

**CAPACITY TRANSFER AGREEMENT
TRANSFERRING INLAND EMPIRE BRINE LINE CAPACITY
FROM WESTERN MUNICIPAL WATER DISTRICT TO SAN BERNARDINO
VALLEY MUNICIPAL WATER DISTRICT**

This Capacity Transfer Agreement (Agreement) is entered into as of _____, 201_ , by and among the Santa Ana Watershed Project Authority (SAWPA), San Bernardino Valley Municipal Water District (Valley District), and Western Municipal Water District (Western). SAWPA, Valley District and Western are sometimes referred to herein individually, as “Party”, and collectively, as the “Parties”.

RECITALS

WHEREAS, Western and Valley District are member agencies of SAWPA.

WHEREAS, SAWPA is responsible for managing the Inland Empire Brine Line (Brine Line), formerly the Santa Ana Regional Interceptor (SARI) pipeline.

WHEREAS, SAWPA delegates some of its authority to manage the Brine Line to Western and Valley District for dischargers in their respective service areas.

WHEREAS, the City of Beaumont (City) needs to treat its wastewater to higher standards in order to meet the discharge requirements of the Regional Water Quality Control Board (Regional Board).

WHEREAS, the City is planning to build the new Beaumont Wastewater Treatment Plant (Plant) to achieve compliance with the Regional Board requirements.

WHEREAS, a byproduct of the treatment process at the Plant will be non-reclaimable, brine waste (Brine) that must be disposed.

WHEREAS, the City desires to purchase 0.55 million gallons per day (MGD) of pipeline capacity rights and treatment and disposal capacity rights in the Brine Line at 917 pounds per day BOD (based on 200 mg/l) and 917 pounds per day TSS (based on 200 mg/l) in order to connect to the Brine Line within the Valley District service area to dispose of its Brine.

WHEREAS, the City is outside of the Brine Line Service Area that is defined in the Agreement between SAWPA and the Orange County Sanitation District (OCSD).

WHEREAS, SAWPA has received a letter from OCSD dated October 24, 2018, in which OCSD identified four requirements to be met before it would accept the City’s discharge from outside SAWPA’s Brine Line Service Area.

WHEREAS, there is no Brine Line pipeline capacity available for sale in the Valley District service area.

WHEREAS, the Dairy Farmers of America (DFA) owns pipeline capacity rights and treatment and disposal capacity in the Brine Line within the Western service area, downstream from the Valley District service area (DFA Capacity), and is willing to allow 0.55 MGD of its pipeline and treatment and disposal capacity to be conveyed to City.

WHEREAS, the City will purchase the DFA Capacity from DFA at SAWPA's published rates under a separate agreement.

WHEREAS, upon transfer of the DFA Capacity to the City, WMWD shall invoice DFA and DFA shall pay any remaining costs owed to WMWD with respect to the DFA Capacity.

WHEREAS, Western desires to approve the transfer of 0.55 MGD of Brine Line pipeline capacity rights and 0.55 MGD treatment and disposal capacity rights within Western's service area to Valley District's service area. ~~to accommodate the City's discharge contingent upon OCSD approving City's discharge to the Brine Line.~~

WHEREAS, SAWPA has determined that the transfer of pipeline capacity ~~from Western to Valley District~~ will require the conversion of five (5) maintenance access structures (MAS) along Euclid Avenue from gravity to pressurized in order to add the 0.55 MGD of pipeline capacity and prevent surcharging and the potential for a Sanitary Sewer Overflow (SSO).

WHEREAS, Valley District ~~desires to approve~~ ~~of~~ the transfer of 0.55 MGD of Brine Line pipeline capacity ~~and treatment and disposal capacity rights~~ from the Western service area ~~contingent~~ upon City obtaining final approval from OCSD to discharge to the Brine Line and completing the necessary MAS improvements to add the capacity under separate agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, the Parties agree to the following.

TERMS OF AGREEMENT

1. Western hereby agrees to transfer to Valley District, and Valley District agrees to accept, 0.55 MGD of Brine Line pipeline capacity rights and 0.55 MGD treatment and disposal capacity rights in the Brine Line at 917 pounds per day BOD (based on 200 mg/l) and 917 pounds per day TSS (based on 200 mg/l). Valley District, and Western shall reflect the transfer of such Brine Line capacity in their records and SAWPA shall invoice Valley District and Western based upon these revised capacities for all charges related to any period on or after the Effective Date. Valley District shall not be responsible for any charges related to the capacities transferred under this Agreement for any period prior to the Effective Date, and Western shall not be responsible for any such charges for any period after the Effective Date. All charges related to the capacities transferred under this Agreement shall be apportioned between Western and Valley District as of the Effective Date, and to the extent the actual charges differ from the amounts apportioned as of the Effective Date, the Parties shall make all necessary adjustments by appropriate payments between themselves within thirty (30) days after such amounts are determined.

2. Effective Date: The transfer agreed to herein will occur on the date of OCSD’s approval of ~~SAWPA’s request, per City’s discharge to the Brine Line, or of actions satisfying the four conditions in~~ OCSD’s letter of October 24, 2018, ~~whichever occurs later~~.
3. Governing Law and Jurisdiction: The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions shall be determined in accordance with the laws of the State of California. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried exclusively in the superior court in the County of San Bernardino, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.
4. Notices: Service of any notices, bills, invoices or other documents required or permitted under this MOU shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

Western:

Western Municipal Water District
 ATTN: **General Manager**
 14205 Meridian Parkway
 Riverside, CA 92518

SAWPA:

Santa Ana Watershed Project Authority
 ATTN: Contracts Administration
 11615 Sterling Avenue
 Riverside, CA 92503

Valley District:

San Bernardino Valley Municipal Water District
 ATTN: **General Manager**
 380 East Vanderbilt Way
 San Bernardino, CA 92408

5. Severability: Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this MOU shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.
6. Entire Agreement: This Agreement contains the entire understanding between the Parties, and supersedes any prior understanding and/or written or oral agreements between them, respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this Agreement, that are not fully expressed herein.
7. Further Acts: Each Party agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

8. Assignment: Neither Party may assign its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party. Any attempted or purported assignment in violation of this section will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.
9. Incorporation of Recitals: Each and every one of the Recitals set forth above is a material part of this Agreement and is hereby incorporated by reference into and made part of this Agreement by this reference.
10. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Four (4) duplicate originals of this Agreement shall be executed each of which shall be deemed to be an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

Dated: _____, 2018.

SANTA ANA WATERSHED PROJECT
AUTHORITY

By: _____

Name: _____

Its: _____

Dated: _____, 2018.

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT

By: _____

Name: _____

Its: _____

Dated: _____, 2018.

WESTERN MUNICIPAL WATER DISTRICT

By: _____

Name: _____

Its: _____

Page Intentionally Blank

**AGREEMENT APPROVING CITY OF BEAUMONT
TO DISCHARGE TO THE INLAND EMPIRE BRINE LINE**

This Agreement (Agreement) is entered into as of _____, 201_, by and among the Santa Ana Watershed Project Authority (SAWPA), San Bernardino Valley Municipal Water District (Valley District), and the City of Beaumont (City). SAWPA, Valley District and City are sometimes referred to herein individually, as “Party”, and collectively, as the “Parties”.

RECITALS

WHEREAS, Valley District is a member agency of SAWPA.

WHEREAS, SAWPA is responsible for managing the Inland Empire Brine Line (Brine Line).

WHEREAS, SAWPA delegates some of its authority to manage the Brine Line to Valley District for dischargers in Valley District’s service area.

WHEREAS, the City needs to treat its wastewater to higher standards in order to meet the discharge requirements of the Regional Water Quality Control Board (Regional Board).

WHEREAS, the City is planning to build the new Beaumont Wastewater Treatment Plant (Plant) to achieve compliance with the Regional Board requirements.

WHEREAS, a byproduct of the treatment process at the Plant will be non-reclaimable, brine waste (Brine) that must be disposed.

WHEREAS, the City desires to purchase 0.55 million gallons per day (MGD) of pipeline capacity rights and treatment and disposal capacity rights in the Brine Line at 917 pounds per day BOD (based on 200 mg/l) and 917 pounds per day TSS (based on 200 mg/l) in order to connect to the Brine Line within the Valley District service area to dispose of its Brine.

WHEREAS, the City is outside of the Brine Line Service Area that is defined in the Agreement between SAWPA and the Orange County Sanitation District (OCSD).

WHEREAS, SAWPA has received a letter from OCSD dated October 24, 201~~87~~, in which OCSD identified four requirements to be met before it would accept City’s discharge from outside SAWPA’s Brine Line Service Area.

WHEREAS, Western Municipal Water District (Western) ~~and Valley District are is~~ considering a separate agreement approving the transfer of 0.55 MGD of Brine Line pipeline capacity rights and 0.55 MGD of treatment and disposal capacity rights within Western’s service area to Valley District’s service area to accommodate the City’s discharge on an effective date defined in that agreement. ~~that is contingent upon completion of OCSD’s four requirements.~~

WHEREAS, SAWPA has determined that the transfer of pipeline capacity requires the conversion of five (5) maintenance access structures (MAS) along Euclid Avenue from gravity to

pressurized in order to add the 0.55 MGD of pipeline capacity and prevent surcharging and the potential for a Sanitary Sewer Overflow (SSO).

~~WHEREAS, Valley District is willing to accept the transfer of 0.55 MGD of Brine Line pipeline capacity rights and treatment and disposal capacity rights from Western's service area contingent upon City completing the necessary MAS to add the capacity, as described herein.~~

WHEREAS, the City will purchase pipeline capacity rights and treatment and disposal capacity rights from the Dairy Farmers of America (DFA) under separate agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, the Parties agree to the following.

TERMS OF AGREEMENT

1. Before the City may discharge its Brine into the Brine Line, the City shall pay for the hydraulic improvements needed to accommodate the transfer of flow from Reach IV-B to Reach IV-A generally consisting of modifying and sealing five (5) Maintenance Access Structures (MAS's) along Reach IV-D (the "Modifications").

SAWPA Shall

- a. Obtain all necessary permits, CEQA or other approvals necessary for completion of the Modifications.
- b. Prepare or cause to be prepared plans and specifications for the Modifications, in accordance with SAWPA standards.
- c. Advertise, award, and administer a public works construction contract for the Modifications.
- d. Construct or cause to be constructed Modifications in accordance with Modification plans approved by SAWPA.
- e. Inspect or cause to be inspected the construction of the Modifications.
- f. Prepare and submit progress bills for costs incurred (not more frequently than once a month, but at least quarterly), and shall submit a final bill to the City within sixty (60) days after completion of the Modifications.

City Shall

- g. Fully reimburse SAWPA for all costs and expenses in connection therewith.
- h. Pay all undisputed and actual and necessary cost of the Modifications within thirty (30) days upon receipt of SAWPA's itemized invoice, compiled on the basis of the actual and necessary costs and expenses incurred and charged or allocated to the Modifications.

Timing of the Modifications

- i. SAWPA intends to complete the Modifications by the end of February 2020. The Parties shall not be responsible to the other for damages resulting from delays in the performance of obligations hereunder resulting from action of the elements, fire, flood, "Acts of God", strikes, lockouts, permit delays or any other such causes beyond said Party's reasonable control.

2. The City shall identify ultimate Brine Line capacity needs related to the Plant within two years of Plant startup and every three years thereafter. Increased flow need could affect the results of the hydraulic analysis and require City to make further pipeline modifications to accommodate the additional flow.
3. The City shall abide by the terms of the Multi-Jurisdictional Pretreatment Agreement between SAWPA and Valley District dated October 15, 2013 (MJPA), incorporated by reference herein and included as Attachment A, **as amended from time to time**. The MJPA requires the City to establish and maintain a pretreatment program in accordance with Federal, state, and local requirements as further defined in Ordinances adopted by OCSD, SAWPA, and Valley, **as amended from time to time**. SAWPA as the Delegated Control Authority shall confirm City compliance with the MJPA.
4. SAWPA shall be entitled to recover costs from the City for the implementation of SAWPA's pretreatment program. These costs relate to matters covered by the MJPA and Ordinances adopted by OCSD, SAWPA and Valley.
5. The City shall comply with all conditions and requirements established by OCSD.
6. The City shall submit to SAWPA a permit application to discharge brine concentrate from its reverse osmosis process at the Plant. Upon receipt of a completed permit application, SAWPA shall prepare the permit and submit to OCSD for concurrence. SAWPA will issue a permit to the City after receipt of concurrence from OCSD.
7. The City shall discharge a maximum of 0.55 MGD of Brine during a 24-hour period and 382 gallons per minute (gpm) peak instantaneous discharge, 917 pounds per day BOD and 917 pounds per day TSS.
8. The City shall install all facilities necessary to discharge its Brine to the Brine Line including upstream and downstream flow meters and sample collection points. The City shall operate and maintain all installed facilities except the modified MASs and downstream flow meter. The City shall submit all design documents to SAWPA for review including details of the connection to the SAWPA Brine Line. SAWPA must approve the connection details, flow meters, and sample collection points prior to construction. SAWPA will inspect the constructed facilities.
9. The City shall pay Valley all fixed and variable costs, ~~and~~ expenses, **and fees** as established by SAWPA and Valley, **as amended from time to time**, upon transfer of the DFA capacity, regardless of the timing of first use.
10. The City acknowledges that discharge to the Brine Line is interruptible and may be directed to shutdown discharge to the Brine Line for maintenance or emergency purposes. Where possible SAWPA will coordinate planned shutdowns for maintenance activities and durations with the City.
11. Governing Law and Jurisdiction: The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions shall be determined in accordance with the laws of the State of California. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried exclusively in the superior court in the County of San Bernardino, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.
12. Notices: Service of any notices, bills, invoices or other documents required or permitted under this MOU shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City:

City of Beaumont
ATTN: City Manager
550 East 6th Street
Beaumont, CA 92223

SAWPA:

Santa Ana Watershed Project Authority
ATTN: General Manager
11615 Sterling Avenue
Riverside, CA 92503

Valley District:

San Bernardino Valley Municipal Water District
ATTN: General Manager
380 East Vanderbilt Way
San Bernardino, CA 92408

13. Severability: Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this MOU shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.
14. Entire Agreement: This Agreement contains the entire understanding between the Parties, and supersedes any prior understanding and/or written or oral agreements between them, respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this Agreement, that are not fully expressed herein.
15. Further Acts: Each Party agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.
16. Assignment: Neither Party may assign its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party. Any attempted or purported assignment in violation of this section will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.
17. Incorporation of Recitals: Each and every one of the Recitals set forth above is a material part of this Agreement and is hereby incorporated by reference into and made part of this Agreement by this reference.
18. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Four (4) duplicate originals of this Agreement shall be executed each of which shall be deemed to be an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

Dated: _____, 2018.

SANTA ANA WATERSHED PROJECT
AUTHORITY

By: _____

Name: _____

Its: _____

Dated: _____, 2018.

SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT

By: _____

Name: _____

Its: _____

Dated: _____, 2018.

CITY OF BEAUMONT

By: _____

Name: _____

Its: _____

*[Signature Page for Agreement Approving City of Beaumont
to Discharge to the Inland Empire Brine Line]*