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Board of Directors

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January 27, 2020

Board of Directors Triunfo Water & Sanitation District Ventura County, California

AGREEMENT FOR TRANSFER OF A PORTION OF LINDERO FEEDER NO. 2 AND RELOCATION OF FALLING STAR TURNOUT FOR CALLEGUAS-LVMWD INTERCONNECTION

Summary

In 2011, Calleguas Municipal Water District (Calleguas) and Triunfo Sanitation District (now TWSD) entered into the Agreement for Transfer of Surplus Facilities to TWSD. This agreement transferred Lindero Feeder No. 3, Palo Comado Pump Station, Cheseboro Reservoir, and a portion of Lindero Feeder No. 2 to TWSD as these facilities were not needed to serve Calleguas' needs and would benefit TWSD.

During preliminary design for the Calleguas-LVMWD Interconnection, a number of potential alternative pipeline alignments were considered. The analysis determined that the best alignment involved utilizing a portion of Lindero Feeder No. 2 from TWSD along Kanan Rd. between Falling Star Ave. and Lindero Canyon Rd., which avoids the need to construct a new pipeline through the most challenging portion of the alignment. However, this approach requires that TWSD transfer back a portion of Lindero Feeder No. 2 to Calleguas and the Falling Star Turnout be relocated to the intersection of Kanan and Lindero Canyon Roads.

This agreement transfers from TWSD to Calleguas the portion of Lindero Feeder No. 2 between Lindero Canyon Rd. and Falling Star Ave. (including associated easements) and obligates Calleguas to construct a relocated turnout at the intersection of Lindero Canyon and Kanan Roads at no cost to TWSD. In addition, Calleguas has agreed to install a metering manhole and meter downstream of the relocated turnout to provide TWSD a secondary meter to measure flow from Calleguas into the District's system. The facilities to be transferred and layout of the new meter turnout are shown on the enclosed map/diagram.

TWSD receives several benefits from this project which are in addition to the meter facilities. In addition to enhancing water system reliability, the Calleguas/LV Intertie Project is essential to TWSD in that it will enable TWSD to receive treated water produced by the Pure Water Project. Also, the transfer eliminates the long-term

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operations and maintenance responsibilities for the approximately 600 feet of large diameter pipe.

Calleguas' Board has previously signed the attached Agreement and staff recommends your Board review and approve the transfer back of a portion of the Lindero Feeder No. 2 to Calleguas. The Agreement has been reviewed and approved by District's Legal Counsel.

Please contact me at 805-658-4621 or email marknorris@triunfowsd.com if you have any questions or need additional information.

Fiscal Impact

Approval of this Agreement would eliminate the District's responsibility for the approximately 600 foot section of 30"-36" mainline water pipe located in Kanan Road.

Recommendation

It is recommended that the Board:

- A. Approve the Chair and General Manager to sign the Agreement For Transfer Of Portion Of Lindero Feeder No. 2 And Relocation Of Falling Star Turnout; and
- B. Direct staff to execute the Agreement and associated transfer of documents and Quitclaim release to be signed by the Chair and the General Manager; or

C. Provide direction to staff.

REVIEWED AND APPROVED:

Mark Norris, General Manager

Attachments:

1. Agreement between TWSD and CMWD

2. Maps of impacted facilities

AGREEMENT FOR TRANSFER OF PORTION OF LINDERO FEEDER NO. 2 AND RELOCATION OF FALLING STAR TURNOUT

THIS AGREEMENT is made and entered into this _	day of	, 20, by and between
Calleguas Municipal Water District ("Calleguas") a	ınd Triunfo Wateı	r & Sanitation District ("TWSD").
Calleguas and TWSD shall hereinafter be referred	to individually as	a "Party" and collectively as the
"Parties."		

Recitals:

Whereas, TWSD (formerly known as "Triunfo Sanitation District") and Calleguas entered into the "Agreement for Transfer of Surplus Facilities" on March 16, 2011, transferring certain facilities from Calleguas to TWSD, including portions of Lindero Feeder No. 2, and establishing the conditions for the construction of Falling Star Meter Station (Exhibit A);

Whereas, TWSD and Calleguas are also parties to the "Construction and Use of Water Service Connection Agreement" dated January 26, 2009, as amended by TSD Contract No. 11-003-1 described below, which imposes additional requirements related to the construction and operation of the Falling Star Meter Station (Exhibit B);

Whereas, TWSD and Calleguas are also parties to the "Agreement to Allocate the 'TSD Contract Deposit,' To Amend the 'Agreement for Transfer of Surplus Facilities' and to Amend the 'Calleguas Municipal Water District Construction and Use of Water Service Connection Agreement,' on September 25, 2012 - TSD Contract No. 11-003-1 (Exhibit C);

Whereas Calleguas and Las Virgenes Municipal Water District have entered into an agreement to construct an interconnection, including a pump station, pressure reducing station, and interconnecting pipelines ("Interconnection") to improve the reliability of their respective systems; and

Whereas, to facilitate the Interconnection, including the proposed alignment for same, TWSD is willing to transfer back to Calleguas certain facilities and accommodate relocation of Falling Star Meter Station as provided in this Agreement;

Now therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged by the Parties:

1. Transfer of Facilities

- a. As of the Closing (defined in Paragraph 4), TWSD shall convey to Calleguas, and Calleguas shall accept from TWSD, any and all of TWSD's rights, title, and interest in and to the following facilities (collectively referred to as the "Returned Facilities"):
 - i. The approximately 36-inch and 30-inch diameter underground pipeline commonly known by the Parties as "Lindero Feeder No. 2" as generally described in the portion of Calleguas' Plans and Specifications No. 173 west of Lindero Canyon Rd. at the intersection with Kanan Road at Pipeline Sta 317+14, and all of the meters, valves, appurtenances, and other property comprising the pipeline ("Returned Pipeline").
 - ii. All property, equipment, and materials making up the cathodic protection systems connected to Lindero Feeder No. 2 west of Pipeline Sta 317+14 ("Returned Cathodic Protection System").

- iii. All easement(s) and rights acquired by TWSD pursuant to the Grant Deed (CMWD 2105) from Calleguas to TWSD (a copy of which is attached hereto as Exhibit D) and pursuant to which Calleguas granted to TWSD all of its rights in the Easement Deed referenced therein with respect to the real property commonly identified by Calleguas and TWSD as Parcels 2105A and 2105B. Such easement(s) and rights are collectively referred to in this Agreement as the "2105 Easements." The Parties acknowledge that, subsequent to the recording of the Grant Deed (CMWD 2105), TWSD conveyed back to Calleguas a portion of the 2105 Easements by Quitclaim Deed due to the final location of the Falling Star Meter Station. For convenience, the Parties agree that the Quitclaim Deed in the form attached hereto as Exhibit G transfers back to Calleguas the entire easement(s) and rights described in the Grant Deed (CMWD 2105) notwithstanding that a portion was already quitclaimed back to Calleguas.
- iv. That portion of the easement(s) and rights acquired by TWSD pursuant to the Quitclaim Deed from Calleguas to TWSD (a copy of which is attached hereto as Exhibit E) pertaining to the Easement Deed dated April 14, 1969, recorded in the Official Records of the Office of the Ventura County Recorder as Instrument No. 65435 in Book 3592, Pages 480 to 483, with respect to that certain real property that is commonly identified by Calleguas and TWSD as Parcel 2111, as more particularly described in said Easement Deed. Such easement(s) and rights are collectively referred to in this Agreement as the "2111 Easements."
- b. The transfer shall be accomplished by TWSD delivering to Calleguas all of the following:
 - Bill of Sale in the form attached hereto as Exhibit F, by which TWSD conveys to Calleguas all of TWSD's interests in the Returned Pipeline and the Returned Cathodic Protection System, including all of the equipment and materials comprising such facilities and used in connection therewith;
 - ii. Quitclaim Deed in the form attached hereto as Exhibit G, by which TWSD conveys to Calleguas the 2105 Easements;
 - iii. Quitclaim Deed in the form attached hereto as Exhibit H, by which TWSD conveys to Calleguas that portion of the 2111 Easements described in Exhibit A and depicted on Exhibit B to that Grant Deed; and
 - iv. Such other documents and instruments, if any, that are reasonably requested by Calleguas in order to complete the transfer of all of the Returned Facilities to Calleguas as provided in this Agreement.

2. Relocation of Falling Star Meter Station

a. Calleguas shall design, acquire all necessary right-of-way, obtain all necessary permits, construct, own, operate, and maintain a relocated meter station as a replacement for Falling Star Meter Station near the southeast corner of the intersection of Lindero Canyon Rd. and Kanan Rd. This work shall be performed at no cost to TWSD. The relocated meter station shall be functionally equivalent to the existing one and shall be operated and maintained by Calleguas in accordance with the terms of the Construction and Use of Water Service Connection Agreement, dated January 26, 2009 (a copy of which is attached as Exhibit B) and as amended by TSD Contract No. 11-003-1.

3. TWSD Flow Monitoring Facility

- a. Calleguas shall design, acquire all necessary right-of-way, obtain all necessary permits, and construct a manhole and connection point for an insertion flow meter ("Flow Monitoring Facility") downstream of the relocated Falling Star Meter Station near the southeast corner of the intersection of Lindero Canyon Rd. and Kanan Rd. This work shall be performed at no cost to TWSD.
- b. Upon Calleguas' filing of the Notice of Completion for the relocated Falling Star Meter Station, Calleguas shall transfer ownership of the Flow Monitoring Facility and pipeline downstream of the Flow Monitoring Facility connecting it to Lindero Feeder, along with its accompanying right-of-way, to TWSD. As of the date of such transfer, TWSD shall assume responsibility for the maintenance, repair, and operation of such facilities and will obtain and maintain any and all permits and licenses required in connection with the ownership and operation of such facilities.

4. Closing

The "Closing" and effective date for each discrete transfer contemplated by this Agreement shall be the date that the Deed(s) described in Paragraph 1 (collectively referred to herein as the "Recordable Instruments") for each discrete transfer are recorded in the Official Records of the Ventura County Recorder. The execution of this Agreement and the Bill of Sale, and the execution and recording of the Recordable Instruments and corresponding Closing of this transaction shall occur as follows:

- Upon due approval of this Agreement, as required under its governing documents, Calleguas shall duly execute this Agreement and shall deliver a duly executed original of the same to TWSD.
- b. Upon receipt of the duly executed Agreement from Calleguas, TWSD shall submit the
 Agreement, Recordable Instruments, and Bill of Sale to its Board of Directors for approval.
 Upon approval by the TWSD Board of Directors, TWSD shall cause the Agreement to be
 signed and shall deliver a copy of the signed Agreement to Calleguas.
- c. Upon its receipt of the Purchase Price, TWSD shall execute and deliver to Calleguas the duly executed original Recordable Instruments and Bill of Sale.
- d. Upon receipt of the duly executed originals as provided in subsection c, Calleguas shall:
 - i. Duly execute the Bill of Sale;
 - ii. Take such action as required by its governing instruments to approve and attach to the Recordable Instruments a duly executed Certificate of Acceptance;
 - iii. Cause the Recordable Instruments to be recorded with the Office of the Ventura County Recorder; and
 - iv. Deliver to TWSD a duly executed original counterpart of the Bill of Sale and copies of the duly recorded Recordable Instruments.

5. Purchase Price

The Parties acknowledge and agree that the purchase price (the "Purchase Price") for the Returned Facilities conveyed pursuant to this Agreement shall consist of the sum of One Dollar (\$1.00) and Calleguas' covenants and agreements contained in the Agreement, including, without limitation, Calleguas' assumption of all present and future obligations and liabilities arising from and in connection with the Returned Facilities.

6. Due Diligence; As-Is Transaction

- a. <u>Due Diligence Complete</u>. Calleguas acknowledges and agrees that it has substantial knowledge and familiarity with all of the Returned Facilities that it is acquiring pursuant to this Agreement, and the condition of the Returned Facilities. Calleguas further acknowledges, and TWSD hereby confirms, that no maintenance or repair of the Returned Facilities was performed by TWSD between March 16, 2011 and the date of this Agreement. By execution of this Agreement, Calleguas acknowledges and agrees that it has has requested, ordered, and obtained all further information, documents, instruments, and reports, including without limitation all title reports and surveys regarding the condition of title to all real property interests, and made such further investigations that it desires in connection with its acquisition of the Returned Facilities; has consulted with all experts and professionals, and conducted all inspections, surveys, testing, and analyses that it desires; and has otherwise fully satisfied itself regarding the rights being acquired pursuant to this Agreement, the physical condition of the Returned Facilities, and all other aspects and conditions of the Facilities, as it deems necessary to make an informed decision to acquire the Returned Facilities pursuant to this Agreement.
- b. <u>As-Is.</u> Calleguas is acquiring the Returned Facilities "as-is," "with all faults." Calleguas acknowledges that, except as expressly provided in this Agreement, TWSD has made no representations or warranties to Calleguas as to any matters concerning the Returned Facilities. Without limiting the foregoing, TWSD makes no representations or warranties concerning topography, seismic condition, soil, subsoil, subsidence, square footage, drainage, access, workmanship or quality of materials of personal property, or the fitness or adequacy of the Returned Facilities for any particular purpose. Further, Calleguas acknowledges that TWSD makes no representations as to the accuracy or completeness of any third party records or reports received by Calleguas from TWSD or from any other source.
- c. Assumption. From and after the Closing, except for the obligations specified in this Agreement, Calleguas shall be solely responsible for the Returned Facilities, including, without limitation, the maintenance, repair, and operation of the Returned Facilities, the quantity and quality of water flowing into and out of the Returned Facilities, and the responsibility for compliance with all applicable state, federal, and local laws of whatever kind or nature. Without limiting the foregoing, Calleguas assumes as of the Closing all obligations, including, without limitation, all maintenance and repair obligations, under each of the Easements assigned by TWSD to Calleguas pursuant to this Agreement. Calleguas is obligated, at its sole cost and expense, to obtain and maintain any and all permits and licenses necessary to conduct any operations with respect to the Returned Facilities.

7. Representations and Warranties

- a. <u>Calleguas Representations and Warranties</u>. In addition to all other representations and warranties of Calleguas expressly set forth in this Agreement, if any, Calleguas represents and warrants as follows:
 - i. Calleguas has all legal right, power, and authority to enter into and perform all of its obligations under this Agreement;
 - ii. All requisite action has been taken by Calleguas to duly and validly authorize its execution, delivery, and performance of this Agreement, and the individual executing this Agreement on behalf of Calleguas has been duly authorized to execute the Agreement; and
 - iii. The execution, delivery, and performance of this Agreement will not violate the terms and conditions of the organizational documents of Calleguas or the terms and conditions of any agreement or obligation to which Calleguas is a party or by which it is bound.
- b. <u>TWSD Representations and Warranties</u>. In addition to all other representations and warranties of TWSD expressly set forth in this Agreement, if any, TWSD represents and warrants to Calleguas as follows:
 - i. TWSD has all legal right, power, and authority to enter into and perform all of its obligations under this Agreement;
 - ii. All requisite action has been taken by TWSD to duly and validly authorize its execution, delivery, and performance of this Agreement, and the individual executing this Agreement on behalf of TWSD has been duly authorized to execute the Agreement;
 - iii. The execution, delivery, and performance of this Agreement will not violate the terms and conditions of the organizational documents of TWSD or the terms and conditions of any agreement or obligation to which TWSD is a party or by which it is bound;
 - iv. Except as otherwise disclosed to Calleguas in accordance with this Agreement, and to the best of its actual knowledge, TWSD has not received any written notice from any governmental agency asserting that the Returned Facilities, or any portion thereof, are in material violation of applicable laws or regulations; and
 - v. To the best of TWSD's actual knowledge, the Returned Facilities are free and clear of any and all liens and claims of any kind, and, except as otherwise disclosed to Calleguas in writing, TWSD is not aware of any pending or threatened claims or legal proceedings related to the Returned Facilities.
- 8. TWSD Insignia. Within 1 year after Closing, Calleguas shall remove all remaining evidence of TWSD's ownership of the Returned Facilities, including, without limitation, printed names, raised letters on manhole lids and valve caps, stickers, markings, insignia, or other signs identifying the Returned Facilities as the property of TWSD. TWSD shall be given reasonable access to the Returned Facilities subsequent to the Closing for the purpose of confirming the removal of such insignia. If Calleguas fails to remove the insignia as set forth herein, TWSD may do so and invoice Calleguas for the cost of such removal. Calleguas shall promptly reimburse TWSD upon receipt of such invoice(s).

9. <u>Recording Costs and Expenses</u>. Calleguas shall be solely responsible for payment of any and all sales tax, transfer taxes, assessments, and recording fees arising from this transaction, including the recording of the Recordable Instruments.

10. Indemnity.

- a. Calleguas shall defend, indemnify, and hold harmless TWSD, its officers, directors, employees, agents, and each of their respective successors and assigns, from and against any and all direct and indirect, known and unknown, obligations, liabilities, judgments, claims, demands, losses (including consequential losses), costs, expenses, and fees (including reasonable attorneys' fees and costs of defense), of whatsoever kind or nature accruing after the Closing date(s) of this Agreement and arising out of or relating to the Returned Facilities, and any portion thereof, and any breach or default by Calleguas with regard to its obligations arising from or relating to this Agreement, including, without limitation, its ownership, maintenance, and operation of the Returned Facilities.
- b. TWSD shall defend, indemnify and hold harmless Calleguas, its officers, directors, employees, agents, and each of their respective successors and assigns, from and against any and all direct and indirect, known and unknown, obligations, liabilities, judgments, claims, demands, losses (including consequential losses), costs, expenses and fees (including reasonable attorneys' fees and costs of defense) of whatsoever kind or nature accruing after the Closing date(s) of this Agreement and arising out of or relating to any breach or default by TWSD with regard to its obligations arising from or relating to this Agreement, including without limitation, its breach of any representation or warranty made by TWSD in this Agreement.

11. Miscellaneous

- a. <u>Counterparts</u>. 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. <u>Amendments</u>. The terms of this Agreement may not be modified or amended except by an instrument in writing duly authorized and executed by both Parties.
- c. <u>Fees and Other Expenses</u>. Except as otherwise specifically provided in this Agreement, each Party shall pay its own fees and expenses in connection with the negotiation and consummation of this Agreement.
- d. <u>Entire Agreement</u>. This Agreement contains the entire agreement between Calleguas and TWSD with respect to TWSD's transfer of the Returned Facilities to Calleguas, and supersedes any prior agreements, negotiations, and communications, oral or written, with respect to the same. This Agreement shall not be modified or amended except in writing executed by both Parties.
- e. <u>Assignment of Agreement</u>. Calleguas shall not assign this Agreement, or any interest or right under this Agreement, or nominate another party to take title to the Returned

Facilities, without the prior written consent of TWSD, which consent shall not be unreasonably withheld. In any event, no assignment shall be effective unless and until TWSD receives satisfactory written evidence that the assignee has assumed in writing all of Calleguas' ongoing duties, obligations, and responsibilities under this Agreement from and after the effective date of the assignment.

- f. <u>Successors and Assigns</u>. Subject to the restrictions set forth in subsection (e), this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. Without limiting the foregoing, the restriction on assignment contained in subsection (e) shall be binding upon all assignees of Calleguas and all other assignees.
- g. <u>Notice</u>. 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 Calleguas:
Calleguas Municipal Water District
2100 Olsen Rd.
Thousand Oaks CA 91360
Attn: General Manager

If to TWSD: Triunfo Water & Sanitation District 1001 Partridge Dr., Suite 150 Ventura CA 93003 Attn: General Manager

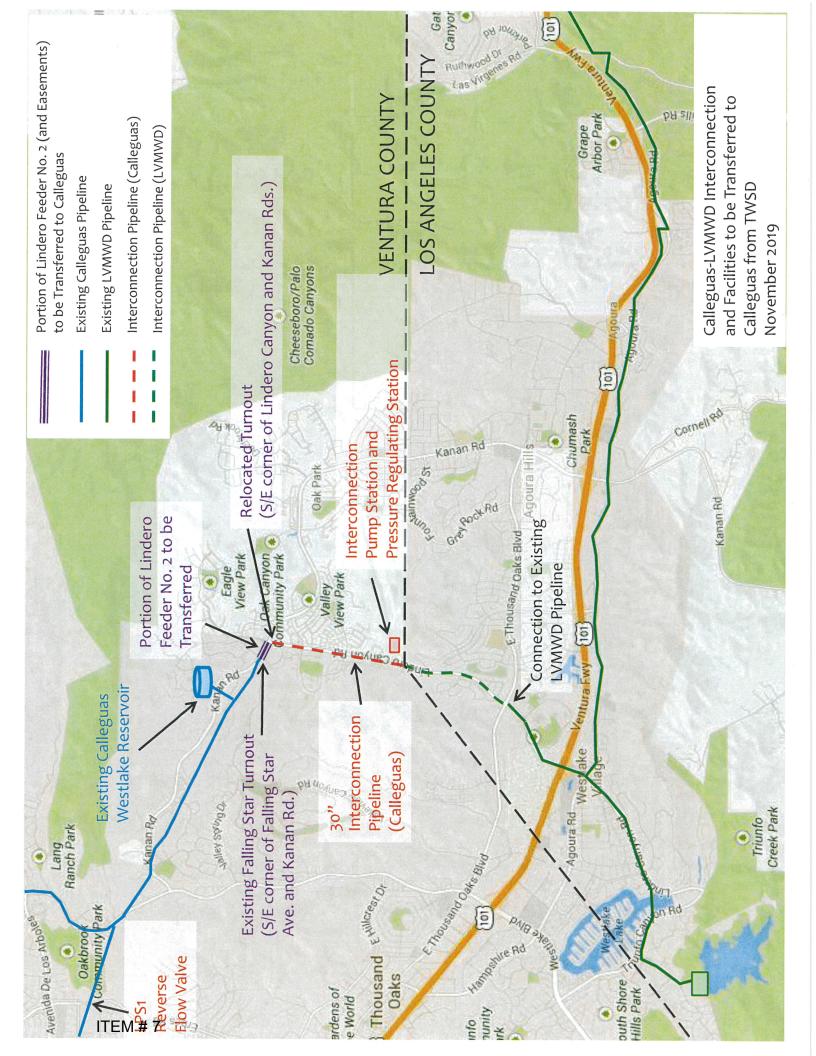
- h. Attorney's Fees. In the event that any dispute between the Parties arising under this Agreement results in litigation or arbitration, the prevailing Party in such dispute shall be entitled to recover from the other Party all reasonable, fees, costs, and expenses (including attorney's fees) incurred in such action.
- i. <u>Further Assurances</u>. The Parties shall take such further actions and execute such further documents as shall be reasonably necessary to effect the transactions contemplated under this Agreement.
- j. No Inducement. Each Party acknowledges to the other that no one (including, without limitation, any Party or any agent or attorney of any Party) has made any promise, representation, or warranty whatsoever, expressed or implied, written or oral, not contained herein concerning the subject matter hereof to induce it to execute this Agreement, and each Party acknowledges that it has not executed this agreement in reliance on any promise, representation, or warranty not contained herein.
- k. <u>Governing Law and Venue</u>. 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

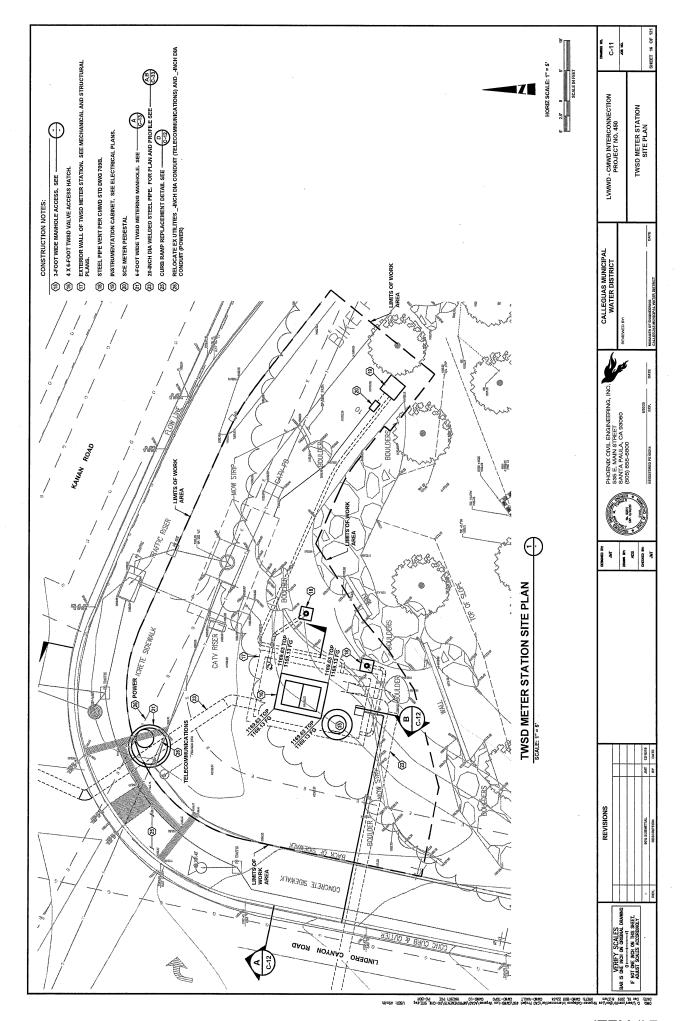
- legal or equitable actions relating to or arising from this Agreement shall be Ventura County, California.
- I. <u>Partial Invalidity</u>. If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.
- m. <u>Joint Drafting</u>. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.
- n. <u>Authority</u>. Each person executing this Agreement warrants and represents to the other Party that it has the authority to execute this Agreement, that it has read and fully understands this Agreement, and that it is entering into this Agreement freely and voluntarily.
- o. <u>Exhibits and Recitals</u>. 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.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this **AGREEMENT FOR TRANSFER OF PORTION OF LINDERO FEEDER NO. 2 AND RELOCATION OF FALLING STAR TURNOUT** to be executed the day and year first above written.

TRIUNFO WATER AND SANITATION DISTRICT	CALLEGUAS MUNICIPAL WATER DISTRICT	
Ву	By C+-SP	
Janna Orkney	Anthony Goff	
Chairperson	General Manager	
Ву		
Mark Norris		
District Manager		
Approved as to Form:		
Ву	Ву	
John Mathews	Robert Cohen	
District Counsel	District Counsel	





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