

RESOLUTION 85-118

A RESOLUTION APPROVING AGREEMENT NO. CH20 BETWEEN INTERMOUNTAIN POWER AGENCY AND DELTA CITY RELATING TO REPAIRS AND WARRANTIES ON THE WHITE SAGE REGIONAL PARK AND ACCEPTING DEDICATION TO DELTA CITY OF SAID PARK.

RECITALS

The City Council of the City of Delta, Utah, referred to herein as the "City Council", hereby recites the following as the basis for adopting this resolution:

A. Intermountain Power Agency, referred to herein as "IPA", has constructed a park commonly known as the "White Sage Regional Park" within the White Sage Annexation to Delta City and has offered to dedicate said park to Delta City.

B. The City Council, by Resolution 84-113, adopted August 27, 1984, agreed to accept dedication of the White Sage Regional Park after an agreement was prepared to provide for completion of major repairs and reinstallation of the structural and landscaping improvements to the park and for warranty of those improvements.

C. IPA has undertaken in good faith to repair and correct defects in the design and construction of the White Sage Regional Park and has planted and restored vegetation damaged or destroyed by the original design and construction. The City Council acknowledges that such work has been substantially completed in accordance with the commitments and representations made by representatives of IPA.

D. An agreement entitled "Agreement No. CH 20 Between Intermountain Power Agency and Delta City - Repairs and Warranty - Delta Regional Park" has been negotiated and drafted between Delta City and IPA setting out the duties and obligations of each respective party relative to the White Sage Regional Park and providing for warranties on the work completed by IPA.

E. The City Council has determined that the work completed to date and the agreement referred to above substantially comply with the requirements of Resolution 84-113. The City Council has further determined that it will accept dedication of the White Sage Regional Park and has approved declaration of its intent.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Delta, Utah:

1. Agreement Approved. The agreement entitled "Agreement No. CH 20 Between Intermountain Power Agency and Delta City - Repairs and Warranty - Delta Regional Park", a copy of which is attached hereto as Exhibit "A" and is by this reference

incorporated as part of this resolution, is hereby approved and authorization is given for the Delta City Mayor and City Recorder, respectively, to execute and attest said agreement on behalf of Delta City.

2. Acceptance of Dedication. Delta City Council hereby accepts dedication of the park commonly referred to as the "White Sage Regional Park" from IPA as said park is described in the Deed of Dedication from IPA to Delta City, a copy of which is attached hereto as Exhibit "B". Authorization is hereby given for the Mayor to accept the original of said Deed of Dedication and to cause the same to be recorded in the Office of the Recorder of Millard County, Utah.

3. Conditions to Acceptance. The acceptance of dedication of the White Sage Regional Park is hereby expressly conditioned upon the agreement attached hereby as Exhibit "A" becoming effective and upon the performance by IPA of its obligations as set out in said agreement. The Delta City Manager is hereby instructed to monitor performance under the agreement and to assure completion of the obligations of IPA and Delta City as set out therein. The acceptance of dedication is further expressly conditioned upon the proper execution, acceptance and recordation of the Deed of Dedication attached hereto as Exhibit "B".

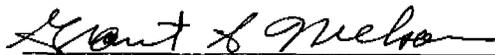
4. Designation of Park. The park dedicated and accepted hereby shall be designated and known as the "Delta City White Sage Regional Park."

5. Effective Date. This resolution shall become effective immediately upon adoption.

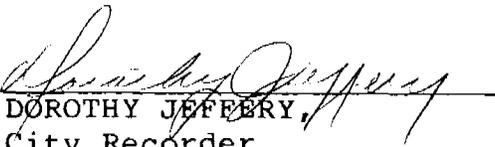
6. Severability. In the event that any portion of this resolution is held to be invalid by a court of competent jurisdiction, the portion ruled invalid or unenforceable shall be deemed severable and the remainder of this resolution shall remain in full force and effect.

7. Conflicting Resolutions. To the extent that any resolutions or policies of the City of Delta conflict with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

PASSED AND ADOPTED THIS 11 day of February, 1985.


GRANT S. NIELSON, Mayor

Attest:


DOROTHY JEFFERY,
City Recorder

New agreement
with changes was discuss this morning

AGREEMENT NO. CH 20

BETWEEN

INTERMOUNTAIN POWER AGENCY

AND

DELTA CITY

REPAIRS AND WARRANTY

DELTA REGIONAL PARK

Exhibit "A"

This Agreement entered into between Delta City, a political subdivision of the State of Utah, hereinafter referred to as "Delta" and Intermountain Power Agency, a political subdivision of the State of Utah, hereinafter referred to as "IPA", is effective upon execution by both parties. The Project Manager for the Intermountain Power Project is the Department of Water and Power of the City of Los Angeles who shall act as agent for IPA in the administration of this Agreement.

RECITALS

WHEREAS, IPA is constructing, within Millard County, the Intermountain Power Project (IPP), a 1522 megawatt coal-fueled electrical generating station and related facilities;

WHEREAS, construction and operation of IPP will create an increase in the population of Delta, such population increase will consist of the employees of IPP as well as contractors and subcontractors employed in the construction, operation and maintenance of IPP and their dependents who may relocate to Delta either temporarily or permanently, as well as a calculated ratio of others who will be induced into the area as a result of IPP;

WHEREAS, such population growth will create an increased need for public facilities and services;

WHEREAS, IPA Parties recognizes the need to provide an environment conducive to the attraction and retention of a competent IPP workforce;

WHEREAS, the IPA recognizes the necessity of providing adequate recreation facilities during the construction of IPP;

WHEREAS, IPA has constructed a park commonly known as the Delta City Regional Park which includes three lighted ball diamonds, a Community Center and other recreational facilities;

WHEREAS, it was IPA's intent to dedicate said park to Delta;

WHEREAS, Delta and IPA have previously executed Impact Alleviation Agreement No. 47, including all change orders associated therewith, wherein Delta agrees to accept park upon completion;

WHEREAS, IPA has agreed in said Impact Alleviation Agreement No. 47 to provide eighty percent (80%) of the funds for Delta's Park and Park Areas annual budgets for salaries, benefits and operating and maintenance cost associated with said budget item;

WHEREAS, Delta has operated and maintained said Delta City Regional Park since July 11, 1984;

WHEREAS, Delta passed Resolution 84-113 agreeing to accept park;

WHEREAS, Delta and IPA have previously entered into a Memorandum of Understanding regarding the terms and conditions pursuant to which Delta would accept IPA's dedication of the park; and

WHEREAS, Delta and IPA desire to formalize said Memorandum and adopt the terms and conditions set forth therein into this Agreement.

NOW, THEREFORE, IT IS AGREEMENT AS FOLLOWS:

1. A. RESPONSIBILITIES OF IPA. IPA shall perform the following:

- 1). Provide and install cover over outlet boxes on exterior of east side of concession building and on north wall of activity room on community center;
- 2). Repair crack in ceiling and ceiling in foyer near the trophy case in the community center;
- 3). Place rubber bumpers on walls in community center so that entry doors to restrooms won't hit walls;

- 4). Replace missing shingles and secure raised shingles on sides and corners of picnic shelter, community center, and concession building. This item shall be completed no later than June 30, 1985. In the event that this item is not completed by such date, Delta may undertake to perform the same and charge IPA the cost of such repair, such cost not to exceed \$450;
- 5). Re-install wind screens, at such time as may be designated by Delta, on the tennis courts;
- 6). Place sand between sidewalk and footings on north-west wall of children's playground;
- 7). Provide and install one basketball net on north basketball standard;
- 8). Turn fire hydrant located near the northeast corner of the community center so that discharge nozzle faces parking lot. This item shall be completed no later than June 30, 1985. In the event such item is not completed by such date, Delta may perform such item and charge IPA the cost thereof, such cost not to exceed \$75;
- 9). Repair pavement failure on north-west corner of parking lot;
- 10). Repair low spot in the pavement on the south-west corner of the parking lot;
- 11). Construct a sub-drain system consisting of a 4 inch diameter perforated field drain pipe, with gravel pack and fabric system. This sub-drain system shall be located along the outfield fence of the three ball diamonds. Such additional sub-drains as may be required to remove saline water shall also be constructed in the outfield areas and outside the outfield fence line;
- 12). Contour the outfield area of the three ball fields into four separate drainage area with adequate side and longitudinal slope to drain water to the sub-drain system;
- 13). Regrade each ball field to assure adequate surface drainage toward the sub-drain located near the outfield fence and place a loamy sand top soil over the contoured outfield areas;
- 14). Cap the infield areas with a suitable silty clay loam material that will not be abrasive for base sliding;
- 15). Regrade areas outside the ball fields with top soil, as necessary, to provide adequate surface drainage to the sub-drain or storm drain systems;

16). Hydroseed and/or resod the ball fields and other park areas where grass has died and/or where the park grounds are being reworked;

17). Replace dead trees and shrubs with comparable varieties of vegetation that can survive under the existing or modified soil conditions;

18). Warrant all structures against problems relating to workmanship, failure or faulty construction until July 1, 1985; and

19). Warrant the turf, shrubs and trees against damage caused by minerals in the soil and/or the lack of adequate surface and subsurface drainage until June 30, 1986.

B. RESPONSIBILITIES OF DELTA. Delta shall perform the following:

1). Inform IPA of any warranty associated problems;

2). Maintain a log during the warranty period to substantiate warranty claims;

3). Obtain written authority from IPA prior to repairing any items covered by warranty except sprinkler heads which shall be repaired immediately as required;

4). Develop and implement a maintenance program to provide for the care of trees, sod, and facilities during the warranty periods;

5). Purchase equipment for the application of fertilizer, herbicides and pesticides; and

6). Invoice IPA for adjustment items if work is performed by Delta, provided however, no invoice shall be sent to IPA prior to completion of the work.

2. DISPUTE RESOLUTION. In the event that the Parties to this Agreement cannot agree upon a warranty issue, a panel shall be formed consisting of one member appointed by IPA and one member appointed by Delta City. The two members so appointed shall agree upon a third member of the panel who shall act as chairman. The three members shall, by majority vote, determine the resolution of the disagreement and issue their decision in writing, which decision should be binding upon the parties.

3. TERM AND DURATION OF AGREEMENT. A. This Agreement shall become effective upon execution by the Parties and shall terminate as set forth in paragraphs 1.A.18 and 1.A.19, but in no event shall this Agreement remain in effect following the fiscal year of Delta in which the date of commercial operation of the last generating unit of the Project occurs.

4. ENFORCEMENT. A. This Agreement shall be enforceable by any party hereto and the prevailing party in any judicial action shall be entitled to recover the costs of such action, including a reasonable attorney's fee.

B. Notwithstanding anything in Section 3(A) to the contrary, no injunction, restraining order or other means of prohibiting, delaying or otherwise compromising the construction or operation of the Project shall be available to any party seeking judicial relief.

5. ACCEPTANCE OF PARK. Upon execution of this Agreement, Delta shall take such steps as necessary to accept IPA's offer of dedication of the park. Time is of the essence in this matter.

6. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties and the Parties agree that there exists no other understandings or agreements, either express or implied, concerning the subject matter of this Agreement.

7. AMENDMENT. This Agreement may be amended by the Parties by executing such amendment, identifying it as an amendment hereto and attaching it to this Agreement.

8. SEVERABILITY. If any part of this Agreement is determined, by a court of competent jurisdiction, to be invalid, the Parties agree to engage in a good faith effort to fulfill the intent of this Agreement. Any portion of this Agreement found to be invalid shall not affect the validity of the remainder.

9. CONSTRUCTION OF AGREEMENT. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of Utah.

10. FORCE MAJEURE. No party shall be deemed to be in default of the terms of this Agreement when a failure to perform such terms shall be due to uncontrollable forces. As used herein, "uncontrollable forces" means any cause beyond the control of the party, including, but not limited to failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by, or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority.

11. NOTICES. Except as they may be amended from time to time upon written notice to the Parties, any notice, demand, or request provided for in this Agreement shall be complete upon personal delivery or being sent by registered or certified mail, postage prepaid, to the persons specified below:

Delta City
Delta, Utah 84624
Attention City Administrator

Los Angeles Department of Water & Power
Project Manager for Intermountain Power Project
P. O. Box 111, Room 931
Los Angeles, California 90051

Attention Manager of Community Development

12. MAXIMUM AMOUNT. The maximum amount payable pursuant to this Agreement is \$525; provided however, that the Parties may, through an amendment to this Agreement, increase such amount.

APPROVED AS TO FORM:

*When Peterson
names need to
be added to
this -*

STEVEN W. ALLRED
Attorney for IPA

This Agreement has been reviewed and is recommended for execution.

ALLAN G. PITZER
Manager of Community
Development

In accordance with the authority granted the Project Manager by the IPP Coordinating Committee and the IPA Board of Directors, I hereby execute this Agreement.

Dated this ____ day of _____, 198__

JAMES H. ANTHONY
Project Director, IPP

DELTA CITY

Dated this 11 day of February, 1985

Grant Nielson
GRANT NIELSON
Mayor