

RESOLUTION NO. 93-215

A RESOLUTION APPROVING AN AMENDED MUNICIPAL WATER RIGHTS ACQUISITION AGREEMENT BETWEEN THE CITY OF DELTA, UTAH AND INTERMOUNTAIN POWER AGENCY PROVIDING FOR A WATER SUPPLY TO TERRITORIES ANNEXED INTO THE CITY OF DELTA AND SUBSEQUENTLY DEVELOPED TO PROVIDE HOUSING AND OTHER FACILITIES; ALLOWING DELTA CITY THE OPTION TO PURCHASE ANY SURPLUS WATER AVAILABLE UPON TERMINATION OF THE AGREEMENT; AND AUTHORIZING THE MAYOR TO EXECUTE THE FINAL FORM OF SAID AGREEMENT.

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:

W I T N E S S E T H

A. WHEREAS, on August 9, 1982, Intermountain Power Agency ("IPA") and Delta City entered into a "Municipal Water Rights Acquisition Agreement" which among other things, provided that IPA would make available additional water rights for Delta City to purchase to supply the increased culinary water demands resulting from new developments attributable to the Intermountain Power Project ("IPP") within Delta City's annexed areas, and pursuant thereto Delta City agreed to collect and pay over to IPA the Water Development Fees charged by Delta City for new connections onto Delta City's water system; and

B. WHEREAS, said August 9, 1982 Agreement provides for termination when the increase in population within Delta City and certain annexed territories attributable to IPP shall have reached its peak or until the first commercial operation of the final unit of IPP, whichever first occurs, except for the right of Delta City to purchase any remaining municipal water rights which IPA might determine are surplus to its needs at \$960.00 per acre-foot of water right; and

C. WHEREAS, both conditions for termination of said August 9, 1982 Agreement have occurred. However, Delta City desires to purchase and IPA is willing to sell to Delta City its remaining portion of these water rights acquired by IPA to carry out the terms of said August 9, 1982 agreement, and accordingly, the parties desire to enter into this Amended Agreement to govern the terms and conditions for further acquisition by Delta City of those municipal water rights owned by IPA; and

D. WHEREAS, Resolution No. 84-110 adopted by Delta City on July 30, 1984, as amended by Resolution No. 91-204 adopted by Delta City on November 25, 1991, fixes and prescribes a mandatory "Water Rights Acquisition and Development Fee" for each new con-

nection to Delta City's municipal water system, which will be used by Delta City to purchase the above additional municipal water rights from IPA under this Amended Agreement.

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

Section 1. Approval of Amended Municipal Water Rights Acquisition Agreement. The Amended Municipal Water Rights Acquisition Agreement between the City of Delta, Utah and IPA, an unexecuted draft of which is attached hereto as Exhibit "A", is hereby approved in substantially the form of the attached draft and authorization is given to the Mayor and City Recorder of the City of Delta, respectively, to execute and attest an agreement in substantially the form of the agreement attached hereto as Exhibit "A".

Section 2. Authorization. Authorization is hereby given to the Mayor of the City of Delta to approve the final form of the attached agreement; provided, however, that the final form of the agreement shall be substantially in the form of the draft attached hereto as Exhibit "A". The Mayor is directed to administer said agreement and to take such actions as are necessary to assure compliance thereto by Delta City and by IPA.

Section 3. Effective Date of Amended Agreement. The agreement approved hereby shall become effective as of the date it is executed by both parties thereto.

Section 4. Effective Date of Resolution. This resolution shall become effective upon adoption.

Section 5. Severability. In the event that any provision of this resolution less than the entire resolution is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such finding of invalidity shall not affect the remaining portions of this resolution.

Section 6. Captions. Captions herein are for convenience only, and neither limit nor amplify the provisions of this resolution.

Section 7. Repeal of Conflicting Resolutions. To the extent that any ordinances, 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 11TH day of January, 1993.


DON DAFQE, Mayor

Attest: 
DOROTHY JEFFERY
City Recorder

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AMENDED MUNICIPAL WATER RIGHTS
ACQUISITION AGREEMENT

THIS AMENDED AGREEMENT, is made and entered into this ____ day of _____, 1992, by and between INTERMOUNTAIN POWER AGENCY, a political subdivision of the State of Utah created pursuant to the Interlocal Co-operation Act (Chapter 13, Title 11, Utah Code Annotated 1953, as amended), with its principal office in Murray, County of Salt Lake, State of Utah, (hereinafter the "IPA") and CITY OF DELTA, a municipal corporation of the State of Utah, (hereinafter "Delta").

WITNESSETH:

WHEREAS, on August 9, 1982, IPA and Delta entered into a "Municipal Water Rights Acquisition Agreement" which among other things, provided that IPA would make available additional water rights for Delta to purchase to supply the increased culinary water demands resulting from new developments attributable to the Intermountain Power Project (hereinafter the "IPP") within Delta's annexed areas, and pursuant thereto Delta agreed to collect and pay over to IPA the Water Development Fees charged by Delta for new connections onto Delta's water system; and

WHEREAS, said August 9, 1982 agreement provides for termination when the increase in population within Delta and certain annexed territories attributable to IPP shall have reached its peak or until the first commercial operation of the final unit of IPP, whichever first occurs, except for the right

EXHIBIT A

of Delta to purchase any remaining municipal water rights which IPA might determine are surplus to its needs at \$960.00 per acre-foot (hereinafter "AF") of water right; and

WHEREAS, the water rights acquired by IPA to carry out the terms of the August 9, 1982 agreement included following:

A. The right to such quantity of water as shall be approved for municipal use in Delta by the final decision of the Utah State Engineer or the courts on judicial review thereof under a change application to be filed by IPA on the divided and exclusive right to the sole supply irrigation requirements of 228.0 acres of land evidenced by Certificate No. 7865 (68-531) (hereinafter the "S & G Water Right"). Change Application No. a12504 (68-531) covering the S & G Water Right was approved by Memorandum Decision of the Utah State Engineer on September 10, 1984 authorizing the use of up to 775.20 AF of water annually for municipal purposes within Delta. To date, IPA has conveyed to Delta a divided right to 157.56 AF of the S & G water right, and the remaining divided right to 617.64 AF of water annually under the S & G Water Right is owned by IPA.

B. The right to the use of up to 242.5 AF of the water annually as approved for municipal use in Delta by the final decision of the Utah State Engineer or the court on judicial review thereof under a change application to be filed by IPA on the divided and exclusive right to the use of 242.5 AF of water annually evidenced by Certificate of Change 9036 (68-498), as

amended by Certificate of Change a-874 (hereinafter the "Cox Water Right"). Change Application No. a12503 (68-2431) covering the Cox Water Right was approved by Memorandum Decision of Utah State Engineer on September 10, 1984 authorizing the use of 242.5 AF annually for municipal purposes within Delta. None of the Cox Water Right has been conveyed to Delta; and

WHEREAS, both conditions for termination of said August 9, 1982 have occurred, however, Delta desires to purchase and IPA is willing to sell to Delta its remaining portion of the S & G Water Right and the Cox Water Right, and accordingly, the parties desire to enter into this Amended Agreement to govern the terms and conditions for further acquisition by Delta of the foregoing municipal water rights owned by IPA; and

WHEREAS, Resolution No. 84-110 adopted by Delta on July 30, 1984, as amended by Resolution No. 91-204 adopted by Delta on November 25, 1991, fixes and prescribes a mandatory "Water Rights Acquisition and Development Fee" for each new connection to Delta's municipal water system, which will be used by Delta to purchase the above additional municipal water rights from IPA under this Amended Agreement.

NOW THEREFORE, in consideration of the mutual benefits which will accrue to the parties hereto, the parties agree as follows:

ARTICLE I

Effective Date

1. This Amended Agreement shall become effective upon the day and year first written above and shall supersede that certain "Municipal Water Rights Acquisition Agreement," dated August 9, 1982.

ARTICLE II

Water Rights Purchased and Sold

2. IPA agrees to sell and Delta agrees to purchase, in whole or in part, the following described water rights according to the terms and conditions set forth in this Amended Agreement:

(a) S & G Water Right - The remaining right to 617.64 AF of water annually evidenced by Certificate of Appropriation No. 7865 (68-531), as amended by approved Change Application No. a12504.

(b) Cox Water Right - The right to 242.5 AF of water annually evidenced by Certificate of Appropriation No. 9036 (68-498), as amended by Certificate of Change No. a-874, as further amended by approved Change Application No. a12503 (68-2431).

3. It is acknowledged that Change Application Nos. a12504 and a12503 covering the use of the S & G Water Right and Cox Water Right, respectively, for municipal purposes were approved by separate Memorandum Decision of the Utah State Engineer on September 10, 1984, and that since the approval thereof, IPA has filed and received approval from the Utah State Engineer for

extensions of time within which to submit proof of change on said applications pursuant to Utah Code Ann. § 73-3-12. In the event IPA determines it necessary to file requests for any additional extensions of time on IPA's portion of the S & G Water Right and/or the Cox Water Right, Delta shall join with IPA as a co-applicant on such additional extensions if requested to do so in writing by IPA.

ARTICLE III

Purchase Price

4. The purchase price for the water rights described in Paragraph 2 above shall be based on the unit price on Nine Hundred Sixty Dollars (\$960.00) per AF of water right.

ARTICLE IV

Conveyance and Title

5. IPA shall convey to Delta good and marketable title to the S & G Water Right and Cox Water Right as described in Paragraph 2 above in increments, by warranty deed free and clear of all liens and encumbrances, as follows:

(a) Within thirty (30) days after the date of this Amended Agreement, Delta shall pay in cash to IPA \$ _____, covering the Water Rights Acquisition and Development Fees collected by Delta since _____, 199_, and concurrently IPA shall convey to Delta _____ AF of the S & G Water Right.

(b) On June 30 of each year, Delta shall notify IPA in writing of the total amounts of Water Rights Acquisition and

Development Fees collected during the preceding year pursuant to Resolution No. 84-110, as amended by Resolution No. 91-204. Within thirty (30) days following said notice, Delta shall pay in cash to IPA an amount equal to the total of all Water Rights Acquisition and Development Fees collected during such period, and in exchange for said payment IPA shall convey to Delta that quantity of water right in AF determined by dividing the total payment by the factor of 960.

(c) The water rights conveyed by IPA to Delta pursuant to the subparagraph 5(b) above shall be first from the S & G Water Right until the balance of said right shall have been conveyed in full, and second from the Cox Water Right until said right shall have been conveyed in full.

(d) The interest, if any, earned on the Water Rights Acquisition and Development Fees collected by Delta pursuant to Resolution No. 84-110, as amended by Resolution No. 91-204, shall accrue to the benefit of Delta while held by Delta.

(e) Any portion of the S & G Water Right and/or the Cox Water Right not conveyed to Delta by IPA on the date of termination set forth in Paragraph 6 below shall be solely owned by IPA, provided, however, in the event IPA in its sole discretion determines that such unconveyed water rights in whole or in part are surplus to its needs, then and in that event, IPA shall notify Delta in writing of the quantity of such surplus water right within thirty (30) days after such date of

termination and Delta shall have the right to purchase such surplus and unconveyed water rights, in whole or in part, by paying to IPA the purchase price as fixed by Paragraph 4 above within thirty (30) days after the date of said written notice. In such event, IPA shall convey to Delta good and marketable title to the water rights so purchased by warranty deed free and clear of all encumbrances.

ARTICLE V

Termination

6. This Amended Agreement shall remain in full force and effect until July 1, 1997, and shall continue in full force and effect for successive five year periods unless terminated in writing by the parties. IPA and Delta shall have the right to unilaterally terminate this Amended Agreement by submitting written notice of termination not less than thirty (30) days prior to the expiration of the respective five year term. It is acknowledged that IPA may expand the generating capacity of the IPP by constructing a third or fourth generating unit, and should such expansion be made during the term or extended term hereof, this Amended Agreement will be modified to include provisions related to providing permanent and temporary connections to the Delta Water Distribution System attributable to such expansion. In the event that IPA decides to construct a third or fourth generating unit at IPP and the parties are unable to agree on the terms and conditions of a modification of this Amended Agreement,

IPA may terminate this Amended Agreement upon thirty (30) days written notice to Delta.

ARTICLE VI

Miscellaneous Provisions

7. Neither this Amended Agreement nor any of the rights of either party hereunder may be assigned or transferred by either party hereunder without the prior written consent of the other party, except as may be specifically permitted by the terms of this Amended Agreement.

8. This Amended Agreement shall be binding upon and inure to the benefit of any successors and assigns of the parties hereto, subject to the limitations on assignability set out in Paragraph 7 above.

9. This Amended Agreement shall be governed by and construed in accordance with the applicable laws of the State of Utah.

10. This Amended Agreement may not be effectively amended or modified except by an instrument in writing executed by the duly authorized representatives of the parties hereto.

11. If any provision of this Amended Agreement shall be held to be inoperative, illegal or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

12. In the event that either party hereto shall default, or otherwise fail to perform its obligations as hereinabove provided, the other party may pursue any remedy or remedies provided by law or equity including, but not limited to, a suit for damages, or a suit for specific performance of the terms of this Amended Agreement and/or for injunctive relief, together with costs and attorney fees incurred enforcement, whether enforcement is through judgment or by other lawful means.

13. All notices provided for in this Amended Agreement shall be sufficient and shall be deemed to have been given on the fifth (5th) day following the day on which the same has been mailed by certified mail, postage prepaid and addressed as follows:

(a) Intermountain Power Agency
480 East 6400 South
Murray, Utah 84107

(b) City of Delta, Utah
Attention: Mayor
76 North 200 West
Delta, Utah 84642

Either party hereto may, by notice given as provided in this Paragraph, designate any further or different addresses to which subsequent notices or other communications shall be sent.

IN WITNESS WHEREOF, the parties hereto have executed this Amended Agreement on the day and year first written above.

INTERMOUNTAIN POWER AGENCY

General Manager

This Amended Agreement approved by Delta City Council Resolution No. 92-_____, dated _____, 1992.

CITY OF DELTA

Mayor

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