

## **CEQA INDEMNITY AGREEMENT**

THIS AGREEMENT, made and entered into this        day of  
by and between EASTERN KERN AIR POLLUTION CONTROL DISTRICT, a special  
district (hereinafter "DISTRICT"), and  
(hereinafter "APPLICANT");

### WITNESSETH:

WHEREAS, APPLICANT has filed applications for authority to construct and permit to operate the equipment and modifications described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Project") that require DISTRICT to conduct analyses pursuant to and certify compliance with the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000, et seq.; and

WHEREAS, prior to DISTRICT's issuance of permits for the Project, APPLICANT must agree to indemnify and defend DISTRICT from liability and expenses related to any legal actions alleging violations of the CEQA requirements related to the Project;

NOW, THEREFORE, IT IS MUTUALLY AGREED between DISTRICT and APPLICANT as follows:

1. APPLICANT shall defend, indemnify, and hold harmless DISTRICT and its agents, officers, and employees from any claim, action, or proceeding against DISTRICT or its agents, officers, or employees to attack, set aside, void, or annul the Project, any permits issued by DISTRICT related to the Project, any conditions imposed by DISTRICT concerning the Project, or to impose personal liability against such agents, officers, or employees resulting from their involvement in the Project, on the ground that DISTRICT failed to comply with CEQA, which claim, action, or proceeding is brought within the time period provided by law, including any claim for private attorney general fees and litigation costs claimed by or awarded to any party from DISTRICT. APPLICANT shall defend DISTRICT with counsel of APPLICANT's choice. DISTRICT will cooperate fully with APPLICANT and APPLICANT's counsel in defending such claim, action or proceeding. To the extent that DISTRICT is required by APPLICANT to use any of its resources to respond to such claim, action, or proceeding, (including cooperation in the defense) APPLICANT will reimburse DISTRICT upon demand and upon presentation of an invoice describing the work done, the time spent on such work, and the hourly rate for such work by the employee or agent of DISTRICT, Kern County or other external or non County agencies. Such resources include, but are not limited to, staff time, court costs, County Counsel's time at its regular rate for external or non County agencies, or any other direct or indirect cost associated with responding to the claim, action, or proceedings.

The APPLICANT's obligations under this Agreement shall apply regardless of whether any other permits or entitlements are issued. These obligations shall be binding on successors and assigns of the real property benefited by approval of the Project, and APPLICANT shall so obligate all transferees and assigns.

2. The DISTRICT will promptly notify APPLICANT of any claim, action, or proceeding that would trigger the applicability of this Agreement and, if the DISTRICT should fail to cooperate fully in the defense, the APPLICANT shall not thereafter be responsible to defend, indemnify, and hold harmless the DISTRICT or its agents, officers, and employees pursuant to this Agreement.

3.a. If APPLICANT undertakes the defense of the claim, action, or proceeding, the DISTRICT may, within its unlimited discretion, participate in the defense of any such claim, action, or proceeding without having been requested to participate by APPLICANT, provided that only activities which APPLICANT has requested DISTRICT to perform pursuant to Paragraph 1 shall be subject to reimbursement under this Agreement. Nonrequested activities may be undertaken by DISTRICT to defend the claim, action, or proceeding in good faith and at its own expense.

b. If APPLICANT fails or refuses to settle or defend the claim, action, or proceeding in a timely fashion, DISTRICT may, prior to the date that a response to the claim, action, or proceeding needs to be filed with the court, take any and all actions reasonably necessary to defend such claim, action, or proceeding without having been requested to participate by APPLICANT, and APPLICANT shall reimburse DISTRICT for its costs and expenses incurred, including, but not limited to, staff time, court costs, County Counsel's time at its regular rate for external or non County agencies, or any other direct or indirect cost associated with responding to the claim, action, or proceedings. APPLICANT shall also be responsible for reimbursing DISTRICT for any private attorney general fees claimed by or awarded to any party from DISTRICT.

4. Unless DISTRICT settles the claim, action, or proceeding while defending pursuant to Paragraph 3.b. above, APPLICANT shall not be required to pay or perform any settlements of such claim, action, or proceeding unless the settlement is approved in writing by APPLICANT.

5. All notices to APPLICANT under this Agreement shall be deemed valid and effective five (5) calendar days following deposit in the United States mail, postage prepaid, by certified and/or registered mail, addressed to:

All notices to DISTRICT under this Agreement shall be deemed valid and effective when personally served upon the EKAPCD Air Pollution Control Officer or five (5) calendar days following deposit in the United States mail, postage prepaid, by certified and/or registered mail, addressed to:

Glen E. Stephens, P.E.  
Air Pollution Control Officer  
Eastern Kern Air Pollution Control District  
2700 "M" Street, Suite 302  
Bakersfield, CA 93301

6. This Agreement represents the complete understanding between the parties with respect to matters set forth herein.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed on the date hereinabove first written.

**Eastern Kern Air Pollution Control  
"District"**

**"Applicant"**

By \_\_\_\_\_  
Glen E. Stephens, APCO

By \_\_\_\_\_

**APPROVED AS TO FORM:**  
Office of the County Counsel

By \_\_\_\_\_  
Deputy