

**AMENDED AND RESTATED AGREEMENT REGARDING SOUTH PARK
COUNTY SANITATION DISTRICT OPERATIONS
AND TRANSFER TO THE CITY OF SANTA ROSA**

This Amended and Restated Agreement ("Agreement") is made this 26th day of June, 2012, by and between the South Park County Sanitation District, (District) and the City of Santa Rosa, a California charter city (City).

RECITALS

A. On February 27, 1996, District and City entered into an Agreement for Dissolution of the South Park County Sanitation District and Transfer to the City of Santa Rosa (Original Dissolution Agreement): The Original Dissolution Agreement provides, among other things, for progression of work to be completed by District prior to dissolution and transfer to City and further provides that District shall apply to the Sonoma County Local Agency Formation Commission (LAFCO) for dissolution effective June 30, 2001, and that once District is dissolved City shall have all of District's capacity in the regional treatment system, shall assume District bonds, indebtedness and obligations and shall own all District property and assets.

B. On February 17, 1998, District and City entered into Amendment Number One to the Agreement for Dissolution of the South Park County Sanitation District and Transfer to the city of Santa Rosa (Amendment One). Amendment One, among other things, adjusted the length of the sewer lines designated for repair or replaced by District prior to dissolution and immediately transferred 0.30 million gallons per day of unused capacity from District to City.

C. On June 27, 2000, District and City entered into the Second Amendment to Agreement for Dissolution of the South Park County Sanitation District and Transfer to the City of Santa Rosa (Amendment Two). Among other things, Amendment Two modified Section 3 of the Agreement to provide that dissolution of the District, if approved by LAFCO, would become effective on June 30, 2006. The Second Amendment also addressed the parties' respective responsibilities and actions concerning the halogenated volatile organic compounds plume in the Roseland area.

D. On April 22, 2004, District and City entered into Amendment No. 3 to Agreement for Dissolution of the South Park County Sanitation District and Transfer to the City of Santa Rosa (Amendment Three). Amendment Three modified Section 3 of the Agreement to change the effective date of dissolution to June 30, 2011 to again allow further time for District to perform the required infrastructure improvements.

E. On June 29, 2011, District and City entered into the Fourth Amendment to the Agreement for Dissolution of the South Park County Sanitation District and Transfer to the City of Santa Rosa (Amendment Four). Amendment Four modified Section 3 of the Agreement to address certain issues in order to effectuate eventual dissolution of the District.

F. District and City desire to amend and restate the Original Dissolution Agreement, including all subsequent amendments, to address the eventual dissolution of the District in accordance with locally required procedures and cooperation of the parties in the management and operation of District facilities until dissolution of the District is effected.

G. District is currently operated by the Sonoma County Water Agency ("Agency") under contract.

District and City agree as follows:

AGREEMENT

SECTION 1 – RECITALS CORRECT: The recitals set forth above are correct.

SECTION 2 -- NEW AGREEMENT: This Agreement replaces and supersedes the Original Dissolution Agreement and all subsequent amendments to the Original Dissolution Agreement.

SECTION 3 – PLEDGE OF REVENUES: All revenues generated within the boundaries of District for sanitation service shall be revenues of the District's Operation Fund and Construction Fund, so long as District is not dissolved.

SECTION 4 – DISSOLUTION OF DISTRICT:

A. Activities Prior to Dissolution: The parties agree that it is necessary to address the following issues related to the eventual dissolution of the District: (i) the District's debt payment obligations and potential origination of new debt, (ii) District infrastructure improvements which are currently planned or may be planned in the future (iii) any obligations or requirements that may exist under that certain Clean Up and Abatement Order No. R1-2007-0040 from the North Coast Regional Water Quality Control Board ("NCRWQCB"), as it may be amended and extended from time to time (Abatement Order), and (iv) the changeover of billings and collections. These issues are addressed in Sections 5, 6, and 10 below. The parties agree to meet during the term of this Agreement as necessary to address these issues on an ongoing basis and prior to any anticipated dissolution. The parties further agree to cooperate to implement District operations and maintenance activities pursuant to this Agreement until dissolution of the District or termination of this Agreement, whichever may occur first.

B. Dissolution: The parties have determined that, in accordance with current state law, the City must annex the territory underlying the District, currently under the jurisdiction of the County of Sonoma, before the District can effectively dissolve. The parties foresee that any such annexation will occur at some point in the future, but currently the timeframe for such annexation is unknown. The parties foresee that the

annexation of the territory underlying the District and therefore the potential dissolution of the District will be driven by factors other than the completion of certain infrastructure improvements within the District as previously anticipated. The parties agree that at such time as annexation proceedings occur, the parties will also take steps to coordinate the dissolution of the District. Such coordination shall include, but may not be limited to, District's application to the Sonoma County Local Agency Formation Commission (LAFCO) for dissolution of the District, in accordance with any applicable terms and conditions of this Agreement. Provided that (i) this Agreement is still in effect, and is not subject to any material dispute between the parties, and (ii) District's application for dissolution is submitted in connection with the initiation of territorial annexation proceedings by the City, City agrees to support District's dissolution before LAFCO. Once District has dissolved, City shall have all of the District's capacity in the Regional Treatment System, and shall assume the District bonds, indebtedness, and other obligations, and shall own all District property and assets. If LAFCO fails to approve District's dissolution, then the parties agree to work cooperatively to address any objections raised by LAFCO and this Agreement shall remain in full force and effect, excepting any termination pursuant to Section 9 below, until such time the District is effectively dissolved.

SECTION 5 – DISTRICT DEBT OBLIGATIONS AND FUTURE IMPROVEMENTS BEFORE DISSOLUTION

A. District has incurred the debt obligations for certain improvement projects as specified in Exhibit A to this Agreement, which is attached to this Agreement and incorporated herein by this reference. The parties understand that any of these debt obligations that are remaining at the time of District dissolution, along with all assets of the District, will be transferred to the City when the District is dissolved.

B. The City understands that District has finite financial capacity to pursue infrastructure improvements within the District and that the District may find it necessary to pursue future debt obligations to fund necessary infrastructure improvement projects, which may include certain of those projects identified in the Abatement Order, Original Dissolution Agreement and subsequent amendments. District hereby agrees that prior to incurrence of any new debt, it will first provide the details of any potential funding arrangement, including but not limited to, the amount and term of the proposed debt, the financing costs, the carrying costs for any such funding, and the proposed infrastructure improvements to be completed with such funding to the City for review. District and City agree to meet to confer in good faith as to whether any changes to debt obligations or new debt obligations should be incurred. If City agrees that seeking debt financing is appropriate to fund any future project, then upon the request of District, City agrees to provide, in a timely manner, such information as is reasonably necessary to facilitate the District in the application for such debt financing. In the event that District requires any further support from the City in acquiring approval of proposed capital projects financing that has been found to be appropriate and justified in the determination of City staff, then City staff will seek such support from the City Council. The parties understand that the District may be required pursuant to law to make certain improvements or expenditures

as part of operation and maintenance of the sanitation system. District will, in good faith, consider comments or concerns raised by City regarding future debt obligations in making its decision regarding such debt obligations.

C. Until dissolution occurs, District shall be responsible, in conjunction with input and consultation with City, for planning, design, and construction contract administration for maintenance, repair and replacement projects of the District collection system. The parties may agree to have City perform work and for District to reimburse City as required pursuant to any such agreement. The parties agree to cooperate in the ongoing assessment of necessary infrastructure improvements within the District as well as prioritization of same. District will continue its efforts to improve District infrastructure so as to avoid long term deterioration or significantly increased maintenance work within the District. City shall have the right to review plans, specifications, and construction work to insure repair and replacement projects are being undertaken and completed to the satisfaction of City.

SECTION 6 -- NCRWQCB CLEAN UP AND ABATEMENT ORDER NO. R1-2007-0040: Clean Up and Abatement Order No. R1-2007-0040, issued by the NCRWQCB in 2007 and last modified in September, 2010 (previously described and referred to as the "Abatement order"), requires completion of certain projects by the timeframes specified in the Abated Order, as it is or may be amended. District agrees to use its best efforts to ensure timely completion of the required projects which become due before dissolution occurs, or to begin work to enable timely completion if such completion is to occur after dissolution, and City agrees to cooperate with District to facilitate such timely completion.

SECTION 7 – BOOKS, RECORDS AND ACCOUNTS: Prior to District's dissolution, City and District agree to keep, or cause to be kept, and to cooperate and, as appropriate, to share regarding same, proper books, records and accounts regarding District and City-related operations, maintenance and construction. Notwithstanding the foregoing, District understands that, given the incongruous boundaries of the District, City does not maintain District specific maintenance logs.

SECTION 8 – OPERATION AND MAINTENANCE OF DISTRICT: City currently operates and maintains District facilities. Until Dissolution occurs or this Agreement is otherwise terminated in accordance with Section 9, City agrees to continue such operation and maintenance pursuant to the requirements of this Agreement, including but not limited to the requirements specified in this Section.

A. Scope of Services: City shall operate and perform routine maintenance of the District's sewer collection system in a manner that: 1) fully complies with all applicable laws and regulatory requirements, 2) fully complies with the District's most current Sanitary Sewer Management Plan (SSMP) (excepting CIP components), and 3) is common to industry practice. All reporting required for regulatory and SSMP compliance, including but not limited to reporting for Sanitary Sewer Overflows, shall be

performed by the City on behalf of the District. If District updates its SSMP, City shall be consulted and have input on any proposed changes.

B. Schedule of Rates: City shall provide District annually a recommended schedule of rates and service charges for City services as the basis for reimbursement under this Agreement. Such rates and service charges shall be approved in writing by District's Board of Directors prior to their implementation. City shall prepare and distribute an operational and maintenance budget by May 1 of each year for the ensuing fiscal year. City agrees to provide a preliminary estimate of its operational and maintenance budget as it pertains to the District by February 1 of each year for the ensuing fiscal year. District shall pay City the full amount specified in the budget for operations and maintenance ("annual contract amount").

C. Requests for Payment: On or before the tenth day of each month, District shall make a payment for the prior month, equal to one-twelfth of the annual contract amount.

D. Amendment: At the request of either party to this Agreement, the parties shall meet to: 1) review the performance of City in providing operation and maintenance service for the District; and 2) review the level of service provided and the fee structure necessary to support the services. If the annual contract amount requested by City is not approved by the District's Board of Directors for any fiscal year during the term of this Agreement, the District and City shall meet to determine adjustments in service rendered to meet the adopted fee structure.

SECTION 9 – TERMINATION: The District or City may terminate this Agreement by giving ninety (90) days written notice to the other party of the party's intent to terminate. Upon termination of this Agreement, City shall be reimbursed for any outstanding costs associated with implementation of this Agreement. City shall return to District .3 million gallons per day of District's unused capacity entitlement in the Santa Rosa Subregional Sewerage System which was previously provided to City, unless the parties agree otherwise pursuant to a separate written agreement.

SECTION 10 – INDEPENDENT CONTRACTORS: The only relationship between the parties is that of independent contractors, and neither party is responsible for any act or omission of the other or any employee of the other. No employee of one party shall be deemed to be an employee of the other party for any purpose.

SECTION 11 - BILLINGS AND COLLECTIONS: City and District agree to work together to transition billings and collections of sanitation fees, with the goal of effecting approval of any new structure of billing and collection by City in advance of dissolution of the District.

SECTION 12 – RATES AND CHARGES: Until dissolution occurs, the District's Board of Directors shall be responsible for adoption of service rules, regulations, and standards; the establishment of user, service, and connection fees; the review and

approval of proposals for the construction of new sanitation facilities; the acceptance of any grants of right-of-way, easements, right-of-entry, or other land rights; and the acceptance of any offers of dedication of land rights and sanitation facilities. City and District understand that sewer service rate increases are currently subject to the protest requirements of Proposition 218, and may be subject to other procedural requirements in the future.

SECTION 13 – RESPONSIBILITY OF CITY AFTER DISSOLUTION OF DISTRICT: After District's dissolution, City shall be responsible for adoption of service rules, regulations, and standards; the establishment of user, service, and connection fees; the review and approval of proposals for the construction of new sanitation facilities; the acceptance of any grants of right-of-way, easements, right-of-entry, or other land rights; and the acceptance of any offers of dedication of land rights and sanitation facilities. The parties hereby understand that the date of District dissolution is at this time uncertain. It is nevertheless presently anticipated by the City that at such time as the District dissolves, those currently served by the District will not be subject to additional charges with regard to service rates relative to all then existing City users, consistent with the legal requirements in place at that time. It is further anticipated that existing debt service of the former District facilities will be subsumed by the City and will be paid for consistent with the then existing City mechanisms for covering debt obligations for the City's system as a whole.

SECTION 14 – TRANSFER OF DISTRICT'S UNUSED CAPACITY OF SUBREGIONAL SYSTEM TO CITY AND COUNTY: Pursuant to the Original Dissolution Agreement made by the parties, including the Fourth Amendment For Use of Santa Rosa Subregional Sewerage System by the subregional system users, District has transferred to City .30 million gallons per day of unused capacity from District's capacity entitlement in the Santa Rosa Subregional Sewerage System for use by City. City shall assume all rights and obligations inherent in that capacity, as provided by that certain agreement made and entered into by and between City and subregional agencies within the City's subregional sewerage system on April 3, 1975 referred to in the Original Dissolution Agreement as the Master Agreement.

SECTION 15 – EXISTING JOINT AGREEMENT: The Joint Agreement Between City of Santa Rosa, County of Sonoma and the South Park County Sanitation District for installation of sanitary sewerage facilities in the area of malfunctioning septic tanks outside the boundaries of the City of Santa Rosa, dated September 4, 1987, shall remain in effect upon dissolution of District. Upon dissolution of the District, all obligations of District shall become the responsibility of City in carrying out the terms and conditions of said agreement as may be amended from time to time by the City and the County of Sonoma.

SECTION 16 – AGREEMENT BETWEEN CITY AND COUNTY OF SONOMA REGARDING HVOC PLUME IN ROSELAND AREA: The Parties acknowledge that the agreement regarding the cleanup of the HVOC plume in the Roseland Area

between the City and the County of Sonoma dated June 27, 2000 shall remain in effect and unchanged by this Agreement.

SECTION 17 – NO THIRD PARTY BENEFICIARIES: Nothing contained in this Agreement shall be construed to confer rights upon any individual or entity not expressly made a signatory hereto.

SECTION 18 – INDEMNIFICATION: Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party under this Agreement. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnity provision survives the Agreement.

SECTION 19 – MERGER: The parties hereto intend this writing to be the final expression of the terms between the parties pursuant to Code of Civil Procedure, Section 1856, and no modification of this Agreement shall be effective unless in writing signed by both parties.

SECTION 20 – ENFORCEMENT OF CONTRACT:

A. A waiver by any party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

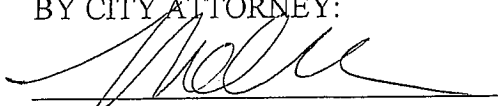
B. This Agreement shall be construed and interpreted according to the substantive law of California. Any action to enforce the terms of this Agreement, or for the breach thereof, shall be brought and tried in the County of Sonoma.

SECTION 21 – TIME IS OF THE ESSENCE: Time is and shall be of the essence of this Agreement and every provision contained herein.

SECTION 22 – SEVERABILITY: To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event any provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

[Signatures on Next Page]

REVIEWED AS TO FORM
BY CITY ATTORNEY:



City Attorney


Dated: 5/23/12

CITY OF SANTA ROSA

By: 

Mayor, City of Santa Rosa

ATTEST:



City Clerk, City of Santa Rosa

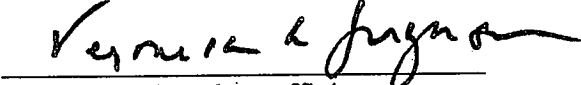
Dated: 6/7/12

SOUTH PARK COUNTY SANITATION DISTRICT

By: 

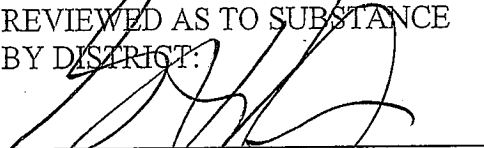
Chairperson, Board of Directors

ATTEST:



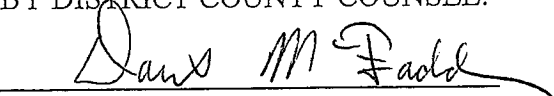
~~County Clerk and ex-officio~~
Clerk of the Board of Directors of the
South Park County Sanitation District,
State of California

REVIEWED AS TO SUBSTANCE
BY DISTRICT:



Department Head

REVIEWED AS TO FORM
BY DISTRICT COUNTY COUNSEL:



County Counsel

Exhibit A – Existing Debt Obligations

