

AGREEMENT made

2009

PARTIES

- 1. **THE CREEKS PIPELINE COMPANY LIMITED** ACN 133 867 197 of 256A Rundle Street, Adelaide, South Australia (CPC)
- 2. **THE PERSON(S) WHOSE FULL NAME(S) AND ADDRESS(ES) IS (ARE) SET OUT IN ITEM 1 OF THE SCHEDULE (Customer)**

BACKGROUND

- A. The Customer is the owner or occupier of the Land.
- B. CPC intends to cause to be constructed a pipeline from near Jervois on the River Murray in order to convey water to the Langhorne Creek region, the Currency Creek region and adjoining areas.
- C. The Customer has requested CPC to supply the Customer with River Murray Water to the Land by means of a water connection off the CPC Pipeline.
- D. CPC and the Customer agree to the provisions set out in this Agreement.

OPERATIVE PROVISIONS

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement, unless the context otherwise requires:

Commencement Date means the date referred to in Item 8 of the Schedule;

Contract Year means the period commencing on the Commencement Date and ending on the following 30 June and thereafter each successive period of 12 months commencing on 1 July until the date on which this Agreement is terminated;

CPC Pipeline means the pipeline referred to in paragraph B of the Background to this Agreement and all associated infrastructure;

CPC Property has the meaning given to that expression in clause 2.2;

DWLBC means the South Australian Department of Water, Land and Biodiversity Conservation;

GST means the goods and services tax imposed in Australia under the GST Act and includes any replacement or subsequent similar tax;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvent means any one or more of the following:

- (a) unable to pay one’s debts as and when they become due;
- (b) in relation to a natural person, committing an act of bankruptcy or becoming bankrupt;
- (c) in relation to a body corporate, becoming an externally-administered body corporate as defined in section 9 the Corporations Act or having a provisional liquidator appointed;
- (d) any other similar event or process;

Land means the land referred to in Item 2 of the Schedule;

River Murray Water means water drawn from the River Murray Prescribed Watercourse referred to in the Water Allocation Plan adopted by the Minister for Environment and Conservation on 1 July 2002 as amended from time to time pursuant to the South Australian *Natural Resources Management Act 2004*;

1.2 **Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) words denoting the singular number include the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

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- (d) words denoting natural persons include bodies corporate and vice versa;
- (e) references to clauses and schedules are to clauses and schedules of this Agreement;
- (f) headings are for convenience only and do not affect interpretation; a reference to any party to this Agreement includes that party's executors, administrators, successors and permitted assigns (as the case may be);
- (g) where two or more persons are a party to this Agreement, a reference to that party is a reference to those persons jointly and each of them severally;
- (h) references to any legislation or to any provision of any legislation include any modification or re-enactment of that legislation or legislative provision or any legislation or legislative provision substituted for, and all regulations and instruments issued under, such legislation or provision;
- (i) the schedules to this Agreement form part of this Agreement.

1.3 Construction

- (a) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (b) If any provision of this Agreement is found to be invalid or unenforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid or unenforceable provisions will be and will continue to be valid and enforceable in accordance with their terms.

2. TERMS AND CONDITIONS

- 2.1 **(Agreement to supply)** CPC agrees that when the CPC Pipeline is commissioned CPC will supply the Customer with River Murray Water to the Land by means of a water connection off the CPC Pipeline provided that:
- (a) during the first Contract Year, CPC will not be required to supply water in excess of the volume calculated in accordance with the formula:
$$\frac{A}{365} \times 4.99 \text{ megalitres}$$
where "A" = the number of days in the first Contract Year, and
 - (b) during each subsequent Contract Year, CPC will not be required to supply water in excess of 4.99 megalitres.
- 2.2 **(CPC Property)** CPC will furnish and fix to the CPC Pipeline at some place to be determined by CPC, and will maintain in repair, a water service, pressure reducing valve and 20mm water meter (all of which shall be and remain the property of CPC (**CPC Property**)) for ascertaining the quantity of water supplied to the Customer. All water supplied to the Customer shall be supplied through the CPC Property. The CPC Property shall form part of the CPC Pipeline.
- 2.3 **(Customer's connection)** The Customer is responsible for connecting the Customer's internal pipeline infrastructure to the CPC Pipeline in accordance with CPC's written instructions. If required by CPC, the Customer's internal pipeline infrastructure must include a back-flow prevention device which has been approved by CPC. The Customer must regularly test and maintain this device in accordance with the requirements of CPC advised to the Customer from time to time.
- 2.4 **(Flow-rate)** CPC will use its best endeavours to ensure a flow-rate of the supply at 9.5 litres per minute through the water meter but the Customer acknowledges that it may be lower from time to time. The flow-rate may not be sufficient for all the Customer's purposes without provision of additional on-site storage and pump infrastructure for which the Customer assumes all responsibility.
- 2.5 **(Use)** The water supplied is to be used only on the Customer's Land and the internal pipeline used by the Customer will not be extended to another property without the prior written consent of CPC.
- 2.6 **(Fees)** The Customer must pay the following fees.
- (a) The Customer must pay to CPC the Connection Fee referred to in Item 3 of the Schedule within 14 days from the date of execution of this Agreement. If the CPC Pipeline is not commissioned by 31 December 2009, CPC will refund the Connection Fee, without interest.
 - (b) The Customer must pay to CPC the Maintenance and Administration Fee referred to in Item 4 of the Schedule (subject to clause 2.6(d)) within 14 days of the date of CPC's invoice.

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- (c)
 - (i) The Customer must pay to CPC the Water Usage Fee referred to in Item 5 of the Schedule (subject to clause 2.6(d)) within 14 days of the date of CPC's invoice. CPC will send an invoice on or about the end of each month.
 - (ii) If the water meter ceases to register or becomes unreliable, the quantity of water deemed to be taken by the Customer shall be assessed at an amount not exceeding the fair average amount of water consumed in respect of the Land or any similar land during any previous periods and the Customer shall be chargeable for the amount of water so assessed as if that amount of water had been actually supplied.
 - (iii) If the Customer causes DWLBC to confirm to the Company's satisfaction that the Customer held a water licence with sufficient water taking allocation under the Natural Resources Management Act 2004 in respect of any water delivered to the Customer via the CPC Pipeline, CPC will set-off against its Water Usage Fee charge to the Customer, the Rebate referred to in Item 6 of the Schedule (subject to clause 2.6(d)).
 - (d) CPC may vary each of:
 - (i) the Maintenance and Administration Fee, the Water Usage Fee and the Rebate, and
 - (ii) the Termination Fee referred to in clause 2.19,at any time and from time to time but CPC will give the Customer not less than 90 days prior notice of the varied Fee or Rebate before it will apply.
 - (e) The Customer undertakes that CPC will have free and unrestricted access at all times to read the water meter and to inspect and repair the CPC Property.
- 2.7 **(No Obligation to Monitor)** CPC will not have any obligation to monitor the quality (including salinity) of the water.
- 2.8 **(No Obligation to Notify of Adverse Effect)** CPC will not be obliged to notify the Customer if CPC becomes aware that the water is likely to have a material adverse effect on anything.
- 2.9 **(No Domestic Use)** The Customer will not use the water delivered by CPC for drinking, food preparation or any other domestic use.
- 2.10 **(Customer's Responsibility)** The Customer is responsible for making its own enquiries in relation to the water delivered by CPC including its suitability for the irrigation of grape vines or any other crops, its suitability for any other purpose or use, its effect on the growth or yield of grape vines or any other crops, and its effect on the productivity, fertility and general condition of the Land. CPC gives no warranty to the Customer in relation to any of these matters.
- 2.11 **(Water Quality)** The Customer:
 - (a) releases to CPC to the full extent permitted by law from any liability for any loss or damage suffered by the Customer arising directly or indirectly out of the quality, composition or constituency of the water delivered by CPC or the presence of any chemicals, particles, minerals or other substances in that water; and
 - (b) indemnifies CPC to the fullest extent permitted by law against any liability for any loss or damage suffered by any third person arising directly or indirectly out of the quality, composition or constituency of the water delivered by CPC or the presence of any chemicals, particles, minerals or other substances in that water.
- 2.12 **(Customer's Pipeline)** CPC is not responsible for installing, repairing and replacing the Customer's pipeline and associated infrastructure.
- 2.13 **(No Toxic Chemicals)** The Customer must not use any in-line toxic chemicals.
- 2.14 **(CPC Pipeline)** Subject to clause 2.3, the Customer must not handle, manipulate, tamper with, attempt to repair or connect anything to the CPC Pipeline.
- 2.15 **(Loss of Water)** CPC will not consider any claim for the loss of water resulting from any leak in the Customer's pipeline or associated infrastructure.
- 2.16 **(CPC Not Responsible)** CPC shall not be responsible for any intermittent supply of water or stoppage of water supply, however occasioned, or any accident, inconvenience, loss or damage that may affect the Customer or others and no claim shall be made upon CPC in respect thereof. The provisions of this clause apply even if CPC or its employees, servants, agents and contractors have committed negligent acts or omissions.

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- 2.17 **(Suspend Water)** If the Customer fails to comply with any of its obligations in this Agreement, CPC may suspend the supply of water to the Customer for so long as the failure to comply continues.
- 2.18 **(Termination by CPC)** CPC may terminate this Agreement:
- (a) immediately if the Customer becomes Insolvent; or
 - (b) on giving the Customer not less than 90 days prior notice of termination.
- 2.19 **(Termination by Customer)** The Customer may terminate this Agreement on giving CPC not less than 90 days prior notice of termination provided that the notice of termination must be accompanied by payment of the Termination Fee referred to in Item 7 of the Schedule.
- 2.20 **(No Prejudice)** Termination of this Agreement will not prejudice any rights or remedies which either party may have against the other in respect of antecedent breach or otherwise.
- 2.21 **(Remove CPC Property)** Following termination of this Agreement CPC shall have free and unrestricted access to remove the CPC Property.

3. GOODS AND SERVICES TAX

- 3.1 The terms used in this clause have the same meanings as those terms in the GST Act.
- 3.2 All fees, charges and other amounts payable by the Customer under or in accordance with this Agreement are exclusive of GST, and shall be increased by the rate of GST, if any, imposed by the GST Act.
- 3.3 CPC must give to the Customer a tax invoice in relation to each such payment.

4. NOTICES

Any notice or other communication to or by a party shall be:

- 4.1 in writing addressed
- (a) in the case of a company to the registered or principal office of that company in South Australia;
 - (b) in the case of a natural person to the last known address of that person;
- 4.2 signed on behalf of the sender;
- 4.3 deemed to be duly given or made in the case of:
- (a) delivery in person, when delivered; or
 - (b) delivery by post, the third day after posting; or
 - (c) a facsimile, upon a transmission report being printed by the sender's facsimile machine stating that the document has been sent to the recipient's facsimile machine;
- but if delivery is not made before 4.00pm on any day it shall be deemed to be made at 9.00am on the next day in that place.

5. ASSIGNMENT

This Customer shall not assign or otherwise transfer any of its rights or obligations pursuant to this Agreement whether in whole or in part without the prior written consent of CPC.

6. GOVERNING LAW

This Agreement will be governed by and interpreted in accordance with the laws for the time being in force in South Australia and each party submits to the non-exclusive jurisdiction of the Courts of or exercising jurisdiction of that State and waives any right it might have to claim that those Courts are an inconvenient forum.

7. WAIVER

- 7.1 A waiver by a party of a provision of this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.
- 7.2 Further, a waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 7.3 The failure of a party to enforce at any time any of the provisions of this Agreement or the granting of any time or other indulgence will not be construed as a waiver of that provision or of the right of that party to subsequently enforce that or any other provision.

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8. COSTS

8.1 Each party must bear its own legal and other costs arising out of the negotiation, preparation, execution of this Agreement.

EXECUTED as an agreement

EXECUTED by **THE CREEKS PIPELINE COMPANY**)
LIMITED without affixing a common seal pursuant to section)
127 of the *Corporations Act 2001* (Cth))
)

.....
Signature of Director

.....
Signature of *Director / *Secretary

.....
Name of Director

.....
Name of *Director / *Secretary

(*Please delete the inapplicable and affix the common seal if the company has a seal)

EXECUTION BY CUSTOMER

If a company:

EXECUTED by the **CUSTOMER** *without affixing a)
common seal / *by affixing its common seal pursuant to section)
127 of the *Corporations Act 2001* (Cth))
)

.....
Signature of *Director / *Sole Director and Sole Company Secretary

.....
Signature of *Director / *Secretary

.....
Name of *Director / *Sole Director and Sole Company Secretary

.....
Name of *Director / *Secretary

(*Please delete the inapplicable and affix the common seal if the company has a seal)

If an individual:

SIGNED by the **Customer**)
in the presence of:)

.....
Signature of Customer

.....
Signature of Witness

.....
Print Full Name of Customer

.....
Print Full Name of Witness

.....
Residential address of Witness

SIGNED by the **Customer**)
in the presence of:)

.....
Signature of Customer

.....
Signature of Witness

.....
Print Full Name of Customer

.....
Print Full Name of Witness

.....
Residential address of Witness

SCHEDULE

Item 1 Customer

Full name:
(include ACN if a company)

Address:
.....

Full name:
(include ACN if a company)

Address:
.....

Full name:
(include ACN if a company)

Address:
.....

Contact name: Contact telephone no.:

Notice details (see clause 4):

Address:
.....

Facsimile no:

Item 2 Land

Certificate of Title reference:

Lot/Section:

Street/Road:

Town/Hundred:

Item 3 Connection Fee

\$3,000

Item 4 Maintenance and Administration Fee

\$20 per month

Item 5 Water Usage Fee

90 cents per kilolitre

Item 6 Rebate

30 cents per kilolitre

Item 7 Termination Fee

\$2,000

Item 8 Commencement Date

* The date which CPC nominates as the date on which the commissioning of the CPC Pipeline has been completed

* ~~The~~ day of

[* delete whichever is not applicable]