

**CAPACITY USE AGREEMENT
FOR
SANTA BARBARA COUNTY FACILITIES**

THIS CAPACITY USE AGREEMENT (this "Agreement"), dated for reference purposes only as of _____, 2017, is made and entered into by and between the GOLETA SANITARY DISTRICT, a public agency organized and existing under Part I of Division 6 of the California Health and Safety Code (the "District"), and the COUNTY OF SANTA BARBARA, a political subdivision of the State of California (the "County"), as follows:

Recitals

A. The District provides sanitary sewer service to certain County properties and facilities located within the eastern Goleta Valley. This sewer service is provided pursuant to (i) that certain Agreement dated March 3, 1959, as amended on October 19, 1959, December 26, 1961, March 25, 1963, January 20, 1964, July 10, 1967, and April 10, 1978 by and between the District and the County (collectively, the "1959 Sewer Service Agreement"), and (ii) that certain Agreement for Expansion of the Goleta Sanitary District Sewage Disposal Treatment Plant Facilities dated November 28, 1960, as amended on July 1, 1964, September 9, 1970, April 10, 1978 and December 14, 2007 (collectively, the "1960 Sewer Capacity Agreement"), by and among the District, the County, the Goleta West Sanitary District (formerly known as the Isla Vista Sanitary District), the Regents of the University of California, and the City of Santa Barbara. The 1959 Sewer Service Agreement and the 1960 Sewer Capacity Agreement are collectively referred to herein as the "Existing Agreements".

B. The County properties and facilities that receive sewer service pursuant to the Existing Agreements (the "County Properties") include, among others, the following:

COUNTY FACILITY	PROPERTY LOCATION
County Transfer Station (Office and Buildings)	4430 Calle Real
County Corporation Yard	4568 Calle Real
County Transportation Yard	4511 Calle Real
Sheriff's Facility and Jail	4434 Calle Real
VA Outpatient Facility and County Elections Office	4440 Calle Real
Fire Department Administration	4410 Cathedral Oaks
Fire Station 12	5330 Calle Real
Fire Station 13	4572 Hollister
Health Care Services	300 N San Antonio
Social Services	234 Camino Del Remedio

C. Pursuant to the 1960 Sewer Capacity Agreement, the County has the right to utilize up to a maximum of 1.42% (the "County Capacity Limit") of the total capacity in the District's wastewater treatment plant (the "Plant") located at One William Moffett Place, Goleta, California. The permitted capacity of the Plant currently is 7.64 million gallons per day ("MGD") (Average Dry Weather Flow). The County Capacity Limit is therefore 39,598,120 gallons per year (1.42% x 7.64 MGD x 365 days).

D. The ten (10) year (FY06-07 to FY15-16) historical flow volume of wastewater from the County Properties is shown on the table attached hereto as Exhibit "A" and incorporated herein by this reference. Based on the historical flow volume, the County needs an additional average of 19,394,488 gallons of wastewater discharge per year (the "Capacity Increase"). This Capacity Increase represents approximately 262 equivalent residential units ("ERUs") based on an estimated average discharge from a single-family residence of 74,095 gallons per year. The District's current capacity fee per ERU is \$2,058.

E. In order to continue to provide for the collection, treatment and disposal of all wastewater from the County Properties, the District is willing to allow the County to utilize a portion of the District's capacity in the Plant to treat the County's Capacity Increase.

F. The District and the County have determined that (i) this Agreement solely involves two public agencies, (ii) the public service to be provided hereunder is an alternative to and/or a substitute for the service already being provided by the District to the County under the Existing Agreements, (iii) the level of service to be provided hereunder is consistent with the level of service contemplated by the District under the Existing Agreements, and (iv) this Agreement represents an extension of the service that the District was providing to the County under the Existing Agreements prior to January 1, 2001. As such, under Government Code Section 56133(e), this Agreement does not require the approval of the Santa Barbara Local Agency Formation Commission.

G. The Parties desire to set forth herein their agreement pertaining to the provision of sewer service to address the Capacity Increase pursuant to Health & Safety Code Sections 6512 and 6823.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the County agree as follows:

1. Service by District. The District agrees to provide sewer service to the County Properties consistent with this Agreement and the County's capacity usage entitlement set forth herein, subject to the terms and limitations hereof. Nothing contained in this Agreement shall be interpreted as giving the County or its successors or assigns the right to connect additional buildings or facilities, whether located on the County Properties or elsewhere, to the District's wastewater collection system, or to increase the volume or strength of wastewater discharged by the County into the District's wastewater collection system.

2. Capacity Usage Fee. In order to compensate the District for allowing the County to utilize a portion of the District's capacity in the Plant to treat the County's Capacity Increase, promptly following the execution of this Agreement, the County shall pay the District a fee in the amount of \$538,685 (the "Capacity Usage Fee") payable in three annual

payments as follows: (1) \$179,561.66 on or before August 1, 2017; (2) \$179,561.67 on or before August 1, 2018; and (3) \$179,561.67 on or before August 1, 2019. If upon review by the District or the County, and if it is mutually agreed by both parties that a fee has been paid or is due that changes the Capacity Usage Fee, an adjustment shall be made to the Capacity Usage Fee no later than August 1, 2019. The Capacity Usage Fee payable by the County hereunder has been calculated by multiplying the 262 ERUs which the Capacity Increase represents, by the District's current connection fee of \$2,058 under District's Ordinance No. 58.

3. Future Increases. In the event it is determined in the future that the actual ERUs from the County Properties have increased to a level that exceeds the Capacity Increase of 19,934,488 gallons per year on average for three (3) consecutive fiscal years (July 1 to June 30), and if the District agrees in its sole discretion, to accept the increased ERUs for collection, treatment and disposal, the County agrees to promptly pay an additional Capacity Usage Fee to the District calculated on the basis of the increase in the ERUs at the connection fee rate in effect at the time it is determined that such increase has occurred. If the District does not agree to accept the increased ERUs, the County shall immediately take such steps as may be necessary to reduce the flow so that it does not exceed the current Capacity Increase of 19,934,488 gallons per year.

4. Maintenance and Operations Costs. In order to fund the County's share of the cost of maintaining and operating the Plant and the District's wastewater collection treatment and disposal facilities after the date of this Agreement, the County shall continue to pay the District such costs based on the County's total annual sewage discharge (including the Capacity Increase) in accordance with the April 10, 1978 amendment to the 1959 Sewer Service Agreement.

5. Compliance with Applicable Requirements. The County shall comply with (i) all ordinances, regulations, resolutions, policies, procedures and administrative provisions of the District to the same extent as if the County Properties had been annexed to the District, and (ii) all statutes, rules and regulations of agencies of the United States of America, the State of California, the County of Santa Barbara and other governmental and regulatory agencies having jurisdiction over the collection, treatment and/or disposal of sewage and wastes, including but not limited to (a) requirements applicable to the construction, use, repair and maintenance of the buildings and facilities located on the County Properties, (b) requirements addressing the type, contents and strength of sewage and wastes permitted to be discharged into sewers, and (c) the District's Ordinance No. 77 ("Applicable Requirements"), as said Applicable Requirements may be amended or superseded from time to time.

6. Termination. This Agreement may be terminated by the District upon one-hundred and eighty (180) days written notice to the County in the event the County violates any of terms hereof, including but not limited to any terms relating to the payment of fees or charges to the District.

7. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto. The rights granted to the County herein relating to the provision of sewer service shall run with the land and shall be appurtenant to the County Properties and to any parcels into which the County Properties may hereafter be legally divided.

8. Entire Agreement/Modification. This Agreement (including all exhibits attached hereto) is the final expression of and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and communications with respect thereto. Notwithstanding the foregoing, nothing herein shall affect in any way the respective rights and obligations of the District and the County under the 1959 Sewer Service Agreement or the 1960 Sewer Capacity Agreement, nor increase the capacity entitlement of the County thereunder. This Agreement may be modified only by a written instrument signed by all parties in interest at the time of the amendment.

9. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. Waiver. No waiver of any breach of any covenant or provision herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

11. Construction. Headings at the beginning of each section are solely for the convenience of the parties and are not a part of this Agreement. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits attached to this Agreement are incorporated herein by reference and are made a part hereof.

12. Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. In the event executed copies of this Agreement are provided by one party to the other by facsimile or email transmission, the original copies shall be sent by the signing party to the other party as soon as reasonably feasible, and pending the receipt thereof, the facsimile or email copies and the signatures thereon shall for all purposes be treated as originals.

13. Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he or she has the authority to execute this Agreement on behalf of such party.

14. Notices. Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be (a) personally delivered, or (b) sent either by United States mail, registered or certified, return receipt requested, or by recognized overnight delivery service (e.g., Federal Express, UPS or DHL), to the party at the address listed below, or at such other address as a party may hereafter designate by written notice to the other party:

DISTRICT:

Goleta Sanitary District
One William Moffett Place
Goleta, California 93117
Attn: General Manager

COUNTY:

County of Santa Barbara
General Services, Support Services
1105 Santa Barbara Street
Santa Barbara, CA 93101
Attn: Assistant Director

15. Assignment. The County may not assign any of its rights or delegate any of its obligations under this Agreement, in whole or in part, without the prior written consent of the District, which consent shall not be unreasonably withheld.

16. Further Assurances. The Parties each agree to take such actions and execute such documents as may be reasonably required to carry out the intent of this Agreement.

17. Force Majeure. Neither party hereto shall be liable to the other party for any losses or damages attributable to a default in or breach of this Agreement which is the result of any cause beyond the reasonable control of such party and without its fault (including, without limitation, effects of fire, strike, war, insurrection, terrorism, acts of God, civil or military authority, civil disturbance and government restriction or prohibition), and the performance of obligations hereunder shall be suspended during, but no longer than, the existence of such cause. The party affected by any event of force majeure shall inform the other party thereof in writing without delay and shall endeavor to take up its performance under this Agreement again as soon as reasonably possible.

18. Release of Claims. The parties mutually waive, release, and covenant not to commence, maintain, join, or authorize any administrative or judicial proceeding against one another related to the County's historical flow volume prior to the date hereof which gave rise to the need for the Capacity Increase. The Parties intend for this Agreement to resolve all past issues and claims related to the County's historical flow volume.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the District and the County have executed this Agreement as of the date(s) set forth below.

"District"

GOLETA SANITARY DISTRICT

By: _____
Jerry D. Smith,
Governing Board President

COUNTERSIGNED:

By: _____
Robert O. Mangus, Jr.,
Governing Board Secretary

Dated: _____

APPROVED AS TO FORM:

By: _____
Richard G. Battles
Howell Moore & Gough LLP
District General Counsel

Dated: _____

"County"

COUNTY OF SANTA BARBARA

By: _____
Joan Hartmann, Chair of Board of
Supervisors

ATTEST:
Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Theodore Fallati, CPA
Auditor-Controller

By: _____
Deputy

RECOMMENDED FOR APPROVAL:

JANETTE D. PELL, DIRECTOR
GENERAL SERVICES DEPARTMENT

By: _____
Department Head

APPROVED AS TO FORM:

By: _____
Risk Management

Dated: 6/8/17

Exhibit A

Santa Barbara County Facilities Waste Water Flow History

SB County Annual Capacity Entitlement -1.42% of GSD 7.64 MGD Permitted Flow (gal)	39,598,120
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Fiscal Year	Actual Flows (gal)	Available Capacity (gal)
2006-07	60,330,892	-20,732,772
2007-08	60,342,950	-20,744,830
2008-09	59,785,225	-20,187,105
2009-10	59,021,077	-19,422,957
2010-11	58,060,464	-18,462,344
2011-12	58,031,539	-18,433,419
2012-13	58,061,204	-18,463,084
2013-14	60,409,579	-20,811,459
2014-15	59,433,829	-19,835,709
2015-16	56,449,325	-16,851,205

10 Year Average Flow Over Annual Entitlement (gal)	19,394,488
Annual Volume per Equivalent Residential Unit (gal)	74,095
10 Year Average Flow Over Annual Entitlement (ERU)	261.75
Capacity Fee per Equivalent Residential Unit (\$)	\$2,058
Total Fee for Capacity Increase (\$)	\$538,685