

CALLEGUAS MUNICIPAL WATER DISTRICT

AGREEMENT FOR CONSTRUCTION AND USE OF SALINITY MANAGEMENT PIPELINE DISCHARGE SERVICE CONNECTION

THIS AGREEMENT is made and entered into this _____ day of _____, 20____(the "Effective Date"), by and between CALLEGUAS MUNICIPAL WATER DISTRICT, organized under the Municipal Water District Act of 1911, as amended (hereinafter referred to as the "DISTRICT") and _____ (hereinafter referred to as "DISCHARGER").

In consideration of the covenants and agreements set forth herein, IT IS AGREED:

I. GENERAL

- a. DISCHARGER requests that the DISTRICT design and construct a discharge service connection (the "Connection") which will be installed on the DISTRICT's Salinity Management Pipeline ("SMP") at a location between Stations XX+XX and XX+XX with an estimated discharge capacity of ___ gallons per minute (gpm) to accept discharge of XXXXXXXX from the XXXXXXXXXXXX.
- b. DISCHARGER shall timely provide all of the necessary easements to the DISTRICT, as may be requested by the DISTRICT, for construction, operation, and maintenance of the Connection.
- c. DISCHARGER, at its sole cost and expense, shall be responsible for construction and operation of the system from which flow will be discharged by DISCHARGER to the Connection and DISCHARGER agrees that such system shall be designed/constructed/modified to accommodate the design criteria listed in Paragraph III of this Agreement at any and all times that DISCHARGER discharges to and through the Connection.

II. ORDINANCE 19 AND OUTFALL DISCHARGE PERMIT

- a. DISCHARGER acknowledges and agrees that installation of the Connection, and subsequent operation and use of the Connection and SMP, shall be in accordance with and subject to the terms and conditions of the DISTRICT's Ordinance No. 19, as may be amended, modified, and replaced by the DISTRICT from time to time as provided therein (hereinafter "Ordinance 19"). The DISTRICT agrees to provide the Connection and its subsequent operation and maintenance pursuant to the terms and conditions of this Agreement and Ordinance 19 and Discharger shall at all times comply with the terms and conditions of this Agreement and Ordinance 19. A copy of Ordinance 19, in effect as of the date of this Agreement, is attached hereto as Exhibit A.
- b. DISCHARGER shall at all times comply with all requirements of the Waste Discharge Requirements for Calleguas Municipal Water District, Regional Salinity Management Pipeline, Oxnard (National Pollutant Discharge Elimination System No. CA0046521, CI-9404) and its successor permits (hereinafter, "Outfall Discharge Permit"). A copy of the Outfall Discharge Permit, as in effect on the date of this Agreement, is attached hereto as Exhibit B.

III. DESIGN CRITERIA

- a. The following criteria will be utilized as the basis of design for this Connection:

Minimum operating hydraulic grade line in SMP	_____ ft above mean sea level
Maximum operating hydraulic grade line in SMP	_____ ft above mean sea level
Maximum hydraulic grade line for surge in SMP	_____ ft above mean sea level

Minimum discharge at the point of connection*
Maximum discharge at the point of connection _____ gpm

* Low flow is one (1) foot per second of velocity through the flow meter.

IV. WATER QUALITY

- a. DISCHARGER shall pay the reasonable costs for the DISTRICT and/or its designated consultant to (i) conduct pre-connection sampling and water quality analysis to verify that DISCHARGER's discharge will comply with the Outfall Discharge Permit, and (ii) if appropriate as determined by the DISTRICT, prepare a letter to the Regional Water Quality Control Board documenting compliance of DISCHARGER'S proposed discharges with the limitations of the Outfall Discharge Permit.
- b. Prior to commencing these efforts, the DISTRICT shall prepare and deliver to DISCHARGER a cost estimate for such efforts and DISCHARGER shall provide to the DISTRICT a cash deposit in the full amount of the estimate. Upon completion of the pre-connection analysis and letter (if applicable), the DISTRICT will compile all costs associated with these efforts. If the reasonable costs exceed the sum of the deposits made by DISCHARGER, DISCHARGER shall pay the DISTRICT the difference within 60 days of receipt of an invoice. If the costs are less than the sum of the deposits made by DISCHARGER, the DISTRICT will, at its election, either pay DISCHARGER the difference within 60 days or apply the balance to the surge analysis cost deposit described in Paragraph V, below.
- c. DISCHARGER shall not be permitted to begin discharging to the Connection or otherwise use the SMP until the DISTRICT determines that the water quality of DISCHARGER'S discharge complies with the Outfall Discharge Permit. DISCHARGER is solely responsible for adopting and implementing all necessary contingency plans to avoid, minimize, or mitigate any adverse consequences to DISCHARGER resulting from any delay in the use of the SMP arising from or relating to the DISTRICT'S Outfall Discharge Permit compliance determination.

V. SURGE

- a. DISCHARGER shall pay the reasonable costs for the DISTRICT and/or its designated consultant to perform a surge analysis for the discharge in order to assure that the SMP is not subjected to hydraulic transients which may cause structural damage.
- b. Prior to commencing the surge analysis, the DISTRICT shall prepare and deliver to DISCHARGER a cost estimate and DISCHARGER shall provide to the DISTRICT a cash deposit in the full amount of the estimate. Upon completion of the surge analysis, the DISTRICT will compile all costs associated with the analysis. If the reasonable costs exceed the sum of the deposits made by DISCHARGER, DISCHARGER shall pay the DISTRICT the difference within 60 days of receipt of an invoice. If the costs are less than the sum of the deposits made by DISCHARGER, the DISTRICT will, at its election, either pay DISCHARGER the difference within 60 days or apply the balance to the capital cost deposit described in Paragraph V, below.
- c. DISCHARGER shall install, operate, and properly maintain all surge protection facilities as recommended by, and in accordance with, this surge analysis. DISCHARGER shall operate and maintain the Surge Protection System in a way that does not cause any hydraulic transients or pressure changes at the Connection which could cause structural damage to the SMP. The DISTRICT reserves the right, in its sole discretion, to suspend, curtail, terminate, or otherwise interrupt DISCHARGER's discharges into the SMP should the Surge Protection

System fail in whole or in part for any reason, including but not limited to DISCHARGER's failure to properly maintain and operate the Surge Protection System. In addition to all other remedies available to the DISTRICT under this Agreement and applicable law, DISCHARGER shall timely pay for all repairs to the DISTRICT's facilities which result from improper operation and maintenance of the Surge Protection System.

- d. DISCHARGER shall not be permitted to begin discharging to the Connection or otherwise use the SMP unless and until the DISTRICT is satisfied with the results of the surge analysis and notifies DISCHARGER in writing. DISCHARGER is solely responsible for adopting and implementing all necessary contingency plans to avoid, minimize, or mitigate any adverse consequences to DISCHARGER resulting from any delay in the use of the SMP arising from or related to DISTRICT's satisfaction with the surge analysis.

VI. CAPITAL COSTS AND REIMBURSEMENTS

- a. Preliminary Design: DISCHARGER shall deposit an amount equal to the DISTRICT engineer's not-to-exceed amount (with appropriate contingency determined by the DISTRICT) for preliminary design services prior to the DISTRICT authorizing a Notice-to-Proceed for preliminary design.
- b. Design: DISCHARGER shall deposit an amount equal to the DISTRICT engineer's not-to-exceed amount (with appropriate contingency determined by the DISTRICT) for design services prior to the DISTRICT authorizing a Notice-to-Proceed for design.
- c. Construction: DISCHARGER shall deposit an amount equal to the DISTRICT engineer's construction cost estimate plus estimated inspection and construction management costs prior to the DISTRICT's advertising the project for bidding.
- d. Upon completion of construction, the DISTRICT will compile all costs associated with the design and construction of the Connection, including but not limited to engineering, right-of-way acquisition, inspection, permitting, and administration. If the reasonable costs exceed the sum of the deposits made by DISCHARGER, DISCHARGER shall pay the DISTRICT the difference within 60 days of receipt of an invoice. If the costs are less than the sum of the deposits made by DISCHARGER, the DISTRICT will pay the DISCHARGER the difference within 60 days after the Notice of Completion is filed for the project.
- e. In the event the discharge service connection requested herein is not completed for any reason by action or inaction of DISCHARGER, then it is agreed that the DISTRICT shall deduct from the deposit all costs incurred by the DISTRICT and any remaining portion of the deposit shall be returned to DISCHARGER.

VII. AVAILABILITY OF SERVICE

- a. DISCHARGER acknowledges and agrees that service and access may be suspended, curtailed, terminated, or otherwise interrupted, as provided for in this Agreement and/or in accordance with Ordinance 19. DISCHARGER further acknowledges and agrees that the DISTRICT shall not be liable to DISCHARGER or any other person or entity for any loss, liability, damage, claim, or other consequences resulting from the suspension, curtailment, termination, or interruption of service in accordance with Ordinance 19. DISCHARGER is solely responsible for adopting, implementing, and maintaining all necessary contingency plans and preventive measures to avoid, minimize, or mitigate any adverse consequences to DISCHARGER in anticipation of such suspension, curtailment, termination, or interruption.

VIII. ASSIGNMENT AND TRANSFER

- a. DISCHARGER shall not assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the DISTRICT which may be given or withheld in the DISTRICT's sole discretion.

IX. AMENDMENT

- a. This Agreement may only be changed by written amendment signed by both parties; provided, however, that DISCHARGER acknowledges and agrees that DISCHARGER is subject to and shall be bound by any and all amendments, modifications, and changes to Ordinance 19 and/or the Outfall Discharge Permit, without the need for any written amendment to this Agreement. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

X. REPRESENTATIONS AND WARRANTIES

- a. As a material inducement to the DISTRICT to enter into this Agreement, DISCHARGER represents, warrants and covenants to the DISTRICT, which representations, warranties, and covenants shall survive termination of this Agreement, that:
 - i. DISCHARGER is duly organized, validly existing and in good standing under the laws of the State of California and has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder;
 - ii. DISCHARGER's execution and delivery of this Agreement, and its performance of all of its obligations, will not violate or constitute an event of default under any agreement or instrument to which DISCHARGER is a party or by which it is bound;
 - iii. All proceedings and approvals required to be taken by or on behalf of DISCHARGER to authorize and perform this Agreement have been duly and properly taken, and this Agreement is a valid and binding obligation of DISCHARGER enforceable in accordance with its terms;
 - iv. To the best of DISCHARGER's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which it is or would be a party, which, if adversely determined, might materially and adversely affect the ability of DISCHARGER to perform its obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder;
 - v. DISCHARGER shall at all times comply with the terms of this Agreement and all laws, rules, regulations, ordinances, and all orders of government and regulatory authorities having jurisdiction, as the same are applicable to DISCHARGER's ownership, operation and maintenance of all property and facilities of or relating to the Connection and the SMP; and
 - vi. No approval, authorization or consent of any government agency or body, or any other person or entity, is required for the valid execution, delivery, and performance of this Agreement by DISCHARGER except for such as have been duly obtained as of the Effective Date. No registration or filing with any government agency or body, or any other person or entity is required for the valid execution, delivery and performance of this Agreement by DISCHARGER except as has been duly completed as of the Effective Date.

XI. COOPERATION

- a. In addition to its duties and obligations under this Agreement, DISCHARGER agrees to reasonably cooperate with the DISTRICT as the DISTRICT may request from time to time in order to design, construct and operate the Connection in accordance with this Agreement, Ordinance 19, and the Outfall Discharge Permit. Without limiting the foregoing, DISCHARGER agrees to timely provide to the DISTRICT information requested and access to DISCHARGER's personnel and facilities as reasonably necessary to carry out the purpose and intent of this Agreement.

XII. CONFLICT

- a. If any term of this Agreement conflicts with the terms of Ordinance 19, Ordinance 19 shall govern to the extent of such conflict.

XIII. ACKNOWLEDGMENT

- a. DISCHARGER acknowledges that it has voluntarily elected to participate in the SMP and by entering into this Agreement DISCHARGER acknowledges and agrees to all of the terms, conditions and requirements of this Agreement, Ordinance 19, and the Outfall Discharge Permit, including without limitation the obligations of DISCHARGER to defend and indemnify the DISTRICT as provided in Ordinance 19. The DISTRICT is entering into this Agreement with DISCHARGER in reliance upon this acknowledgement and agreement, which acknowledgement and agreement constitutes material consideration for this Agreement. .

XIV. MISCELLANEOUS

- a. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- b. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, regarding its subject matter and contains the entire agreement between the parties relating thereto.
- c. Subject to the restrictions on assignment set forth above, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
- d. In the event that any dispute between the parties arising under this Agreement results in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses (including attorney's fees) incurred in such action.
- e. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of California and the venue for all legal or equitable actions relating to or arising from this Agreement shall be Ventura County, California.
- f. If any term, covenant, condition or provision of this Agreement, is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.
- g. Any notice, demand or request to be given under or pursuant to this Agreement shall be given in writing at the physical addresses set forth below by personal service; telecopy; overnight courier; or registered or certified, first class mail, return receipt requested:

If to the DISTRICT: Calleguas Municipal Water District
2100 Olsen Road
Thousand Oaks, California 91360
Attn: General Manager

If to DISCHARGER: _____

h. All Recitals set forth above, and all Exhibits attached to this Agreement are intended to be and hereby are specifically made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement in Ventura County, California, and have caused this Agreement to be executed in duplicate on the day and year first above written.

CALLEGUAS MUNICIPAL WATER DISTRICT

By _____
Susan B. Mulligan
General Manager

DISCHARGER

By _____