

Staff Report

for the Board of Directors' Meeting of June 8, 2016

TO: Board of Directors

FROM: Chip Close, Water Operations Manager
Shannon Matteoni, Business Services Technician

DATE: May 31, 2016

SUBJECT: **Water Service Rules and Regulations**
Section 6.12 Term Payments – Proposed Change

OPERATIONS DEPARTMENT

RECOMMENDATION:

Approve proposed changes to Section 6.12 Term Payments, and the related agreement

BACKGROUND:

With the development of the District Reimbursement Policy and the Backbone Extension Program, Staff felt it was appropriate to evaluate Section 6.12 Term Payment of the Water Service Rules and Regulations. Fee schedules are reviewed annually; however, the customer's ability to finance a portion of those fees has not been review since 2009.

To summarize, the major modifications include: 1) Extending the term from 5 years to 10 years, 2) Increasing the amount to finance from \$7,000 up to \$20,000, 3) All references to "Property" have been changed to "Parcel" for lien purposes, and 4) Modernization and clarity of language.

Legal Counsel has reviewed and provided many of the suggested changes based on comments from Staff.

On May 17, 2016, the Engineering Committee reviewed and discussed the proposed changes. It was highlighted during this meeting that Capacity Charges would not be included within the \$20,000 financeable amount. Since then, clarification has been received from legal counsel that NID is not prohibited from financing Capacity Charges within this Term Payment option. As a result, the policy and agreement have been modified to include Capacity Charges as appropriate.

To illustrate how often the Term Payment Agreement has been utilized in the previous six years, Customer Service provided the following summary of new treated water connections and Term Payment Agreement executed, by year:

	2010	2011	2012	2013	2014	2015	2016 (through 5/31)
New Meter Connections	118	190	105	138	137	116	26
Term Payments Executed	2	6	5	4	8	2	4

Currently, per District records, there are 1,645 active Standby Accounts. Additionally, it is reasonable to think that with the continued success of the District's BEP program, there may be an increase in the use of the Term Payment Agreement along with requests for new treated water connections.

BUDGETARY IMPACT:

Potential increase in customer base, as well as the collection of applicable fees, due to the Term Payment Agreement option

CC:sm

attachments (4):

- Proposed Section 6.12
- Original Section 6.12 – redline
- Proposed Agreement
- Original Agreement – redline

6.12

TERM PAYMENTS

The General Manager and the Finance Manager, together, are authorized to sign term payment agreements with individual property owners under the following guidelines:

(a) Up to a 120-month period and a maximum amount of up to \$20,000.00 can be authorized for District fees and charges related to a new residential treated water service including but not limited to, capacity charges, meter and backflow prevention device installation charges, and buy-in fees to improvement districts. The interest rate to be charged on all term payment agreements will be four (4) percent and such rate may be changed from time to time by the Board of Directors as economic conditions warrant. Late term payments will pay charges equal to the rate shown for the late payment penalty in Section 6.01.01 of these Regulations.

(b) Up to a 12-month repayment period can be authorized for customers to pay delinquent water account charges. A late payment penalty shall be charged at the rate shown in Section 6.01.01.

(c) The District has the right to terminate water service and remove the water meter upon failure to pay.

eff. 7/13/94; rev. 6/11/03; rev. 4/14/04; 3/25/2009

6.12

TERM PAYMENTS

The General Manager and the Finance Manager, together, are authorized to sign term payment agreements with individual property owners under the following guidelines:

(a) Up to a ~~60~~120-month period and a maximum amount of up to \$720,000.00 can be authorized for District fees and charges related to a new residential treated water service including but not limited to, capacity charges, meter and backflow prevention device installation charges, ~~culvert replacements~~ and buy-in fees to improvement districts. The interest rate to be charged on all term payment agreements will be four (4) percent and such rate may be changed from time to time by the Board of Directors as economic conditions warrant. Late term payments will pay charges equal to the rate shown for the late payment penalty in Section 6.01.01 of these Regulations.

(b) Up to a 12-month repayment period can be authorized for customers to pay delinquent water account charges. A late payment penalty shall be charged at the rate shown in Section 6.01.01.

~~(e) The Treasurer, or the Deputy Treasurer, shall conduct a credit check on applicants.~~

~~(d)~~(c) The District has the right to terminate water service and remove the water meter upon failure to pay.

eff. 7/13/94; rev. 6/11/03; rev. 4/14/04; 3/25/2009

RECORDING REQUESTED BY:

Nevada Irrigation District

WHEN RECORDED MAIL TO:

**Nevada Irrigation District
1036 W. Main Street
Grass Valley CA 95946**

APN «APN»

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GOVERNMENT BUSINESS: FREE

This is to certify that the recordation of this document is being requested by NEVADA IRRIGATION DISTRICT, a political subdivision of the State of California, pursuant to Government Code Section 6103.

AGREEMENT REGARDING DEFERRED PAYMENT OF FEES AND CHARGES

APN: «apn» County of: «County»

This agreement is made and entered into this «day» day of «month», «year», by and between NEVADA IRRIGATION DISTRICT, hereinafter referred to as “District”, and «customer_name» and «Sec_cust_name», hereinafter referred to as “Customer”.

R E C I T A L S

WHEREAS, District provides raw and treated water services to its customers; and

WHEREAS, Customer desires residential treated water service at the “PARCEL” identified as APN _____, and more particularly described in that certain document recorded on «Rec_Co_Doc_Date», in Document Number «Co_Doc_Number», «County» County records; and

WHEREAS, the charges levied for such treated water services include :

Meter Installation Fee	\$	«mtr_fee»
Capacity Fee		«capacity_fee»
Buy In Fee		«buyin_fee»
Lien Removal Fee		«lien_rmvl_fee»
		»
Standby Factor		«standby_factor»
		r»
Other: «Other_fee_descr»		«Other_fee»
Partial Payment Received		«Payment»
Total		<u>20,000</u>
	\$	

hereinafter referred to as “Connection Charges”; and

WHEREAS, Connection Charges must be paid prior to the time a parcel is eligible to receive water service, and are all due and payable prior to connection, and

WHEREAS, Customer requests that District allow installment payment of these Connection Charges under the terms set forth below;

NOW THEREFORE, the parties hereto do mutually agree upon the following terms, covenants and conditions:

1. RECITALS: The recitals contained herein are an integral part of this agreement.
2. TREATED WATER SERVICES: Customer desires District to commence treated water service immediately and to allow payment of Connection Charges owed District in installments. District shall serve treated water to Customer, prior to full payment of Connection Charges, subject to the terms and conditions of this agreement.
3. DEFERRED PAYMENT OF CHARGES: Consistent with Section 6.12 of the District's Water Service Rules and Regulations, Customer shall pay amounts of principal and interest related to the Connection Charges to District on a bi-monthly basis at an interest rate of 4% per year, for a term of _____ months.

(a) Terms of Payment: Customer shall pay District at the rate of \$«bimonthly_pymt» bi-monthly, payable on the first day of each and every billing commencing «start_date», which bi-monthly sums are inclusive of interest. Customer agrees that District may make an alteration in Customer's rate of bi-monthly payment and bill Customer accordingly.

(b) Late Payment Charge for Delinquent Payment: Payment of Connection Charges on a bi-monthly basis are due and payable upon issuance of District's billing statement and shall become delinquent fifteen (15) days after issuance. If such charges remain unpaid for a period of seven (7) weeks from such issuance, the PARCEL shall no longer be entitled to District water service and the District shall have the right to immediately discontinue water services and remove the water meter until such time as Customer makes current the amounts due and owing District. District's right to discontinue service shall exist notwithstanding that the parcel maybe paying service charges for water received when due. In addition, if not paid within eight (8) weeks of such issuance, there shall be added thereto and become a part of such charges, a late payment penalty at the rate of one and one-half percent (1 ½%) per month, eighteen percent (18%) per year, on all delinquent Connection Charges. The late payment penalty shall be in addition to the rates of interest assessed on the Connection Charge pursuant to this agreement.

(c) Nothing herein shall prohibit the District from utilizing all other methods for collection of delinquent principal and interest charges permitted under the California Water Code or other applicable law and consistent with the nature of the lien created hereby.

(d) Customer shall be permitted to prepay amounts any and all amounts owed pursuant to this Agreement at any time without penalty.

4. RECORDATION AND LIEN PURSUANT TO CALIFORNIA WATER CODE SECTION 25806: This agreement shall be notarized and filed for record in the office of the County Recorder, and shall constitute a lien upon the PARCEL in the amount of unpaid principal and interest Connection Charges. This lien shall survive for a period of ten years plus any additional extensions permitted by law, and shall expire on the date the Connection Charges are paid in full, unless sooner released or otherwise discharged. District shall, at Customer's expense, record a release of discharge of lien document at the time of Customer's full performance of this agreement.
5. ACCELERATION UPON SALE OR TRANSFER OF CUSTOMER'S PARCEL : Upon any sale, conveyance, assignment, or other transfer of the PARCEL, except transfer to a spouse, immediate family member, or for the benefit of creating a trust for the current PARCEL owner's, spouse, or immediate family member, the full balance of principal and interest related to the Connection Charges outstanding will be immediately due and payable in full.
6. ATTORNEY'S FEES: Should either party hereto be required to institute legal action to either complete performance of this agreement or recover damages for non-performance, the prevailing party shall be entitled to all reasonable attorney's fees, costs of suit, expert witness fees, and all other expenses of litigation incurred in connection therewith.
7. COVENANT: This agreement benefits and burdens the PARCEL, and shall constitute a covenant running with the PARCEL and it shall bind Customer's heirs, successors and assigns. The District's lien for unpaid Connection Charges shall be an encumbrance upon the PARCEL until fully discharged.
8. BREACH OR DEFAULT: Should Customer, or its heirs, successors, or assigns be in breach or default under this agreement, District may refuse and terminate water service to the PARCEL until any such breach or default is cured or the full balance of outstanding Connection Charges outstanding are paid in full. Should a breach or default remain uncured for a period of one hundred eighty days (180) or longer, the District may, at its option, terminate this Agreement and accelerate the payment of amounts due.
9. NOTICES: The mailing addresses of District and Customer for purposes of giving any notice required pursuant to this agreement are as follows:

DISTRICT

Nevada Irrigation District
1036 W. Main Street
Grass Valley, CA 95945

CUSTOMER

«customer_name» «Sec_cust_name»
«Address1»
«City», «State» «PostalCode»

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

Attach Acknowledgement Notary

CUSTOMER

BY: _____

«customer_name»

CUSTOMER

BY: _____

«Sec_cust_name»

NEVADA IRRIGATION DISTRICT

Attach Acknowledgement Notary

BY: _____

Remleh Scherzinger, General Manager

**PLEASE SIGN AND ACKNOWLEDGE THIS
DOCUMENT BEFORE A NOTARY PUBLIC.**

**PLEASE SIGN YOUR NAME EXACTLY AS IT IS
TYPEWRITTEN ON THIS DOCUMENT.**

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R E C I T A L S

WHEREAS, District provides raw and treated water services to its customers; and

WHEREAS, Customer desires residential treated water service at the "PARCEL/PROPERTY" identified as APN _____, and more particularly described in that certain document recorded on «Rec Co Doc Date», in Document Number «Co Doc Number», «County» County records located at the APN specified above; and

WHEREAS, ~~pursuant to California Water Code Section 22280,~~ the charges levied for such treated water services include consist of:

Meter Installation Fee	\$	«mtr_fee»
Capacity Fee		«capacity_fee»
Buy In Fee		«buyin_fee»
Lien Removal Fee		«lien_rmvl_fee»
		»
Standby Factor		«standby_factor»
Other: «Other_fee_descr»		«Other_fee»
Partial Payment Received		«Payment»
Total		<u>20,000</u>
	\$	

hereinafter referred to as "Connection Charges"; and

WHEREAS, Connection Charges must be paid prior to the time a parcel is eligible to receive water service, and are all due and payable prior to connection, and

WHEREAS, Customer requests that District allow installment payment of these Connection Charges under the terms set forth below;

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3. DEFERRED PAYMENT OF CHARGES: Consistent with Section 6.12 of the District's Water Service Rules and Regulations, Customer shall pay District and Customer understand and agree that the District shall receive deferred payment of amounts of principal and interest related to the Connection Charges to District from Customer on a bi-monthly basis at an interest rate of 4% per year, for a term of _____ months.

(a) Terms of Payment: Customer shall pay District at the rate of \$«bimonthly_pymt» bi-monthly, payable on the first day of each and every billing commencing «start_date», which bi-monthly sums are inclusive of interest. Customer agrees that District may make an alteration in Customer's rate of bi-monthly payment and bill Customer accordingly.

(b) Late Payment Charge for Delinquent Payment: PDeferred payment of Connection Charges on a bi-monthly basis are due and payable upon issuance of District's billing statement and shall become delinquent fifteen (15) days after issuance. If such charges remain unpaid for a period of seven (7) weeks from such issuance, the PARCEL~~parcel~~ shall no longer be entitled to District water service and the District shall have the right to immediately discontinue water services and remove the water meter until such time as Customer makes current the amounts due and owing District. District's right to discontinue service shall exist notwithstanding that the parcel may-beis paying service charges for water received when due. In addition, if not paid within eight (8) weeks of such issuance, there shall be added thereto and become a part of such charges, a late payment penalty at the rate of one and one-half percent (1 ½%) per month, eighteen percent (18%) per year, on all delinquent Connection Charges. The late payment penalty shall be in addition to the rates of interest assessed on the Connection Charge pursuant to this agreement.

(c) ~~Customer agrees that~~ Nothing herein shall prohibit the District from utilizing all other methods for collection of delinquent principal and interest charges permitted under the California Water Code or other applicable law and consistent with the nature of the lien created hereby.

(d) Customer shall be permitted to prepay amounts any and all amounts owed pursuant to this Agreement at any time without penalty.

4. RECORDATION AND LIEN PURSUANT TO CALIFORNIA WATER CODE SECTION 25806: ~~District and Customer understand and agree that the~~ This execution of this agreement shall be notarized and ~~and the Agreement shall be~~ filed for record in the office of the County Recorder, and ~~further, that the amounts required to be paid herein shall constitute a lien upon the~~ PROPERTYPARCEL in the amount of unpaid principal and interest Connection Charges, more particularly described in that certain document recorded on ~~«Rec_Co_Doc_Date», in Document Number «Co_Doc_Number», «County» County records.~~ This lien shall survive for a period of ten years plus any additional extensions permitted by law, and shall expire on the date the Connection Charges are paid in full, unless sooner released or otherwise discharged. District shall, at Customer's expense, Customer shall pay any charges required by the County Recorder to file and record a release of discharge of lien document ~~at the time of Customer's final and full performance of this agreement.~~ payment of Connection Charges.
5. ACCELERATION UPON SALE OR TRANSFER OF CUSTOMER'S PROPERTYPARCEL : ~~This agreement benefits and burdens the PROPERTY, and shall constitute a covenant running with the PROPERTY, and it shall bind the heirs, successors and assigns of Customer.~~ Upon any sale, conveyance, assignment, or other transfer of the PROPERTYPARCEL, except transfer to a spouse, immediate family member, or for the benefit of creating a trust for the current propertyPARCEL owner's, spouse, or immediate family member, the full any balance of principal and interest related to the Connection Charges outstanding Deferred Payments will be immediately due and payable in full.
6. ATTORNEY'S FEES: Should either party hereto be required to institute legal action to either complete performance of this agreement or recover damages for non-performance, the prevailing party shall be entitled to all reasonable attorney's fees, costs of suit, expert witness fees, and all other expenses of litigation incurred in connection therewith.
7. COVENANT: This agreement benefits and burdens the PROPERTYPARCEL, and shall constitute a covenant running with the PROPERTYPARCEL and it shall bind Customer's ~~the~~ heirs, successors and assigns, ~~of Customer.~~ The District's lien for unpaid Connection Charges shall be an encumbrance upon the PARCEL until fully discharged. ~~are not personal obligations of the Customer, but apply to the parcel receiving service.~~

~~7.8. BREACH OR DEFAULT: Should Customer, or its heirs, successors, or assigns current owner, be in breach or default under this not pay the full amount of Connection Charges against the parcel pursuant to this agreement, District may refuse and terminate then water service to the PARCEL hereto will be denied until any such breach or default is cured or the full balance of outstanding Connection Charges outstanding are paid in full. unpaid balance thereof is paid in full. Should a breach or default remain uncured for a period of one hundred eighty days (180) or longer, the District may, at its option, terminate this Agreement and accelerate the payment of amounts due.~~

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«customer_name» «Sec_cust_name»
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IN WITNESS WHEREOF, parties hereto have executed this agreement on the day and year first above written.

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CUSTOMER

BY: _____

«customer_name»

CUSTOMER

BY: _____

«Sec_cust_name»

NEVADA IRRIGATION DISTRICT

Attach Acknowledgement Notary

BY: _____

Remleh Scherzinger, General Manager

**PLEASE SIGN AND ACKNOWLEDGE THIS
DOCUMENT BEFORE A NOTARY PUBLIC.**

**PLEASE SIGN YOUR NAME EXACTLY AS IT IS
TYPEWRITTEN ON THIS DOCUMENT.**