

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: 6/30/04
Department Name: General Services
Department No.: 063
Agenda Date: 7/20/04
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 (568-3078)
Real Property Manager

SUBJECT: Culligan International Company Remediation Project
at the Garden Street Employee Parking Lot
First Supervisorial District
Folio No. 003148

Recommendation(s):

That the Board of Supervisors approve and execute an Access and Use Agreement by and between the County of Santa Barbara and Culligan International Company for the purpose of conducting certain environmental remedial activities approved by County Fire Department's Protection Services Division (PSD) to address hydrocarbon 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 Agreement shall be retroactive to September 15, 2000, and shall terminate upon the completion of the Permitted Activities to the satisfaction of the applicable governmental authorities. Culligan will pay County a \$200 per month fixed use rate.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 2, A Safe and Healthy Community in Which to Live, Work, and Visit.

Executive Summary and Discussion:

In 1953 a 550-gallon underground gasoline storage tank was permitted for installation at 1026 Santa Barbara Street (site of the former Culligan Soft Water of Santa Barbara facility). Upon tank removal 32 years later (in 1985), holes were found in the tank and stained backfill and native soils were observed, and local, state and federal laws mandate remediation of the groundwater contamination due to leaking of the underground fuel tank. After the initial assessment boring drilled in 1985 (sampled to a depth of 18 feet), no site

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assessment occurred for 8 years, until 1993. Manual free product removal was conducted between March 1995 and continued through the end of the fourth quarter, 1998, recovering approximately 26 gallons of product located about 130 feet down gradient of the Culligan tank. Since 1998, local, state and federal mandates for remediation of contamination due to leaking underground fuel tanks have become more stringent.

In 1998, it appeared that both soil and groundwater contamination extended onto County property beyond the remediation work being conducted solely on the Culligan and Santa Barbara Bank and Trust properties. Subsequent to an updated action Culligan asked the County for permission to access County property to perform remediation work on a portion of the County's Garden Street Parking Lot. On March 20, 1998, the General Services Director approved a Land Lease Agreement for Culligan's use of one parking space for the placement of equipment, etc. necessary to the remediation work. The Land Lease was for a period of 6 months with 2 options to extend of 6 months each at a monthly rent amount of \$200. On February 8, 2001, the Land Lease was amended to extend the term through September 15, 2001, add Contractor's Pollution Liability insurance in the amount of \$6,000,000 and change the Reporting Requirements.

Since the expiration of the Land Lease Agreement, County Public Works, Fire/PSD, County Counsel and General Services Departments have been collaborating with Culligan, Culligan's consultant, Shaw Environmental, and Culligan's attorney, Jon Benjamin, on a Remedial Action Plan to complete the remediation work within a time span of 3 -5 years. With the approval of a Remedial Action Plan on March 12, 2004, Culligan is now requesting a new agreement with the County for access and use of the County Garden Street Parking Lot. An Access and Use Agreement was generated which addresses the following concerns of the County:

- Under the terms of the Agreement, Culligan shall provide the dates and times for their remediation project. Also, Culligan's timeline will be reviewed by county staff as to the reasonableness of their schedule. The remediation work should be completed within 3-5 years from the commencement of the work.
- Culligan shall pay the County \$200 per month as compensation for the use of one parking space on the property for remediation activities. The Agreement may confer a possessory interest on Culligan which may be levied upon the site or equipment during the term of the Agreement.
- Culligan is required to obtain and maintain all necessary permits and authorizations from applicable governmental authorities required for, and shall comply with all applicable laws, ordinances, regulations and permits with respect to the performance of the Permitted Activities to ensure the public's safety and protect the environment. Fire/Protection Services Division is the local regulating/enforcement agency. Discussions with Public Works' Engineering Geologist and PSD's Registered Geologist, confirmed that the remediation work will not present any environmental impacts or health and safety risk to county employees parking in the Garden Street Parking Lot, nor will the remediation project preclude County from constructing a parking structure in that area in the future.

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- The consultant for Culligan is required to submit a report to County Fire/Protection Services Division every 3 months. County staff can prepare a summary of activities from the information available in the quarterly reports and present the summary to your Board on a semi-annual basis.

Mandates and Service Levels:

No change in service levels.

Fiscal and Facilities Impacts:

The revenue generated by this agreement 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 exclusively on Saturdays, Sundays and Holidays in order to minimize disturbance to employees parking their vehicles during normal County business hours.

Special Instructions:

Upon approval and execution by the Board, the Clerk should distribute as follows:

- | | |
|---|---|
| 1. Original executed Agreement | - Board's Official File |
| 2. Dupl. orig. exec. Agreement & Minute Order | - Attn: Ronn Carlentine, Facilities Svcs.,
Courthouse, 2 nd Floor Annex |
| 3. Copy exec. Agreement & Minute Order | - Attn: Bill Tracy, Public Works |
| 4. Copy exec. Agreement & Minute Order | - Attn: Div. Chief Tom Franklin, Fire
Department/Protection Svcs. Div. |

Concurrence:

County Fire Department/Protection Services Division (Ron Gutier)
Public Works (Bill Tracy)
County Counsel (Mike Ledbetter)

Project: Culligan 's Remediation
at Garden Street Lot
Folio: 003148
APN: 029-212-011 & -019
Agent: RC

ACCESS AND USE AGREEMENT

THIS ACCESS AND USE AGREEMENT (the "Agreement") is by and between the COUNTY OF SANTA BARBARA, a political subdivision of the state of California ("Permitter" or "County"), and CULLIGAN INTERNATIONAL COMPANY, a Delaware Corporation ("Culligan" or "Permittee"), with reference to the following:

RECITALS

A. Permittee plans 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, in Santa Barbara, California. The property at 1020 Santa Barbara Street is currently owned by Pacific Capital Bank, N.A. (Assessor's Parcel Number 029-212-026, the "Bank's Property"). It is adjacent to the former Culligan Soft Water of Santa Barbara Facility, formerly located at 1026 Santa Barbara Street in Santa Barbara, California (Assessor's Parcel Number 029-212-023, the "Former Culligan Facility"). In addition, remedial activities will also be undertaken at a portion of the County's Garden Street parking lot, as described immediately below.

B. To implement the PSD-approved remediation, Culligan will need continuing access, as described in this Access Agreement, to portions of the Garden Street parking lot, located between the 1000 blocks of Santa Barbara Street and Garden Street (Assessor's Parcel Numbers 029-212-019 and 029-212-011) in the City of Santa Barbara (the "County's Property"). Permitter is the fee owner of the County's Property.

C. To enable Culligan expeditiously and efficiently to implement the remedial activities, Permitter desires to grant its permission to Permittee or its affiliates, Permittee's consultants, engineers, employees, contractors, subcontractors, representatives and agents (collectively referred to herein as "Permittee's Agents"), and each of them, to have access to the County's Property, in conformity with the terms and conditions set forth herein.

NOW, THEREFORE, according to the foregoing recitals and following terms and conditions, the parties to this Agreement (individually "Party" and collectively "the Parties"), and each of them, hereby covenant and agree as follows:

1. **GRANT OF ACCESS:**

(a) Permitter hereby grants its permission to Permittee and Permittee's Agents to have access to the County's Property in order to perform the Permitted Activities (as defined in paragraph 1(b) below), subject to the terms and conditions set forth herein.

(b) The "Permitted Activities" shall consist of the following specific activities at specific locations of the County's property, as shown on "Exhibit A" to this Agreement, all of which are necessary for Culligan to undertake in order to implement the remedial action plan, as described in the report titled "Remedial Action Plan," dated March 9, 2004, and approved by PSD on March 12, 2004. This document, which was prepared by and submitted to PSD by Shaw Environmental, Inc. (Shaw), Culligan's technical consultant, included the following activities: (1) continued periodic monitoring of five groundwater monitoring wells (MW-7, MW-9, MW-10, MW-13 and MW-15) currently located at various locations on the County's property; (2) utilization of MW-7 and MW-10 as remediation wells during the remediation project; (3) installation of one additional monitoring well (MW-17) and one additional remediation well (MW-19); (4) utilization of an unused portion of the parking lot plus one adjacent parking space (the "treatment pad") during the remediation project, for installation of above-ground equipment necessary to operate the treatment system for the remediation project and discharge treated vapor to the atmosphere under permit from County Air Pollution Control District; (5) one-time (for two consecutive weeks) trenching and installation of underground piping and utilities from the treatment pad to MW-7, MW-10, and MW-19, temporary storage of excavated soils on the County's Property, followed by utilization of such below-ground piping during the remediation project; (6) one-time trenching and installation of piping from the treatment pad to the edge of the Bank's Property, as shown on Exhibit A hereto, from where further underground trenching and piping will lead to a remediation well (MW-18) on the Bank's adjacent Property, temporary storage of excavated soils on the County's property, followed by utilization of such below-ground piping and utilities during the remediation project; and (7) such access as may reasonably be required for installation, start-up, operation and maintenance of the treatment system, the wells, the associated piping and utilities.

(c) Permittee or Permittee's Agents shall provide Permitter or Permitter's designated representative with a written notice of the dates and approximate times when such Permitted Activities will be performed. Such notification shall be provided not less than fourteen (14) calendar days prior to the commencement of access onto the County's Property to perform the Permitted Activities on the County's Property. If the date and time proposed by Permittee for the Permitted Activities is not reasonably acceptable to Permitter, Permitter shall confer promptly with Permittee or its agent regarding a mutually acceptable alternative. Except as provided in section 1(b)(5) above, or as may be subsequently agreed to in writing between the parties, it is the intent of the parties that the activities to be performed hereunder, including without limitation installation, maintenance and removal, take place exclusively on Saturdays, Sundays and Holidays to the extent that they disturb areas other than the permanently fenced enclosure shown on Exhibit "A," in order to minimize disturbance to the parking of vehicles during normal County business hours.

2. **GOVERNMENTAL AUTHORIZATION FOR PERMITTED ACTIVITIES:**

Permittee and Permittee's Agents shall obtain and maintain all necessary permits and authorizations from applicable governmental authorities required for, and shall comply with all

applicable laws, ordinances, regulations and permits with respect to, the performance of the Permitted Activities.

3. **WASTE GENERATION AND MANAGEMENT:** Permittee shall be the designated generator of any waste produced in performing the Permitted Activities, including soil cuttings from trenching and pipe run installation, and shall be fully responsible for preparation and execution of any manifests required for the management of such waste.

4. **USE, OCCUPATION AND ENJOYMENT OF COUNTY'S PROPERTY:** Except as agreed herein or subsequently agreed to by the County, in exercising their rights granted by this Agreement, Permittee and Permittee's Agents shall not interfere with Permitter's use, occupation or enjoyment of the County's Property as a parking lot during normal business hours.

5. **RENT:** Commencing upon execution of this Agreement by Permitter, and monthly thereafter, Permittee shall pay a monthly rent of TWO HUNDRED DOLLARS and 00/100 (\$200.00).

Rental payments shall be made to Permitter at the address as shown in Section 18, **NOTICES**, or such other place as the parties shall agree upon. Rent due for any period during the term hereof which is for less than one (1) calendar month shall be prorated based upon a thirty (30) day month.

6. **SECURITY DEPOSIT:** A deposit in the amount of FIVE THOUSAND and 00/100 DOLLARS (\$5,000.00) shall be due to Permitter within 30 days after execution of this Agreement or prior to the commencement of construction of Permittee's activities (as defined in paragraph 1 (b) above), whichever is earlier ("Security Deposit"). Permitter shall have the right to use monies from this Security Deposit to make any repairs not made by Permittee for which Permittee is otherwise obligated to make, to restore the Property in the event Permittee does not properly do so, within ten (10) day's notice (if there is adequate time to provide such notice without causing unacceptable risk to persons or property, in Permitter's reasonable discretion), according to its obligations as set forth herein, and to reimburse Permitter's designated representatives for the staff time associated with significant services required after the execution of this Agreement by both parties to it. In the event that, during the course of this Agreement, Permitter is required to use a portion of the Security Deposit to make repairs, then Permittee shall, within thirty (30) days of such repairs and Permittee's receipt of Permitter's written notice to reimburse Permitter, thereafter reimburse the Security Deposit monies used by Permitter, provided, however, that Permittee shall not be requested to make such reimbursement unless there has been material noncompliance by Permittee or its agent with respect to the matters covered in this paragraph. At the expiration or earlier termination of this Agreement Permitter shall refund any remaining monies from the Security Deposit to Permittee.

7. **PERFORMANCE OF THE PERMITTED ACTIVITIES:**

(a) Permittee shall take all reasonable and necessary safety and security precautions and maintain a neat and orderly workplace in connection with the performance of the Permitted Activities under this Agreement. Permittee shall not cause or permit any damage to the County's Property as a result of the performance of the Permitted Activities, except as may reasonably be required to perform the Permitted Activities (such as, by way of example, breaking through pavement to trench and install underground piping runs from the treatment pad to the extraction

and injection wells, or drilling through pavement and soil for installation of additional monitoring or extraction wells that may be required by PSD). Permittee, at its sole expense, shall repair any settlement to asphalt resulting from construction and installation of the treatment system.

(i) Permittee shall repair any damage caused to the County's Property resulting from the performance of the Permitted Activities by Permittee or Permittee's Agents, as soon as is reasonably practicable but not later than thirty (30) days after completion of each such Permitted Activity

(ii) Permittee shall restore the County's Property to a condition at least as good as that which existed prior to the time that Permittee or its agents performed any of the Permitted Activities, by replacing all asphalt that was removed and repairing any asphalt damaged by such work, in accordance with a scope of work to be prepared at the direction of Permittee and reasonably and promptly approved by Permitter.

(iii) Following completion of the remedial activities and receipt of a "no further action" letter from PSD regarding the same, Permittee shall remove the treatment system equipment, cement the underground piping in place, and repave any disturbed areas, and shall abandon all of the wells. Abandoning the wells shall include but is not limited to, removing the sleeve buried in the well shaft as well as removing the sand pack around the sleeve, filling the resulting hole with a sealant of bentonite cement slurry and patching the surface to conform to existing conditions on the Property.

(b) Permittee shall defend, indemnify and hold Permitter harmless from all liability, loss, cost, expense, fines, penalties and claims arising out of any such damage to the County's Property occurring after the date of this Agreement, or before the date of this Agreement as a result of environmental investigatory or remedial work performed on the Subject Property by Permittee or its agents, to the extent such damages are the result of acts or omissions of Permittee and Permittee's Agents.

(c) Permittee shall be responsible to ensure that its agents who will be performing the Permitted Activities comply with the provisions of this Section 7.

8. **ENVIRONMENTAL IMPAIRMENT:** Permittee at Permittee's expense, shall comply with and perform all applicable laws, regulations, rules, including without limitation those relating to construction, grading, provision of a 6-foot height opaque chain link fence with a locking gate and signage containing a 24-hour local emergency contact person, health, safety, noise, underground tanks, 90-day limit for storing toxic or hazardous materials, environmental protection, waste disposal, clean-up and water and air quality, and shall furnish Permitter with satisfactory evidence of such compliance upon the request of Permitter. Permittee shall obtain all necessary permits at its sole expense.

9. **COMPLIANCE WITH THE LAW:** With respect to the Permitted Activities, Permittee, its agents, or employees shall comply with all local, County, State, and Federal laws, rules, ordinances, and regulations affecting the Property and Site, now or hereafter in effect.

10. **WASTE AND NUISANCE:** While on the Property subsequent to the execution of this agreement, Permittee, its agents, or employees shall not commit, nor suffer to be committed, any waste or nuisance upon the Property and Site. Permittee's activities, facilities and equipment shall be professionally maintained and fitted such as noise and odor shields and blankets as needed to reduce the level of noise and odor to surrounding business and residents.

11. **TOXICS:** Subsequent to the execution of this agreement, Permittee shall not manufacture or generate hazardous wastes on the Site or Property unless specifically authorized by this Agreement. Permittee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by Permittee, its agents, employees, or designees on the Site or Property during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. Permittee shall notify COUNTY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

12. **TAXES AND ASSESSMENTS:** This Agreement may confer a possessory interest on Permittee and Permittee shall pay and discharge any and all property taxes and/or assessments, including special assessments and possessory interest taxes, if any, which may be levied upon the Site or equipment during the term of this Agreement.

13. **INDEMNIFICATION:** Permittee shall defend, indemnify and save harmless the Permitter, its officers, agents and employees from any and all third party claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the Permittee or its agents or employees or other independent contractors directly responsible to it; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the negligence or willful misconduct of the Permitter. It is the intent of the parties that this paragraph provide indemnification of Permitter by Permittee for liability related to the performance of the Permitted Activities to the fullest extent allowed by law.

Permittee shall notify Permitter immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Permitter shall give notice to Permittee within such period of time as shall allow Permittee the benefit of any defense to the claims, demands, damages, costs, expenses, judgments or liabilities for which Permitter intends to seek indemnification under this section or allow Permittee the opportunity to respond in a timely fashion.

14. **INSURANCE:** Without limiting the Permittee's indemnification of the Permitter, Permittee shall either provide a statement of self-insurance acceptable to Permitter or procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (a) have a Best's rating of no less than A VII, and (b) are admitted insurance companies in the State of California. All other insurers require the prior approval of the Permitter. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place Permittee in default. Upon request by the Permitter, Permittee shall provide a certified copy of any insurance policy to the Permitter within ten (10) working days.

- A. **Workers' Compensation Insurance.** Statutory Workers' Compensation and Employers Liability Insurance shall cover all Permittee's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, major

change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such notice by the Permitter. In the event Permittee is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if Permittee has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and Permittee submits a written statement to the Permitter stating that fact.

- B. General and Automobile Liability Insurance.** The general liability insurance shall include personal injury liability coverage, shall afford coverage for all premises and operations of Permittee, shall afford coverage for product liability, and shall include contractual liability coverage for this Agreement between Permitter and Permittee. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles, which are operated on behalf of Permittee pursuant to Permittee's activities hereunder. Permitter, its officers, employees, and agents shall be named as additional Insured on any policy. Permittee's A copy of the endorsement evidencing that Permitter has been added as a named additional insured on the policy must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Personal injury liability coverage shall also be in the amount of not less than \$2,000,000 per occurrence and aggregate. Said policy or policies shall include severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form: "Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the Permitter has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only." Said policy or policies shall provide that the Permitter shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction of coverage..
- C. Fire Legal Liability.** Permittee shall provide Fire Legal Liability coverage in the amount of \$50,000 as part of the General Liability Policy.
- D. Property Insurance:** Permittee shall maintain property insurance on Permittee's equipment throughout the Agreement.
Permittee shall maintain property insurance for personal effects, including supplies and tenant improvements. Permittee is not granted personal property coverage under the Permitter Property program.
- E. Contractors' Pollution Liability Insurance:** Permittee shall provide evidence of Contractor's Pollution Liability Insurance coverage in the minimum amount of \$1 Million.

The above insurance requirements are subject to periodic review by Permitter. County's Risk Manager is authorized to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against Permitter or inflation. Any such change of provisions for the entire term of the Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Permittee agrees to execute any such amendment within thirty (30) days of receipt.

15. **MUTUAL WAIVER OF SUBROGATION RIGHTS:** Permittee and Permitter hereby waive any rights each may have against the other on account of any loss or damage suffered by Permittee or Permitter, as the case may be, to their respective property arising from any risk generally covered by "all risk" property insurance; and the parties each, on behalf of their respective insurance companies insuring the property of either Permittee or Permitter against any such loss, waive any right of subrogation that either may have against the other, as the case may be, including any deductibles or self-insurance maintained thereunder.

16. **NON-DISCRIMINATION:** Permittee shall comply with County laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.

Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, Permitter shall have the right to terminate this Agreement and the interest hereby created without liability therefore.

17. **COMMENCEMENT, DURATION AND TERMINATION:** This Agreement shall be retroactive to September 15, 2000, and shall terminate upon the completion of the Permitted Activities to the satisfaction of the applicable governmental authorities and the prompt restoration of the County's Property as required in Section 5, above. Permittee shall give written notice to Permitter within thirty (30) days after the applicable governmental authority approves of the completion of the Permitted Activities. If the applicable governmental authority subsequently requires additional work to be performed by Permittee, it shall not be performed on the County's Property unless authorized pursuant to an amendment to this Agreement. Nothing in this Agreement shall be construed to give Permittee the right to enter the County's Property to do any work that governmental authorities might require of Permittee, other than the Permitted Activities, and Permittee acknowledges and agrees that this Agreement does not give Permittee any right to enter the County's Property to perform any soil or groundwater remediation work that any governmental agency may require Permittee to do, other than such work that is specifically described in Section 1(b) of this Agreement, or as may be described in any amendment to this Agreement.

18. **COOPERATION WITH PERMITTED ACTIVITIES:** Permitter shall reasonably cooperate in all respects with Permittee and Permittee's Agents to effectuate the Permitted Activities.

19. **NON-WAIVER OF OTHER RIGHTS:** Nothing herein shall constitute an admission or acknowledgment of any fact, liability, responsibility or fault, or proportionate share thereof, for any conditions at, on, or beneath the County's Property, nor shall this Agreement be used as evidence of any admission, acknowledgment or liability. Nothing in this Agreement shall be construed or intended to modify or waive any rights among the Parties, which may exist otherwise.

20. **REPORTING REQUIREMENTS AND COMPOUND ACCESS:**

(a) Permittee shall provide Permitter with an updated site map if other Permitted Activities are subsequently proposed and approved. Permittee shall continue to provide copies of all data and reports submitted to PSD regarding the remediation project. Such information

shall be provided to Mr. Bill Tracy, County of Santa Barbara Department of Public Works, 123 East Anapamu Street, Santa Barbara, CA 93101, or his designee.

(b) If the County desires access to the remediation compound, this shall be requested through Permittee's consultant, Shaw Environmental & Infrastructure, 3770 State Street, Suite 350, Santa Barbara, California, 93105-3100, attention: Ms. Karol Ballantine (or Office Manager, if Ms. Ballantine is not available, 805-569-9825). Keys necessary for access to the remediation compound shall be held at that location.

21. **NOTICES:** Unless otherwise agreed, any notice required or permitted to be given hereunder shall be in writing and personally delivered, or delivered by mail to the respective addresses set forth below, or delivered by facsimile transmittal to the fax numbers set forth below, provided that a copy is either personally delivered or delivered by mail. Permittee or Permitter may from time to time designate different addresses or fax numbers for notice, by notice to the other.

If to Permitter: Bill Tracy
 Department of Public Works
 County of Santa Barbara
 123 East Anapamu Street
 Santa Barbara, California 93101

If to Permittee: Robert LaBoube
 Director, Environment, Health & Safety
 Culligan International Company
 One Culligan Parkway
 Northbrook, Illinois 60062
 Phone No.: 847-205-5792
 Fax No.: 847-205-6050

With copies to: Jon L. Benjamin, Esq.
 Farella Braun + Martel, LLP
 235 Montgomery Street, 18th Floor
 San Francisco, CA 94104
 Phone No.: 415-954-4971
 Fax No.: 415-954-4480

 Michael R. Ledbetter, Esq.
 Office of County Counsel
 105 East Anapamu Street, Room 201
 Santa Barbara, California 93101
 Phone No.: 805-568-2950
 Fax No.: 805-568-2982

Notices personally delivered shall be deemed served on actual delivery. Notices delivered by mail shall be deemed served three (3) working days after deposit in the United States Mail, postage prepaid and properly addressed. Notices delivered by facsimile transmission shall be

deemed served as of the date and time of receipt of transmission as shown by a report electronically produced by the facsimile system.

22. **ENTIRE AGREEMENT/MODIFICATION:** This Agreement represents the entire agreement between the Parties with respect to the matters covered herein. No alteration, modification, amendment, or waiver of this Agreement shall be valid unless it is in writing and signed by all Parties hereto.

23. **MECHANICS LIENS:** Permittee shall keep the County's Property free from any mechanics or other liens arising out of any work performed, materials furnished or obligations incurred by Permittee or Permittee's Agents. Permittee shall cause any such lien that may attach to the County's Property to be released within a commercially reasonable time, not to exceed sixty (60) days after Permittee receives notice of such lien, at Permittee's sole cost and expense. Preliminary Twenty-Day Notices are not liens for purposes of this paragraph 23.

24. **LIMITATION OF WAIVER:** No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed to be a further continuing waiver of any such term, provision, or condition or of any other term, provision, or condition of this Agreement.

25. **ASSIGNMENT:** The permission granted herein may be assigned by Permittee to any other party or parties with the prior written consent of Permitter, which consent may not be unreasonably withheld.

26. **CHOICE OF LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

27. **COUNTERPARTS:** This Agreement may be signed in any number of counterparts, each of which shall be an original, and all of which shall constitute one and the same Agreement.

28. **ATTORNEYS', EXPERTS', STAFF AND CONSULTANTS' FEES:** Should any dispute arise between the Parties concerning performance or the rights and duties arising out of this Agreement, the prevailing party in such dispute, whether the dispute be resolved by litigation or other proceedings, shall be entitled, in addition to such other relief as may be granted to it, to a reasonable sum as and for its costs and attorneys', experts' staff and consultants' fees.

29. **HEADINGS AND TITLES:** The captions of the paragraphs of this Agreement are only to assist the Parties in reading and understanding this Agreement and shall have no effect upon the construction or interpretation of any part thereof.

30. **SEVERABILITY:** If any provision of this Agreement, or its application to any person, is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties to the extent possible. In any event, invalidation of any provisions of this Agreement, or of its application to any person, by judgment or order, shall not affect any other provision of this Agreement or its application to any other person or circumstance, and all remaining portions of this Agreement shall continue in full force and effect.

31. **TIME OF THE ESSENCE:** Time is of the essence of this Agreement and all of the terms, provisions, covenants and conditions hereof.

32. **FURTHER ASSURANCES:** The Parties agree to take any other actions reasonably requested of them to effectuate the purposes of this Agreement. The Parties agree to confer in good faith to resolve any disputes that may arise out of this Agreement.

33. **CONSTRUCTION:** The parties hereto have each been represented by counsel and have each participated in the drafting of this agreement. Accordingly, each party hereto waives any application of Civil Code section 1654 with respect to this agreement.

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Deleted:
LEASERE
& Access A

Project: Culligan 's Remediation at
Garden Street Lot
Folio: 003148
APN: 029-212-011 & -019
Agent: RC

IN WITNESS WHEREOF, the parties have executed this Access and Use Agreement as of the last date set forth below.

“PERMITEE”
CULLIGAN INTERNATIONAL COMPANY, a Delaware Corporation

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

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

By: _____

APPROVED:

By _____
Ronn Carlentine, SR/WA
Real Property Manager

“PERMITTOR”
COUNTY OF SANTA BARBARA

By: _____
Chair, Board of Supervisors

Date: _____

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: _____

APPROVED:

By _____
John A. Forner, MBA, ARM
Risk Program Administrator

Deleted:
LEASERE
& Access A

“EXHIBIT A”

MAP OF PERMITTE’S ACTIVITIES AND LOCATIONS