



Staff Report

for the Board Meeting of May 26, 2021

TO: Board of Directors

FROM: Chip Close, Water Operations Manager
Thor Larsen, Water Resources Superintendent

DATE: May 6, 2021

SUBJECT: Revised Tektronix – Nevada City School of the Arts Raw Water Supply Agreement (Consent)

OPERATIONS

RECOMMENDATION:

Approve an updated agreement with the Nevada City School of the Arts for a raw water supply, and authorize the Interim General Manager to execute the appropriate documents.

BACKGROUND:

In May of 1996, the District executed an agreement with Tektronix establishing a raw water supply to multiple parcels that made up the Tektronix Campus (formerly known as the Grass Valley Group). The agreement allowed Tektronix to purchase raw water for treatment to current drinking water standards and delivery to parcels that made up their campus.

Tektronix properties have changed ownership multiple times since the original agreement execution in 1996. In addition, recent parcel splits and lot line adjustments necessitate an update the agreement.

The current owner of the Tektronix properties is the Nevada City School of the Arts (NCSA). Staff worked with NCSA to incorporate changes at the campus into an updated agreement. Staff also received input from NID legal counsel to ensure the revised agreement was up to current legal standards. NCSA has reviewed the agreement and concurs with the changes as evidenced by their signature.

BUDGETARY IMPACT:

Fees in the agreement are subject to the District's standard Inside District Municipal Water Rate established in Schedule 5R. Water demands for NCSA are not anticipated to change; therefore, execution of this agreement would not result in a marked change of the District's budget.

A cancelation of the agreement would result in a loss of revenue of roughly \$10,600 (Based upon the 2020 NCSA billings).

Attachments:

- 1996 Tektronix Contract
- Proposed 2021 Nevada City School of Arts Agreement

**CONTRACT BETWEEN NEVADA IRRIGATION DISTRICT
AND TEKTRONIX, INC.
FOR A RAW WATER SUPPLY**

THIS AGREEMENT, made and entered into this 22nd day of May, 1996, by and between NEVADA IRRIGATION DISTRICT, (District), an irrigation district organized and existing under and by virtue of the laws of the State of California and TEKTRONIX, INC., (TEK), a Corporation, organized and existing under and by virtue of the laws of the State of Oregon.

W I T N E S S E T H:

WHEREAS, District has untreated water that can be sold to TEK; and

WHEREAS, TEK wishes to purchase untreated water from District and treat same to meet current drinking water standards at its sole cost, expense and responsibility in order to supply TEK with potable water.

1. This Agreement shall be effective on the date of execution and shall continue in effect until either party through mutual consent gives written notice to the other that they wish to terminate this Agreement for cause.

2. District agrees to sell and deliver to TEK, during the term of this Agreement, such untreated water as may be ordered by TEK, subject to the availability of untreated water and capacity in District's existing conduits, for use within the present boundaries of TEK's service area (present service areas being shown in Exhibit

"A" attached hereto and made a part of this Agreement). Any extension of TEK's water service area shall not be made without written approval of District.

3. District shall measure and deliver the untreated water from its Newtown Canal to TEK through a canal service box (No. 2178) as shown on Exhibit "A", on a daily miners inch flow rate equal to the maximum daily usage of TEK's treatment plant based on the following schedule:

<u>Treatment Plant Daily Production (Gallons Per Day)</u>		<u>Daily Flow (Miners Inches)</u>		<u>Acre Feet Per Month</u>
0 to 32,320	=	2	=	3.0
32,321 to 48,480	=	3	=	4.5
48,481 to 64,640	=	4	=	6.0
64,641 to 80,800	=	5	=	7.5
80,801 to 96,960	=	6	=	9.0

TEK shall advise District in writing on January 1 each year as to the expected maximum daily production of water thru its treatment plant for the following year and provide daily treatment plant production records at the end of each month.

4. All determinations relative to the measurement of water shall be made by District, and upon request by TEK, the accuracy of such measurement shall be investigated by District. Any error appearing shall be adjusted retroactively for a period not to exceed six months, and any over collections shall be credited to future billings. If, for any reason, the measuring facilities fail to operate properly during any period of time, the amount of water delivered to TEK shall be estimated by District, from the best information available, and the District's estimate of deliveries

shall be conclusive for billing purposes. TEK may inspect such measuring device for the purpose of determining the accuracy thereof.

After such water has passed the point of delivery, as mentioned hereinabove, neither District nor its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality.

5. TEK shall pay District for the untreated water service provided at the applicable rates and charges (Schedule 5RI) as are established by the District and as they may be modified, from time to time, by action of the Board of Directors of District. Based on the rated capacity of its water treatment plant as outlined in Paragraph 3, TEK guarantees District, during the term of this Agreement, a minimum monthly payment equivalent to District's rate for three acre feet (3.0) of water. If less than the minimum amount of water is requested or delivered in any month, said minimum monthly charge shall not create a credit against charges for future deliveries of water.

It is understood and agreed that in a year which is considered or deemed to be a drought year or in a year which, in the estimation of District, rationing or curtailment of use of water is required, District in its discretion may impose a drought surcharge, and/or reduce or restrict the raw water service to TEK, in proportion to any reduction, limitation or curtailment of use of water on the distribution system serving TEK, and in addition thereto, may add any other surcharges as may be deemed appropriate and as are consistent with District's treatment of other customers similarly situated under similar circumstances.

6. Water sold and delivered hereunder is untreated water which has flowed in open canals, conduits and flumes and which has been stored in reservoirs SUCH WATER IS NOT POTABLE NOR DOES DISTRICT REPRESENT OR GUARANTEE THAT IT IS FIT FOR DOMESTIC PURPOSES. TEK shall be solely responsible at its sole cost and expense for any treatment of said water as may be required to make it safe for human consumption, and TEK agrees to hold District free and harmless, and upon demand to defend District, from any and all claims, injuries and/or damages that may result from the use of said water or from the acts or omissions of TEK in treating and distributing water.

7. TEK shall construct, operate, and maintain a water treatment facility in full compliance with all state and federal laws and regulations governing the treatment and distribution of water for domestic consumption and shall, upon demand of District, provide documentation from the appropriate state or county health officials of the treatment facilities certification for its intended purpose. The District reserves the right, upon revocation or suspension of any license or permit for the treatment plant or related facilities, to discontinue water service to said plant.

7a. TEK requests and District agrees to allow treated water to be made available by TEK to Nevada County parcel number N-52-070-48 owned by Penn Valley Fire Protection District, and contiguous to TEK property. Should TEK or its successor or assigns decide to no longer operate the aforementioned treatment facility, District shall not be responsible for providing potable water to said parcel.

8. TEK shall indemnify District, its officers, agents and

employees against all claims, loss, damage, expense and liability resulting from injury to or death to any person or persons or injury to property, arising out of the use of raw water, or in any way arising out of or connected with TEK's performance of this Agreement, including claims or loss, damage, expense and liability arising from failure or inadequacy of its treatment plant. TEK shall, on District's request, defend any suit asserting any claim covered by this indemnification. TEK shall pay all costs, as determined by the Court or through arbitration, including attorney fees, that may be incurred by the District in enforcing this indemnity and in accordance with the terms hereof. TEK shall indemnify District against all damages claimed by other water users on the theory that water diverted for TEK was not owned by TEK.

In support of this indemnity TEK shall, at TEK expense, obtain and maintain throughout the term of this agreement liability insurance in an amount of not less than one million dollars, combined limit for bodily injury and property damage arising out of any one occurrence and an aggregate policy limit of two million dollars. District, its agents and employees shall be named as additional insured under said policy of insurance, and a certificate of insurance and policy endorsements evidencing this coverage shall be provided to District. Said certificate and endorsements shall provide that District will be given thirty (30) days written notice of any change or cancellation of said policy.

9. TEK agrees on or before the 15th day of each and every month during the term of this Agreement to pay District in lawful money of the United States all sums due and owing for water furnished

during the preceding month by District to TEK pursuant to this Agreement. Failure to pay for all water and other services may, in the District's discretion, result in the discontinuance of all water service under Schedule 5RI or its successor, or under any other schedule under which water is served to TEK, including water used for nonconsumptive purposes. The District shall be under no obligation to prorate any payments made to any particular schedule or service provided to TEK. If not paid in 30 days a penalty of 10 percent will be applied to the account and water service terminated in 60 days after billing

10. TEK agrees to maintain water well(s) and/or raw water storage with sufficient capacity to meet its minimum water requirements for a minimum of 10 days during emergency outages and/or scheduled maintenance outages.

11. District agrees to use reasonable diligence to maintain service without interruption but it is recognized and agreed that snow or ice blockage, drought, canal or flume breaks, and other causes beyond the District's reasonable control may prevent such service. The parties hereto agree that District's sole obligation shall be to use its best efforts to restore water service as soon as may be feasible and District shall not be liable for damages including indirect and consequential damages arising from said shortage or interruption and District shall be covered under the indemnity set forth in Paragraph 6 for claims or damages as a result of any such interruption or in the event TEK or its water users suffer damages from not receiving adequate water supply under this Agreement.

12. This Agreement shall not create or convey any right, title or interest, legal or equitable, in or to the property, canal, water or water rights of District, nor interfere with or obstruct the full, free and unobstructed use and disposition thereof by District; and District shall have full control of the distribution of water through its system, and the right to establish and enforce such rules and regulations as it may deem expedient; and the furnishing of water hereunder shall not result in the creation of a water right or other property right in favor of TEK.

13. If any suit or action is brought to enforce or interpret the terms and provisions of this contract, the prevailing party shall be entitled to payment of its reasonable attorney fees and consultant cost incurred in such action, such cost to be allowed as additional costs, or damages, as may be determined appropriate by the Court.

In case any litigation is brought to enforce or interpret the terms and provisions of this Agreement, then it is agreed that venue for such action shall lie in the appropriate judicial district or department of the Nevada County Superior Court.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinbefore written.

TEKTRONIX, INC

By George Sturm
George Sturm

5-20-96

Director, Corporate Real Estate

NEVADA IRRIGATION DISTRICT

By Robert Budball
President 5-22-96

By S. Carol Bator
Secretary 5-22-96

**AGREEMENT BETWEEN NEVADA IRRIGATION DISTRICT
AND NEVADA CITY SCHOOL OF THE ARTS
FOR A RAW WATER SUPPLY**

THIS AGREEMENT FOR A RAW WATER SUPPLY ("Agreement"), is made and entered into by NEVADA IRRIGATION DISTRICT ("District"), A California Irrigation District organized and existing under Division 11 of the California Water Code, and Nevada City School of the Arts ("School"), a California Domestic Nonprofit Corporation organized under the Nonprofit Public Benefit Corporation Law (each a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, District has untreated water that can be sold to School;

WHEREAS, School wishes to purchase untreated water from District and treat same to meet current drinking water standards at its sole cost, expense and responsibility in order to supply School with potable water.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICENY OF WHICH IS HEREBY STIPULATED, THE PARTIES AGREE AS FOLLOWS:

1. **Term.** This Agreement shall be effective on the date of full execution, and shall continue indefinitely. The District may terminate this Agreement at any time and for any reason, including but not limited to, for nonpayment as described in Section 9, for a breach of any term of this Agreement, or for any unauthorized change to School's service area. Such termination will be consistent with applicable California law, and will be effective immediately upon delivery of written notice of termination to School.
2. **Sale of Untreated Water.** District agrees to sell and deliver to School, during the term of this Agreement, such untreated water as may be ordered by School, subject to the availability of untreated water and capacity in District's existing conduits, for use within the present boundaries of School's service area (present service areas being shown in Exhibit "A" attached hereto and made a part of this Agreement). Any change to School's water service area shall not be made without written approval of District.
3. **Measure of Water.** District shall measure and deliver the untreated water from its Newtown Canal to School through a canal service box (No. 2178), on a daily miners inch flow rate equal to the maximum daily usage of School's treatment plant based on the following schedule:

Treatment Plant Daily Production <u>(Gallons Per Day)</u>	=	<u>Daily Flow</u> <u>(Miners Inches)</u>	=	<u>Acre Feet</u> <u>Per Month</u>
0 to 32,320		2		3.0

32,321 to 48,480	=	3	=	4.5
48,481 to 64,640	=	4	=	6.0
64,641 to 80,800	=	5	=	7.5
80,801 to 96,960	=	6	=	9.0

School shall advise District in writing on January 1 each year as to the expected maximum daily production of water thru its treatment plant for the following year and provide monthly treatment plant production records at the end of each month.

4. **Measurement Inspections and Adjustments.** All determinations relative to the measurement of water shall be made by District, and upon request by School, the accuracy of such measurement shall be investigated by District. Any error appearing shall be adjusted retroactively for a period not to exceed six months, and any over collections shall be credited to future billings. If, for any reason, the measuring facilities fail to operate properly during any period of time, the amount of water delivered to School shall be estimated by District, from the best information available, and the District's estimate of deliveries shall be conclusive for billing purposes. School may inspect such measuring device for the purpose of determining the accuracy thereof.

After such water has passed the point of delivery, as mentioned hereinabove, neither District nor its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality.

5. **Rates.** School shall pay District for the untreated water service provided at the applicable rates and charges (Schedule 5R) as are established by the District and as they may be modified, from time to time, by action of the Board of Directors of District. Based on the rated capacity of its water treatment plant as outlined in Paragraph 3, School guarantees District, during the term of this Agreement, a minimum monthly payment equivalent to District's rate for three acre feet (3.0) of water. If less than the minimum amount of water is requested or delivered in any month, said minimum monthly charge shall not create a credit against charges for future deliveries of water.

It is understood and agreed that in a year which is considered or deemed to be a drought year or in a year which, in the estimation of District, rationing or curtailment of use of water is required, District in its discretion may impose a drought surcharge, and/or reduce or restrict the raw water service to School, in proportion to any reduction, limitation or curtailment of use of water on the distribution system serving School, and in addition thereto, may add any other surcharges as may be deemed appropriate and as are consistent with District's treatment of other customers similarly situated under similar circumstances.

6. **Raw Water.** Water sold and delivered hereunder is untreated water which has flowed in open canals, conduits and flumes and which has been stored in reservoirs SUCH WATER IS NOT POTABLE NOR DOES DISTRICT REPRESENT OR GUARANTEE THAT IT IS FIT FOR DOMESTIC PURPOSES. School shall be solely responsible at its sole cost and expense for any treatment of said water as may be required to make it safe for human consumption, and School agrees to hold District free and harmless, and upon demand to defend District, from any and all claims, injuries and/or damages that may result from the

use of said water or from the acts or omissions of School in treating and distributing water.

- 7. Water Treatment Facility.** School shall construct, operate, and maintain a water treatment facility in full compliance with all state and federal laws and regulations governing the treatment and distribution of water for domestic consumption and shall, upon demand of District, provide documentation from the appropriate state or county health officials of the treatment facilities certification for its intended purpose. The District reserves the right, upon revocation or suspension of any license or permit for the treatment plant or related facilities, to discontinue water service to said plant. Should School or its successor or assigns decide to no longer operate the aforementioned treatment facility, District shall not be responsible for providing potable water to any of the parcels receiving water under this Agreement.
- 8. Indemnity.** School shall defend, indemnify and hold harmless District, its officers, agents and employees against all claims, loss, damage, expense and liability resulting from injury to or death to any person or persons or injury to property, arising out of the use of raw water, or in any way arising out of or connected with School's performance of this Agreement, including claims or loss, damage, expense and liability arising from failure or inadequacy of its treatment plant. School shall, on District's request, defend any suit asserting any claim covered by this indemnification. School shall pay all costs, as determined by the Court or through arbitration, including attorney fees, that may be incurred by the District in enforcing this indemnity and in accordance with the terms hereof. School shall indemnify District against all damages claimed by other water users on the theory that water diverted for School was not owned by School.

In support of this indemnity School shall, at School expense, obtain and maintain throughout the term of this agreement liability insurance as described in Exhibit B to this Agreement. District, its agents and employees shall be named as additional insured under said policy of insurance, and a certificate of insurance and policy endorsements evidencing this coverage shall be provided to District. Said certificate and endorsements shall provide that District will be given thirty (30) days written notice of any change or cancellation of said policy.
- 9. Payment; Due Date.** School agrees on or before the 15th day of each and every month during the term of this Agreement to pay District in lawful money of the United States all sums due and owing for water furnished during the preceding month by District to School pursuant to this Agreement. Failure to pay for all water and other services may, in the District's discretion, result in the discontinuance of all water service under Schedule 5R or its successor, or under any other schedule under which water is served to School, including water used for nonconsumptive purposes. Such discontinuance of service shall be consistent with all applicable law in the state of California. The District shall be under no obligation to prorate any payments made to any particular schedule or service provided to School. If not paid in 30 days a penalty of 10 percent will be applied to the account and water service terminated in 60 days after billing.

- 10. **Emergency Supply.** School agrees to maintain water well(s) and/or raw water storage with sufficient capacity to meet its minimum water requirements for a minimum of 10 days during emergency outages and/or scheduled maintenance outages.

- 11. **Interruption of Service.** District agrees to use reasonable diligence to maintain service without interruption, but it is recognized and agreed that snow or ice blockage, drought, canal or flume breaks, and other causes beyond the District's reasonable control may prevent such service. The parties hereto agree that District's sole obligation shall be to use its best efforts to restore water service as soon as may be feasible and District shall not be liable for damages including indirect and consequential damages arising from said shortage or interruption and District shall be covered under the indemnity set forth in Paragraph 8 for claims or damages as a result of any such interruption or in the event School or its water users suffer damages from not receiving adequate water supply under this Agreement.

- 12. **Reservation of Rights.** This Agreement shall not create or convey any right, title or interest, legal or equitable, in or to the property, canal, water or water rights of District, nor interfere with or obstruct the full, free and unobstructed use and disposition thereof by District; and District shall have full control of the distribution of water through its system, and the right to establish and enforce such rules and regulations as it may deem expedient; and the furnishing of water hereunder shall not result in the creation of a water right or other property right in favor of School.

- 13. **Enforcement.** If any suit or action is brought to enforce or interpret the terms and provisions of this contract, the prevailing party shall be entitled to payment of its reasonable attorney fees and consultant cost incurred in such action, such cost to be allowed as additional costs, or damages, as may be determined appropriate by the Court.
 In case any litigation is brought to enforce or interpret the terms and provisions of this Agreement, then it is agreed that venue for such action shall lie in the appropriate judicial district or department of the Nevada County Superior Court.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement by their duly authorized officers on the dates hereinafter indicated.

Nevada Irrigation District

Dated: _____

By: _____

Name

Title

DocuSigned by: **Nevada City School of the Arts**
Melissa Brokenshire
 By: _____
32C88EDD9E134D4...

Dated: 5/6/2021

Melissa Brokenshire

Business Manager

Name

Title

Exhibit A

Service area of Nevada City School of the Arts consists of the following list of parcels, identified by APN:

052-050-031 (formerly N52-050-31-000)

052-050-030 (formerly N52-050-30-000)

052-070-071

Exhibit B

INSURANCE REQUIREMENTS

School shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement hereunder by the School, his/her agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability Insurance appropriate to the School's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

School shall maintain limits no less than:

1.	General Liability: <i>Including operations, products and completed operations.</i>	\$1,000,000	Per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2.	Automobile Liability:	\$1,000,000	Per accident for bodily injury and property damage.
3.	Employer's Liability	\$1,000,000	Per accident for bodily injury or disease.
4.	Errors & Omissions Liability:	\$1,000,000	Per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers, or (b) the School shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

Exhibit B

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The District, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the School; or automobiles owned, leased, hired or borrowed by the School.
2. For any claims related to this project, the School's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be excess of the School's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return-receipt requested, has been given to the District.

If Errors and Omissions coverage is written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of performance.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of performance under the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the School must purchase an extended period coverage for a minimum of five (5) years after completion of performance.
4. A copy of the claims reporting requirements must be submitted to the District for review.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Verification of Coverage

School shall furnish the District with original certificates and endorsements, including amendatory endorsements, effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before performance commences; however, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Waiver of Subrogation

School hereby agrees to waive subrogation which any insurer may acquire by virtue of the payment of any loss. School agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the District for all work performed by the School, its agents, employees, independent contractors and subcontractors