

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Prepared on: February 8, 2005
Department: General Services
Budget Unit: 063
Agenda Date: February 22, 2005
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Ron Cortez, Director
General Services Department

STAFF CONTACT: Ronn Carlentine, SR/WA
Real Property Manager (568-3078)

SUBJECT: Culligan International Company Request for
Assignment of Access and Use Agreement
First Supervisorial District

Recommendation:

That the Board of Supervisors:

- A. Consent by execution of the Consent to Assignment granting Water Applications & Systems Corporation (WASC), a private equity fund managed by Clayton, Dublier & Rice, Inc., the right to assume responsibility for remediation of the UST site at 1020 Santa Barbara Street, which affects the County's Garden Street employee parking lot pursuant to the terms and conditions of the Access and Use Agreement dated July 27, 2004, and subsequent amendment dated October 26, 2004, from Culligan International Company.
- B. Authorize the General Service Department to execute on behalf of the County, any permits which require property owner's signature in order to facilitate the Permitted Activities associated with the Access and Use Agreement.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community and with actions required by law or by routine business necessity.

Executive Summary and Discussion:

On July 27, 2004 and subsequent amendment on October 26, 2004, your Board entered into an Access and Use Agreement with Culligan International Company for the purpose of conducting certain environmental remedial activities approved by County Fire Prevention Division to address hydrocarbon

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contamination associated with a historical fuel release from the former Culligan Soft Water of Santa Barbara facility formerly located at 1026 Santa Barbara Street, in Santa Barbara, adjacent to County's Garden Street employee parking lot.

The County has been notified that Culligan International Company was part of a group of companies sold by its corporate owner, United States Filter Corporation, and that as of the closing date of September 30, 2004, WASC assumed responsibility for the remediation of the UST site at 1020 Santa Barbara Street. The remedial system installation is scheduled to begin no later than June 3, 2005, and remediation should be completed within a time span of 3 -5 years.

County Public Works, Fire/PSD, County Counsel and General Services Departments have been working with Culligan's legal representative, Jon Benjamin of Farella Braun+Martel LLP, and their technical consultant Shaw Environmental, with Diane Buchanan as the project manager. WASC will continue to have Jon Benjamin of Farella Braun + Martel LLP represent its interests, and the technical consultant will remain Shaw Environmental, with Diana Buchanan continuing as the project manager.

In addition, the General Services Department is requesting your Board to recognize the General Services Department Director, or designee to execute any and all necessary permits to facilitate the required property owner's signature on such permits.

Mandates and Service Levels:

No change in programs or service levels.

Fiscal and Facilities Impacts:

As earlier provided, the revenue generated by this agreement (\$200 per month) will be deposited in General Services/Vehicle Ops Account: 7460; Fund: 1900; Program: 4100; Dept: 063.

The impact to facilities will be a one time (for two consecutive weeks) trenching and installation of underground piping and utilities. It is the intent of the parties that the activities to be performed take place to minimize disturbance to employees parking their vehicles during normal County business hours.

Special Instructions: After Board action, distribute as follows:

- | | |
|--|--------------------------------------|
| 1. Copy of original <u>Notice of Assignment of Access Agreement</u> | Board's Official File |
| 2. Original <u>Notice of Assignment of Access Agreement & Minute Order</u> | Facilities Services, Ronn Carlentine |

Clerk: The General Services Department, Real Estate Services will send the executed original Notice of Assignment of Access Agreement to WASC. The Clerk of the Board should retain a copy of the executed Notice of Assignment of Access Agreement for the Board's official file.

Project: Culligan Assignment
Garden Street Lot
Folio: 003148
APN: 029-212-011 & -019
Agent: RC

**ASSIGNMENT OF ACCESS AND USE AGREEMENT, ASSUMPTION OF
PERFORMANCE, and CONSENT TO ASSIGNMENT,**

(Assignment)

CULLIGAN INTERNATIONAL COMPANY, a Delaware Corporation, hereinafter "PERMITEE/ASSIGNOR," hereby assign to WATER APPLICATIONS & SYSTEMS CORPORATION ("WASC"), a Delaware Corporation, hereinafter "ASSIGNEE," with their principal place of business at 14950 Heathrow Forest Parkway, Suite 200, Houston, Texas 77032 that certain agreement, hereinafter "ACCESS AND USE AGREEMENT," dated July 27, 2004, entered into, by and between PERMITEE/ASSIGNOR and the County of Santa Barbara, hereinafter "COUNTY," and which was subsequently amended on October 26, 2004, to conduct certain environmental remedial activities, approved by the County Fire Department's Protective Services Division ("PSD"), to address hydrocarbon contamination associated with a historical fuel release on certain real property located at 1020 Santa Barbara Street, Santa Barbara, (know as the County Garden Street Parking Lot); such assignment to be effective upon the execution of Consent to Assignment by COUNTY, subject to each and every condition, as follows:

1. That ASSIGNEE shall faithfully perform, and shall agree to be bound by, all of the terms, conditions and covenants of said ACCESS AND USE AGREEMENT and its amendments attached hereto as Attachment "A" and incorporated herein by reference; and
2. That there shall be no further assignment, or subletting, without the written consent of COUNTY.

PERMITEE/ASSIGNOR
CULLIGAN INTERNATIONAL COMPANY

By: _____
Robert LaBoube, Director
Environmental, Health & Safety

Project: Culligan Assignment
Garden Street Lot
Folio: 003148
APN: 029-212-011 & -019
Agent: RC

(Assumption of Performance by Assignee)

WATER APPLICATIONS & SYSTEMS CORPORATION (“WASC”), a Delaware Corporation, hereinafter “ASSIGNEE,” having their principal place of business at 14950 Heathrow Forest Parkway, Suite 200, Houston, Texas 77032, hereby assumes the ACCESS AND USE AGREEMENT referred to above and agrees to perform, and be bound by all terms, conditions, and covenants thereof, with the same force and effect as though originally the PERMITEE named therein.

“ASSIGNEE”
WATER APPLICATIONS &
SYSTEMS CORPORATION

By: _____

Date: _____

Project: Culligan Assignment
Garden Street Lot
Folio: 003148
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(County's Consent to Assignment of Lease Agreement)

The foregoing request of CULLIGAN INTERNATIONAL COMPANY, a Delaware Corporation, PERMITEE/ASSIGNOR, for the consent of the County of Santa Barbara to the proposed assignment of the ACCESS AND USE AGREEMENT between PERMITEE/ASSIGNOR and COUNTY referred to above, is hereby granted, upon the terms and conditions set forth above, including the agreement of WATER APPLICATIONS & SYSTEMS CORPORATION ("WASC"), a Delaware Corporation, ASSIGNEE, to perform the terms, conditions and covenants of said ACCESS AND USE AGREEMENT, as stipulated herein.

"COUNTY"
COUNTY OF SANTA BARBARA

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Chair, Board of Supervisors

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, C.P.A.
AUDITOR-CONTROLLER

By: _____
Deputy

By: _____

APPROVED:

APPROVED AS TO INSURANCE:

Ronn Carlentine, SR/WA
Real Property Manager

Stephen D. Underwood
Chief Assistant County Counsel