delivery of such water, but first party reserves the right to fix the irrigation schedule of all of its water users in the above described area in order to accommodate the delivery of water to its delivery system, but that the dates and periods of delivery

4 irrigation season, and during the non-irrigation or winter months delivery to commence at such daylight
5 hour as first party may designate. The maximum quantity of water which second part y
6 shall have the right to demand from first party in any one irrigation period of thirty days is fixed in
7 paragraph (a) above, but should second part y in any one irrigation period, desire more water
8 for use than has been ordered for that particular period and should second part y be entitled to
9 additional water under the provisions of paragraph (a), than that ordered, then such additional water
10 may be ordered from first party and delivery thereof shall be made by first party to second part y
11 during such period of time if the delivery system of first party be of sufficient capacity to make such
12 delivery. Provided, that such order shall be given in writing to said Water Department at least 24
13 hours prior to time of required delivery. The only excuse which will permit non-delivery of such
14 additional water, up to the maximum quantity herein specified, by first party to second part y
15 shall be the lack of capacity in such delivery system to accommodate such water, or inability to pro-
16 duce the same owing to broken machinery or pipeline or shortage of power. Second part y
17 may at any time by giving at least 24 hours written notice to said Water Department, reduce to any
18 extent any such monthly requirement.

19 (h) SOURCE OF SUPPLY

20 First party reserves the right to furnish said water from any available water which it may have
21 or which may now or hereafter be at its disposal and only covenants and agrees that said water shall
22 be reasonably free from detritus, but does not agree to furnish water sufficiently pure for drinking or
23 household purposes.

24 (i) UNFORSEEN CONDITIONS OR ACTS

25 In the event of storms, washouts, earthquakes, or any other unforeseen contingencies over which
26 first party has no control, taking place, which result in damage to first party's pumping plant or delivery
27 system or in the event of shortage of power, any of which events at any time interfere with, hinder or
28 stop the delivery of water hereunder temporarily, first party shall not be held responsible or liable for the
29 non-delivery of water on scheduled time as herein specified, nor shall first party be held liable or respon-
30 sible for accident, labor strikes, walkouts, breakdown, breakage, sanding of wells or any other unfore-
31 seen condition resulting in inability of first party to make delivery of water hereunder on scheduled
32 time, but first party shall, no matter what may be the cause of such interference with the pumping and

to second part y. In the event of delivery of water ceasing hereunder from some unfore-
seen cause over which first party has no control, the schedule of delivery under which second part y
is receiving water shall be advanced the number of days or fractions of days required
by first party to re-establish its system and recommence the delivery of water hereunder, but no liability
shall rest on first party for any interference with such delivery to second part y, excepting failure
to use reasonable diligence to re-establish its pumping and delivery system.

This Agreement and every covenant herein contained to be performed by first and second parties
respectively, are expressly made for the benefit of and shall inure to, the benefit of and be binding
upon the successors and assigns of first party and to and upon the heirs, administrators, executors, suc-
cessors and assigns of second part y.

J. Provided, however, that whenever during the winter months or non-irrigation season, there is
a surplus of water running in Mill Creek, irrigation water, limited to quantity and points of delivery
as herein defined, shall on demand of second part y, be delivered to second part y at the
rate of 10 cents for each and every day inch of water so delivered.

K. Provided, that should said wells or any source of supply from which water is being furnished
hereunder, fail to function and delivery of water hereunder cease for a period of more than five days,
then delivery from some other source must be recommenced by first party not later than five days after
the cessation of delivery. The purpose of this provision being that irrigation shall not be suspended at
any time, when water is demanded hereunder for a longer period of time than five days from any cause
whatsoever.

IN WITNESS WHEREOF the duly constituted officers of first party, thereunto duly authorized
by proper resolution of its board of Trustees, have hereunto set their hands and seals and the second
parties have hereunto subscribed their names the day and year first herein written.

CITY OF REDLANDS,

By

[Signature]

Mayor

Attest:

Beatriz Sanchez

Deputy City Clerk.

[Signature]