

California Regional Water Quality Control Board, Colorado River Basin  
Prosecution Team Evidence  
on the matter of  
Administrative Civil Liability Complaint R7-2014-0041  
Exhibit 28

Contract between City & NB

**WATER SUPPLY AND WASTEWATER TREATMENT  
FEES AND CAPACITY RESERVATION  
AGREEMENT**

This Water Supply and Wastewater Treatment Fees and Capacity Reservation Agreement (this "Agreement") is entered into this 22 day of March, 2011, ("Effective Date") by and between The City of Brawley, California (the "City") and National Beef California, LP ("National Beef").

**RECITALS**

**WHEREAS**, The City owns and operates a water treatment plant and water distribution system and owns and operates a wastewater collection system and treatment facility to provide residences and business in the City of Brawley, including National Beef, with potable water and with wastewater services;

**WHEREAS**, National Beef owns and operates a beef packing plant at 57 Shank Road, Brawley, California (the "National Beef Plant") and as part of its beef packing operations requires potable water and wastewater services of the City;

**WHEREAS**, A dispute has arisen between the parties concerning the meaning and scope of a letter dated August 4, 2000; and

**WHEREAS**, without admitting liability and solely for the purpose of resolving their disputes, the parties agree to settle their dispute on the terms set forth herein.

**NOW THEREFORE**, in mutual consideration of the terms and obligations set forth herein, the City and National Beef agree as follows:

**I. POTABLE WATER.**

- a. **Provision of Potable Water.** The City shall provide National Beef with potable water that meets all standards and requirements of applicable laws, regulations, and ordinances, including, but not limited to the federal Safe Drinking Water Act (42 U.S.C. § 300f *et. seq.*) and the California Safe Drinking Water Act (Cal. Health and Safety Code Sec. 116270 *et. seq.*).
- b. **Point of Potable Water Delivery.** The City shall deliver potable water to National Beef at the potable water delivery point designated on Attachment 1 to this Agreement. The City shall maintain all water delivery systems prior to the point of delivery at the City's sole expense. National Beef, at National Beef's sole expense shall maintain a back-flow prevention device at the point of delivery and shall maintain all water delivery systems after the point of delivery.

- c. Amount and Rate of Potable Water Delivery. The City shall provide National Beef with a maximum amount of 2,500,000 gallons of potable water per day, seven days per week, 52 weeks per year. Day is defined as the 24 hour period between 12:00 am and 11:59 pm. The City shall deliver the water at flow rates up to 2000 gallons per minute with peak flows up to approximately 3000 gallons per minute.
- i. National Beef shall not take more than 2,500,000 gallons of potable water per day unless an unusual event beyond normal plant operations causes the need for additional water. If such unusual event occurs, National Beef shall notify the City as soon as it becomes aware of the unusual event. The notice shall include the estimated amount of additional water needed and the duration of time that such additional amount of water is needed. During such times that National Beef requires additional water National Beef shall make every reasonable effort to conserve water use consistent with applicable requirements of law and food safety protocols of National Beef. National Beef shall pay for the additional water at the water rate in effect during the period of additional need.
  - ii. If National Beef desires additional water on a long term basis it may request additional water from the City. The City may make additional water available in amounts consistent with water available that is not otherwise committed to residences and businesses in Brawley.
  - iii. This Agreement shall not be interpreted so as to provide National Beef priority over other City potable water users for delivery of water in the event circumstances arise which interfere with the City's ability to provide City potable water users normal service.
- d. Potable Water Rates. National Beef shall pay for potable water at the rates as set forth below and in calendar month billing periods within 30 days of receiving a bill from the City for the same.
- i. September 1, 2009 through August 31, 2010. National Beef shall pay the City \$2.01 per 1000 gallons for water delivered to National Beef. The City shall refund to National Beef the amount that National Beef has paid the City in excess of \$2.01 per 1000 gallons during the period September 1, 2009 through August 31, 2010. The refunded amount is \$138,289.47. The City shall pay the refund to National Beef by April 15, 2011.
  - ii. September 1, 2010 through August 31, 2011. National Beef shall pay the City on a monthly basis the City's cost to produce potable water per 1000 gallons plus half the difference between the cost to produce potable water and the full commercial rate for potable water pursuant to the September 2, 2008 Proposition 218 Notification. The cost to produce for the period September 1, 2010 through October 15, 2010 is \$2.01 per 1000 gallons. The full commercial rate for the period September 1, 2010 through

October 15, 2010 is \$2.31 per 1000 gallons. The cost to produce for the period October 16, 2010 through August 31, 2011 shall be \$2.01 per 1000 gallons and pursuant to the September 2008 Proposition 218 Notification on Proposed Metered Water Rate the full commercial rate for the period October 16, 2010 through August 31, 2011 shall be \$2.37 1/2 per 1000 gallons. The City shall refund to National Beef the amount that National Beef has paid the City in excess of cost to produce potable water per 1000 gallons plus half the difference between the cost to produce potable water and the full commercial rate during the period September 1, 2010 through the end of the billing cycle within which the Effective Date falls. National Beef shall provide the City a statement of excess payment prior to the due date for the bill for the billing cycle within which the Effective Date falls. The City shall pay the refund to National Beef by May 15, 2011.

- iii. September 1, 2011 and thereafter. National Beef shall pay the full commercial rate for potable water based upon the Proposition 218 Notification in effect during the billing period.
- e. Potable Water Base Capacity Reservation. The City reserves for National Beef capacity in its potable water treatment and distribution system in the amount of 2,500,000 gallons per day (the "Base Potable Water Capacity Reservation").
- i. There is no charge for the Base Potable Water Capacity Reservation.
  - ii. The Base Potable Water Capacity Reservation shall remain in effect during the Term of this Agreement.
  - iii. The City shall provide the Base Potable Water Capacity Reservation from the City's potable water treatment and distribution system in existence at any time during the Term of this Agreement and/or from any potable water source that the City owns, operates, owns an interest in, or from which the City purchases or otherwise procures potable water.
  - iv. The Potable Water Base Capacity Reservation shall not be transferrable by National Beef except to a subsequent owner of the plant at 57 Shank Road (including transferred contiguous property of National Beef) that is operating a beef or other food processing business.
- f. Potable Water Additional Capacity Reservation. The parties may establish a potable water treatment and distribution system capacity in addition to the Base Potable Water Capacity Reservation ("Additional Potable Water Capacity Reservation") as follows;
- i. If National Beef desires additional capacity reservation of potable water National Beef may make a written request to the City setting forth the additional capacity requested on a weekly basis and daily basis.

- ii. The City shall respond to a request for Additional Potable Water Capacity Reservation to:
  1. Provide the Additional Potable Water Capacity Reservation and a proposed charge for the Additional Capacity Reservation;
  2. Provide a proposed alternative Additional Potable Water Capacity Reservation and a proposed charge for the Additional Capacity Reservation;
  3. Propose requirements necessary to provide the Additional Potable Water Capacity Reservation, a proposed charge for the Additional Capacity Reservation and proposed obligations of the City and National Beef with respect to such requirements; or
  4. Inform National Beef that there is no additional capacity available in the City's potable water treatment and distribution system.
- iii. The City and National Beef shall negotiate in good faith regarding any Additional Potable Water Capacity Reservation requests and the terms under which any Additional Potable Water Capacity Reservation shall be established.
- iv. Additional Potable Water Capacity Reservations established under this Agreement shall be set forth as an amendment to this Agreement.
- v. Additional Potable Water Capacity Reservations established under this Agreement may be transferred by National Beef to subsequent purchasers or operators of the property at 57 Shank Road and contiguous property transferred by National Beef.

## II. WASTEWATER

- a. Wastewater Treatment Provision. The City shall provide National Beef with wastewater collection and treatment that meets all standards and requirements of applicable laws, regulations, and ordinances, including, but not limited to the federal Clean Water Act (33 U.S.C. § 1251 *et seq.*), the California Water Code (CA Water sec. 1 *et seq.*), Brawley Wastewater Pretreatment Ordinance 2001-08 (as amended), and permits and authorizations issued under applicable laws, regulations, and ordinances.
- b. Quality of Wastewater Delivered. National Beef shall deliver wastewater to the City's wastewater collection and treatment system that meets all standards and requirements of applicable laws, regulations, and ordinances, including, but not limited to the federal Clean Water Act (33 U.S.C. § 1251 *et seq.*), the California Water Code (CA Water sec. 1 *et seq.*), Brawley Wastewater Pretreatment Ordinance 2001-08 (as amended), and permits and authorizations issued under applicable laws, regulations, and ordinances.

- c. Point of Wastewater Delivery. National Beef shall deliver wastewater to the City's wastewater collection system at a delivery point to be designated by National Beef within one year after the Effective Date.
  - i. National Beef shall maintain all wastewater delivery systems prior to the point of delivery at the sole expense of National Beef.
  - ii. The City shall maintain all wastewater collection and treatment systems after the point of delivery at the sole expense of the City.
- d. Metering of Wastewater Delivered. National Beef shall meter the wastewater delivered to the City as follows:
  - i. From the Effective Date until the time described in paragraph 2.d.ii, National Beef shall meter the wastewater flow at the current agreed metering location between wastewater pond 1 and pond 2. National Beef shall maintain (including calibrate) the wastewater flow meter.
  - ii. National Beef shall install within 1 year from the Effective Date a wastewater flow meter at the point of delivery. National Beef shall maintain (including calibrate) the wastewater flow meter. National Beef shall make provision such that the City has access to the wastewater flow meter to read and to check calibration of the wastewater flow meter.
- e. Amount of Wastewater. National Beef may deliver wastewater at the point of delivery in a maximum amount of 2,100,000 gallons per day, seven days per week, 52 weeks per year. Day is defined as the 24 hour period between 12:00 am and 11:59 pm.
  - i. National Beef shall not deliver at the point of delivery more than 2,100,000 gallons of wastewater per day unless an unusual event beyond normal plant operations causes the need to deliver additional wastewater. If such unusual event occurs, National Beef shall notify the City as soon as it becomes aware of the unusual event. The notice shall include the estimated amount of additional wastewater that will be delivered and the duration of time that such additional amount of wastewater will be delivered. National Beef shall pay for the additional water at the wastewater rate in effect during the period of additional delivery.
  - ii. If National Beef desires to deliver additional wastewater at the point of delivery on a long term basis it may request additional water from the City. The City shall make additional wastewater collection and treatment available in amounts consistent with the ability of the Brawley wastewater collection and treatment system capability to collect and treat such additional wastewater.
- f. Wastewater Collection and Treatment Rates. National Beef shall pay for wastewater collection and treatment services at the rates as set forth in the then

effective Proposition 218 rate structure and in calendar month billing periods within 30 days of receiving a bill from the City for the same.

- g. Wastewater Collection and Treatment Base Capacity Reservation. The City reserves for National Beef capacity in its wastewater collection and treatment system in the amount of 2,100,000 gallons per day (the "Base Wastewater Capacity Reservation").
- i. There is no charge for the Base Wastewater Capacity Reservation.
  - ii. The Base Wastewater Capacity Reservation shall remain in effect during the Term of this Agreement.
  - iii. The City shall provide the Base Wastewater Capacity Reservation from the City's wastewater collection and treatment system in existence at any time during the Term of this Agreement and/or from any wastewater collection and treatment system that the City owns, operates, owns an interest in, or from which the City purchases or otherwise procures wastewater collection and treatment.
  - iv. The Base Wastewater Capacity Reservation shall not be transferrable by National Beef except to a subsequent owner of the plant at 57 Shank Road (including transferred contiguous property of National Beef) that is operating a beef or other food processing business.
- h. Wastewater Collection and Treatment Additional Capacity Reservation. The parties may establish a wastewater collection and treatment capacity in addition to the Base Wastewater Capacity Reservation ("Additional Wastewater Capacity Reservation") as follows;
- i. If National Beef desires additional wastewater collection and treatment capacity reservation National Beef may make a written request to the City setting forth the additional capacity requested on a weekly basis.
  - ii. The City shall respond to a request for Additional Wastewater Capacity Reservation to:
    1. Provide the Additional Wastewater Capacity Reservation and a proposed charge for the Additional Wastewater Capacity Reservation;
    2. Provide a proposed alternative Additional Wastewater Capacity Reservation and a proposed charge for the Additional Wastewater Capacity Reservation;
    3. Propose requirements necessary to provide the Additional Wastewater Capacity Reservation, a proposed charge for the Additional Wastewater Capacity Reservation and proposed

obligations of the City and National Beef with respect to such requirements; or

4. Inform National Beef that there is no additional capacity available in the City's wastewater collection and treatment system.
- iii. The City and National Beef shall negotiate in good faith regarding any Additional Wastewater Capacity Reservation requests and the terms under which any Additional Wastewater Capacity Reservation shall be established.
- iv. Additional Wastewater Water Capacity Reservations established under this Agreement shall be set forth as an amendment to this Agreement.
- v. Additional Wastewater Capacity Reservations established under this Agreement may be transferred by National Beef to subsequent purchasers or operators of the property at 57 Shank Road and contiguous property transferred by National Beef.

### III. TERM OF AGREEMENT

- a. Basic Term. This Agreement shall be for a term of ten (10) years and shall expire at midnight on the tenth anniversary of the Effective Date (the "Anniversary Date:).
- b. Automatic Renewal. At midnight on the anniversary date in 2020, this Agreement shall automatically be renewed for five (5) years. This Agreement shall automatically be renewed for five (5) year terms at midnight on the fifteenth anniversary of the Effective Date and every five years thereafter.
- c. Termination.
  - i. This Agreement can be terminated by either party upon substantial and material breach by the other party.
    1. The parties shall negotiate in good faith regarding any alleged breach of this Agreement.
    2. If after good faith negotiation regarding an alleged breach the parties have not resolved the alleged breach the party alleging breach may give notice of termination as provided herein.
    3. Written notice of termination shall be delivered to the party alleged to be in breach 18 months prior to termination.
    4. The party alleged to be in breach shall have 18 months in which to perform its obligations alleged to be breached. If performance is made, this Agreement shall not be terminated.

5. If performance is not made this Agreement shall, unless otherwise negotiated by the parties, terminate not earlier than 18 months after the notice of termination is delivered to the party alleged to be in breach.

ii. National Beef may terminate this Agreement if National Beef ceases to operate the beef packing plant at 57 Shank Road or does not otherwise require water and wastewater service from the City. National Beef shall provide 6 months notice to the City of such termination.

#### IV. NOTICE

a. Notice under this Agreement shall be made by First Class Mail addressed as shown below:

i. City of Brawley, City Manager, 383 Main Street, Brawley, CA 92227

ii. National Beef California, LP, Plant Manager, 57 Shank Road, Brawley, CA 92227

#### V. GENERAL

a. Good Faith. The parties agree to work together in good faith in all aspects of fulfilling their contractual responsibilities under this Agreement.

b. Final Agreement. This Agreement supersedes all other verbal or written agreements of the parties with respect to the matters addressed herein.

c. Amendment. This Agreement may be amended only in writing and only if such amendment is signed by both parties. Any amendments to this Agreement will be effective as of the date specified in such amendments.

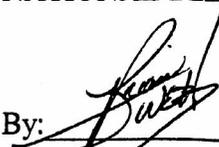
d. Choice of Law. This Agreement shall be construed according to the laws of the State of California.

e. Authorization. Each party warrants that it is authorized to enter into this Agreement.

CITY OF BRAWLEY

NATIONAL BEEF CALIFORNIA, LP

By: 

By: 

Mayor

Plant Manager

Attachment 1  
Potable Water Point of Delivery

