

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Yugal K. Lall, City Engineer/Public Works Director  
Prepared by: Shaun Kroes, Management Analyst

**DATE:** May 8, 2008 (CC meeting of 05/21/2008)

**SUBJECT:** Consider Fiscal Agent Contract for Management, Funding and Cost Sharing Implementation of the Calleguas Creek Watershed Total Maximum Daily Load Program

**SUMMARY**

The City Council is being asked to consider approval of a Fiscal Agent Contract with Calleguas Municipal Water District to manage the funds and program under the previously approved Calleguas Creek Total Maximum Daily Load (TMDL) Memorandum of Agreement (MOA) for the management, funding and cost sharing required to implement the Calleguas Creek Watershed TMDL Program.

**DISCUSSION**

On November 7, 2007, the City Council approved an MOA allocating the costs to implement the TMDL program among the public agencies and Ventura County Agricultural Irrigated Lands Group (Ag Group) based on allocations outlined in the TMDLs. As part of the MOA, a Fiscal Agent is required to manage the funds collected under the MOA. The MOA calls for a separate agency to serve as the Fiscal Agent with respect to the operations of the TMDL program established under the MOA. Calleguas Municipal Water District has agreed to serve as the Fiscal Agent for the sum not to exceed \$35,000 annually. Moorpark's contribution would be \$535 per year, which is based on the urban cost distribution based on allocations multiplied by average annual discharge volume from each entity. The previously adopted MOA authorized the collection of funds for this service.

**FISCAL IMPACT**

Funds are budgeted and available for the City's Fiscal Agent Contract share of \$535 annually. This amount was accounted for in the previously approved MOA.

**STAFF RECOMMENDATIONS**

1. Authorize the Mayor to sign the Fiscal Agent Contract.
2. Authorize the City Manager to execute any necessary subsequent amendments to the Fiscal Agent Contract that are consistent with the terms of the MOA.

Attachment A: Fiscal Agent Contract

## FISCAL AGENT CONTRACT

This Fiscal Agent Contract ("Agreement"), effective as of \_\_\_\_\_, is by and between the Calleguas Municipal Water District, a California special district ("Fiscal Agent") and the Parties of the Memorandum of Agreement for the Management, Funding and Cost Sharing for the Implementation of the Calleguas Creek Watershed Total Maximum Daily Load Program (collectively "Parties"). The Parties are the cities of Camarillo, Moorpark, Oxnard, Simi Valley, Thousand Oaks; the County of Ventura, Ventura County Waterworks District No. 1, Camarillo Sanitary District, Camrosa Water District, U.S. Department of the Navy, California Department of Transportation, and the Ventura County Agricultural Irrigated Lands Group within the Calleguas Creek watershed.

### RECITALS

- A. Parties have entered into that certain Memorandum of Agreement for the Management, Funding and Cost Sharing for the Implementation of the Calleguas Creek Watershed Total Maximum Daily Load Program dated March 1, 2008 ("MOA"), which is attached and incorporated as Exhibit A. Unless otherwise defined in this Agreement, all initially capitalized words and terms will have the meanings provided in the MOA.
- B. The MOA calls for a separate public agency to serve as the Fiscal Agent with respect to the operations of the Program established under the MOA.
- C. Calleguas Municipal Water District is willing to provide the services required of the Fiscal Agent under the MOA and as provided in this Agreement.

### AGREEMENT

#### 1. Scope and Performance of Services:

Calleguas Municipal Water District agrees to perform the services ("Services") required of the Fiscal Agent in the time and manner described in the MOA, in particular, Section 3 of Article II and Article III.

Calleguas Municipal Water District will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary or proper to perform and complete the Services required of Fiscal Agent under this Agreement.

Fiscal Agent will not be compensated for any Services rendered in connection with this Agreement that are in addition to or outside of the Services set forth in this Agreement, unless such additional Services are authorized in advance and in writing by Parties.

Parties may request changes to the Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Fiscal Agent will be adjusted accordingly. All such changes must be authorized in writing, and executed by Fiscal

Agent and Parties. The cost or credit to Parties resulting from changes in the Services will be determined by the written agreement between the parties.

## **2. Payment for Services:**

Parties agree to pay or cause to be paid Fiscal Agent the sum of \$2,390.00 per month for the Services, which represents reimbursement for the anticipated reasonable and customary costs incurred as described in Section 3.2.C of the MOA. The Fiscal Agent and the Management Committee will review the Fiscal Agent's level of effort and reimbursement semi-annually and upon the concurrence of the Management Committee and Fiscal Agent may adjust the monthly payment up or down with an aggregate annual reimbursement not to exceed \$35,000.00. The annual audit required in the MOA, Section 2.3.J shall be submitted as a separate budget item and is not included in the monthly payment for Services. Parties have caused sufficient funds to be deposited with Fiscal Agent or in an account managed by Fiscal Agent to cover the monthly cost of such Services, Fiscal Agent is authorized to withdraw during the following month the amount owed for the prior month's Services.

Any payment to Fiscal Agent for Services performed under this Agreement will not be deemed to waive any defects in the Services performed by Fiscal Agent.

The Parties also acknowledge that the obligation of the California Department of Transportation ("Caltrans") to contribute funds under the MOA is subject to the appropriation of funds by the California Legislature and the allocation of funds by the California Transportation Commission.

## **3. Indemnification:**

Fiscal Agent agrees to indemnify, defend, protect and hold harmless Parties from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively, "Claims"), which Parties may suffer or incur or to which Parties may become subject to the extent caused by the negligent or willfully wrongful acts or omissions of Fiscal Agent, its officers, employees, or agents committed in performing any Services under this Agreement. For the purposes of this section, "Parties" includes Parties' officers, officials, employees, agents and volunteers. The provisions of this paragraph do not apply to Claims occurring as a result of Parties' sole negligence or willful acts or omissions.

Parties shall jointly and severally, indemnify, defend, protect and hold harmless Fiscal Agent from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively, "Claims"), which Fiscal Agent may suffer or incur, or to which Fiscal Agent may become subject by reason of, or arising out of this Agreement and/or the MOA, including without limitation any claim for breach of contract or any other claim or action brought by any contractor or subcontractor. For the purposes of this section, "Parties" includes Parties' officers, officials, employees, agents and volunteers. The provisions of this paragraph do not apply to Claims occurring as a result of Fiscal Agent's sole negligence or willful acts or omissions.

The provisions of this section will survive the expiration or earlier termination of this Agreement.

**4. Insurance**

Calleguas Municipal Water District (CMWD) is a member of the Association of California Water Agencies - Joint Powers Insurance Authority (ACWA-JPIA). As a member of this association, the District participates in both pooled and excess insurance coverage. Specifically the District maintains the following insurance coverage: Crime Policy including Employee Dishonesty, Forgery or Alteration, and Computer Fraud coverage and Liability Insurance including General Liability and Automobile coverage. Calleguas Municipal Water District shall maintain coverage as described in this section for the duration of this Agreement and shall notify the Parties of any intent to alter its coverage.

**5. Termination of Agreement:**

Parties may terminate this Agreement, with or without cause, at any time by written notice of termination to Fiscal Agent and reassignment of all contracts executed by the Fiscal Agent on behalf of the Parties. In the event such notice is given, Fiscal Agent must cease immediately all Services in progress.

Fiscal Agent may terminate this Agreement in accordance with Section 2.3 of the MOA.

**6. General Provisions:**

There are no understandings or agreements between Fiscal Agent and Parties other than those set forth in this Agreement. This Agreement may not be modified or amended except by written agreement of the parties. Fiscal Agent may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Fiscal Agent's duties or obligations under this Agreement without the prior written consent of Parties. This Agreement is governed by California law.

IN WITNESS WHEREOF, the undersigned authorized representatives of the PARTIES have caused this Agreement to be executed on their behalf as of the date specified above, as follows:

**PARTIES**

**CAMROSA WATER DISTRICT**

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Chair, Board of Directors

By: \_\_\_\_\_  
General Counsel

**CAMARILLO SANITARY DISTRICT**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chair, Board of Directors

**CITY OF CAMARILLO**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor, City Council

**CITY OF MOORPARK**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor, City Council

**CITY OF OXNARD**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor, City Council

**CITY OF SIMI VALLEY**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor, City Council

**CITY OF THOUSAND OAKS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor, City Council

**COUNTY OF VENTURA**

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Chair, Board of Supervisors

By: \_\_\_\_\_  
County Counsel

**VENTURA COUNTY WATERWORKS DISTRICT NO. 1**

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Chair, Board of Directors

By: \_\_\_\_\_  
General Counsel

**UNITED STATES DEPARTMENT OF NAVY**

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

By: \_\_\_\_\_  
General Counsel

**VENTURA COUNTY AGRICULTURAL IRRIGATED LANDS GROUP, a subdivision of  
the Farm Bureau of Ventura County**

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

By: \_\_\_\_\_  
General Counsel

**STATE OF CALIFORNIA**  
**Department of Transportation**  
Will Kempton  
Director of Transportation

By \_\_\_\_\_  
Douglas R. Failing  
District Director

Approved as to Form & Procedure:

By: \_\_\_\_\_  
Attorney

Certified as to Funds:

By: \_\_\_\_\_  
District Budget Manager

Certified as to Financial Terms and Conditions:

By: \_\_\_\_\_  
Accounting Administrator

**Calleguas Municipal Water District as FISCAL AGENT:**

By: \_\_\_\_\_  
General Manager