



NEVADA IRRIGATION DISTRICT

(Est. 1921)

NO SPRAY AGREEMENT

Maintenance Department Vegetation Control Program

This AGREEMENT is made and entered into this _____ day of _____, 20____ by and between **NEVADA IRRIGATION DISTRICT**, a public agency formed and existing under the laws of the State of California (hereinafter "NID" or "District"), and _____, an individual owning that property within NID boundaries identified as Assessor Parcel Number(s) _____ (hereinafter "Landowner").

WITNESSETH

WHEREAS, NID is the possessor of rights granting it the right of access, and to operate and maintain certain NID facilities and immediately surrounding lands that traverse or are adjacent to Landowner's property, which is the subject of this Agreement (hereinafter "Premises");

WHEREAS, pursuant to applicable laws, regulations and policies, NID has the duty to control vegetation on the lands and rights-of-way proximate to NID facilities, including the sides and tops of canal and ditch berms;

WHEREAS, it is NID's practice to control weeds and other vegetation on the sides and tops of canal and ditch berms with approved herbicides;

WHEREAS, Landowner desires that the sides and tops of the canal and ditch berms on or adjacent to the Premises NOT be sprayed with herbicides;

NOW, THEREFORE, for consideration, the receipt and sufficiency of which is hereby stipulated, NID and Landowner (collectively hereinafter "Parties") agree as follows:

ARTICLE I. Identification of "No Spray Area." Upon execution of this Agreement and Landowner's submission of an insurance endorsement described in Article VII below, NID shall provide Landowner with District-issued signage for the purpose of designating those areas of the Premises, which Landowner wishes to be excluded from District's application of herbicide. Such signage shall include a property identification number unique to the Premises that is the subject of this Agreement, and shall be placed only on the property which corresponds to this Agreement. NID will not recognize or honor any signage other than appropriate District-issued signage to determine areas subject to a valid "No Spray Agreement."

1.1 Landowner shall place one District-issued "No Spray Area" sign on top of the berm at the two ends of the area Landowner desires to be free from the application of herbicides. All signs must be placed at least 2 feet above ground level. Signs shall not interfere with vehicular access, and shall not be placed closer than 3 feet to the wetted edge of a canal or ditch. Signs shall not be placed on utility poles or attached to District facilities. Signs shall be properly installed and readily visible to NID maintenance personnel for the entire term of this Agreement, regardless of whether active spraying operations are ongoing or not.

1.2 NID assumes no responsibility for ensuring signage is properly placed or maintained, and is under no obligation to refrain from applying herbicides to areas which are not clearly identified as a “No Spray Area” by appropriate signage.

1.3 Landowner shall notify NID immediately in the event “No Spray Area” signage is lost, damaged or stolen. NID shall replace such signage at District’s cost.

ARTICLE II. Landowner’s Duty within “No Spray Area” and Compliance. Landowner assumes the obligation and responsibility to manage the vegetation within the designated “No Spray Area” in accordance with the following standards:

2.1 Vegetation on the berm surface and canal slope shall not exceed 6 inches in height at any time.

2.2 Authorized Tools and Equipment. To satisfy the standards identified above, Landowner shall exclusively use hand tools and hand operated power tools. Such authorized tools shall include, without limitation, weed wackers, push mowers, hoes, rakes, shovels, circle hoes, etc. Landowner shall not operate equipment or machinery anywhere on the Premises, including, but not limited to, those areas on the wetted side of the canal or ditch berm. Prohibited equipment shall include, without limitation, tractors, discing equipment, bobcats, excavators, riding mowers, etc.

2.3 Landowner shall not, under any circumstance, be permitted to apply chemicals upon the Premises. Landowner shall not deposit any vegetation, fill or other matter within the wetted banks of the canal or ditch, or NID’s right-of-way traversing the Premises.

2.4 Landowner shall not take any action or fail to take any action which would result in compromising the structural integrity of the canal or ditch berm.

ARTICLE III. Inspection and Compliance Procedure. NID may, from time-to-time during the term of this Agreement, inspect and review Landowner’s compliance with the abovementioned vegetation management standards. In the event NID determines Landowner has failed to comply with applicable maintenance standards, the following procedure shall be followed:

3.1 First Warning. Upon discovery that the Premises does not comply with applicable maintenance standards, NID will send, via U.S. Mail, a notice to Landowner identifying those conditions that require remediation (“Remediation Notice”). The Remediation Notice shall specify a date and time, no sooner than 10 calendar days following the date of the Remediation Notice, at which NID will inspect the Premises to determine whether identified deficiencies in the condition of the Premises have been resolved to NID’s satisfaction. In the event the conditions identified in the Remediation Notice have been remediated to NID’s satisfaction, District will issue to Landowner a Compliance Letter stating that the issues identified in the Remediation Notice have been resolved and that no further actions are required.

3.2 Revocation. If, at the time of inspection, the deficiencies identified in the Remediation Notice have not been resolved to NID’s satisfaction, District will issue to Landowner a Revocation Notice terminating this Agreement. The effect of the Revocation Notice shall be to immediately terminate, as of the date of the Notice, Landowner’s privilege to maintain the Premises, and to have such area excluded from NID’s application of herbicides. The Revocation Notice shall be sent to Landowner via U.S. Mail and shall clearly state that the No Spray Agreement has no further force or effect. NID personnel shall thereafter remediate deficient conditions existing on the Premises pursuant to District

vegetation management practices, including the application of herbicides if and when necessary.

3.3 District Discretion. Determinations regarding Landowner's compliance with the standards set forth in Paragraph 2 above shall be solely at District's discretion. NID's determination that Premises does not comply with such standards shall be final and conclusive.

ARTICLE IV. District's Remediation Costs. Following an issuance of a Revocation Notice, Landowner shall be exclusively liable for, and hereby agrees to pay, any extraordinary and one-time costs incurred by NID to eliminate defective conditions existing on the Premises, and to bring the Premises into compliance with conditions existing on District's maintained canal or ditch berm. District's costs shall be calculated at the rate of \$2.50 per linear foot of berm that requires District remediation. Following the initial remediation, District shall manage and control vegetation on the Premises at District's expense.

ARTICLE V. Emergencies and Standard NID Operations. Nothing herein shall be construed to prevent, limit or impede NID from immediately remedying, by the use of herbicides or otherwise, conditions on the Premises that it determines to constitute an emergency, issue of public safety or which poses an unreasonable restriction of the flow of water.

5.1 Nothing herein shall limit or restrict NID from performing routine or otherwise required maintenance activities, including brush removal or annual canal cleaning, which may or may not occur on the Premises and may include the use of equipment.

5.2 The Parties acknowledge that this Agreement is limited to applications of herbicides on the sides and tops of canal and ditch berms. District makes no representations that it will refrain from using in-water aquatic herbicides for the purpose of controlling aquatic weeds in the wetted areas of the canal or ditch conveyance traversing Landowner's property.

ARTICLE VI. Landowner's Duty to Defend and Indemnify.

6.1 Duty to Defend or Advance Defense Costs. Landowner and each and all of Landowner's agents, servants, permissive users, associates and subcontractors (hereafter individually and collectively "Landowner") agree to defend NID and all past, present and future, directors, officers, employees, agents and assigns (hereafter individually and collectively "NID") with respect to any and all claims, lawsuits, administrative proceedings, and any other legal proceeding of every kind and nature, arising out of Landowner's maintenance or failure to maintain the Premises. Landowner's obligation to defend NID accrues immediately upon commencement of a claim, lawsuit, arbitration proceeding, administrative proceeding and/or any other legal proceeding of any kind and nature against NID. Landowner shall fulfill its Duty to Defend, at NID's sole election and discretion, by accepting the tender by NID to Landowner of NID's defense, or by the advance payment by Landowner of NID's defense costs, to include all litigation fees and costs, attorneys' fees and costs, and experts' fees and expenses arising out of or related to this Agreement.

6.2 Waiver of Liability. Landowner hereby releases, waives, discharges and covenants not to sue NID from any and all liability, claims, demands, actions and causes of action whatsoever arising out of or related to any loss, damage or injury, including death, that may be sustained by Landowner or any property belonging to Landowner arising out of or relating to all acts, failures to act or other conduct of Landowner related to or arising

out of this Agreement, or the use, misuse, possession, operation, custody or control of the Premises, including claims, liabilities, losses, damages or expenses arising out of or relating to and irrespective of the negligence or other fault of any one or any combination of NID or its officers, directors, employees, agents and representatives.

6.3 Indemnification. Landowner shall indemnify NID (including its successors and assigns, and each of their respective officers, directors, employees, agents and representatives) from and against all claims, liabilities, losses, damages, litigation costs (i.e., court fees and costs, arbitration fees and costs, fees and costs related to administrative proceedings, etc.), attorneys' fees and costs, experts' fees and costs or expenses arising out of or relating to all acts, failures to act or other conduct of Landowner related to or arising out of this Agreement, or the use, misuse, possession, operation, custody or control of the Premises (or Landowner's employees, agents, representatives, contractors, material and equipment suppliers, and any other entity or individual with whom Landowner may affiliate), including claims, liabilities, losses, damages or expenses arising out of or relating to and irrespective of the negligence or other fault of any one or any combination of NID or its officers, directors, employees, agents and representatives.

ARTICLE VII. Insurance. Landowner agrees to keep the Premises insured against bodily injury liability and property damage liability for the full term of this Agreement for damages and liabilities arising out of or under this Agreement. Landowner shall furnish to NID an adequate policy endorsement verifying that Landowner has obtained a minimum of \$250,000.00 of coverage, naming NID as an additional insured, and that such policy of insurance includes no coverage exclusions applicable to the activities or coverages contemplated by this Agreement. Landowner's submission of such endorsement to NID, verifying that the coverages specified above have been obtained, shall be an express condition precedent to the effectiveness of this Agreement, and to Landowner's authority to exercise any privileges hereunder to conduct vegetation management on the Premises.

ARTICLE VIII. Term and Renewal. The term of this agreement shall commence on January 1, 20__ and shall terminate on December 31, 20__.

8.1 Landowner shall indicate its intent to enter into a No Spray Agreement for a subsequent period by providing written notice to NID of such intent no later than 30 days prior to the expiration of the term of this Agreement.

8.2 NID shall have the sole discretion whether to enter into a subsequent No Spray Agreement with Landowner, and may consider such factors as whether Landowner has failed to comply with any of the terms and conditions of this Agreement, and whether District has issued Landowner a Remediation Notice and/or Revocation Notice during the term of this or any other No Spray Agreement.

ARTICLE IX. Notice. Any notice or correspondence required to be submitted under this Agreement should be put in writing and delivered via U.S. Mail.

If to NID:

Nevada Irrigation District
Attn.: Maintenance Department
1036 West Main Street
Grass Valley, CA 95945-5424

If to Landowner:

ARTICLE X. No Assignment. This Agreement is personal to Landowner and it shall not be assigned to any successors of Landowner without the express consent of NID.

ARTICLE XI. Time. Time shall be of the essence in this Agreement.

ARTICLE XII. Governmental Compliance. Landowner shall comply with all local, county, state and federal laws, orders, ordinances and statutes applicable to Landowner's actions contemplated by this Agreement, and with all permits, environmental statements, laws, orders, ordinances and statutes applicable to NID's obligations with respect to the vegetation management of the premises.

ARTICLE XIII. Entire Agreement. This Agreement constitutes the full agreement between the Parties and supersedes all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all Parties or where, due to an error or omission by NID, the terms require correcting.

ARTICLE XIV. No General Waiver. The failure of NID at any time to require performance of any provision or to resort to any remedy provided under this Agreement shall in no way affect the right of NID to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by NID of a breach be deemed to be a waiver of any subsequent breach. A waiver shall not be effective unless it is in writing and signed by the party against whom the waiver is being enforced.

ARTICLE XV. Executing Authority. The Parties hereto have full power and authority to enter into this Agreement and complete the responsibilities and duties contemplated by this Agreement. The language used in this Agreement shall be deemed the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any person.

ARTICLE XVI. Independent Parties. The Parties hereto are independent of each other and no agency, partnership, joint venture or employer-employee relationship is intended or created by this Agreement. Neither Party shall have power to obligate or bind the other Party.

LANDOWNER:

DISTRICT:

By: _____
(Signature)

By: _____
Jacqueline S. Longshore
Maintenance Manager

(Printed Name)

Date: _____

Date: _____