

RESOLUTION NO. RES-2017-211

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA APPROVING THE FIRST AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT REGARDING SOUTH PARK COUNTY SANITATION DISTRICT OPERATIONS AND TRANSFER TO THE CITY OF SANTA ROSA

WHEREAS, the South Park County Sanitation District (SPCSD) was formed in 1972 and responsibility for SPCSD was transferred to the Sonoma County Water Agency in 1994 via state legislation; and

WHEREAS, the SPCSD and the City entered into the “Agreement for Dissolution of the South Park County Sanitation District and Transfer to the City of Santa Rosa” in February 1996; and

WHEREAS, the SPCSD and the City approved four amendments over the years for additional time extensions, to provide credit to SPCSD for pipe installations, and to address the Regional Water Quality Control Board’s Clean Up and Abatement Order No. R1-2007-0040 regarding a plume of halogenated volatile organic compounds in the SPCSD service area; and

WHEREAS, on June 26, 2012, SPCSD and the City entered into the “Amended and Restated Agreement Regarding South Park County Sanitation District Operations and Transfer to the City of Santa Rosa” (Amended and Restated Agreement) to address the unknown date of dissolution of SPCSD, provide for ongoing maintenance operations by the City, address current and any future debt payment obligations, define required infrastructure improvements, and set forth South Park’s obligations under Clean Up and Abatement Order No. R1-2007-0040; and

WHEREAS, in February 2013, the City Council directed development of a work plan for annexing the unincorporated Roseland area; and

WHEREAS, the Roseland Area Annexation consists of five unincorporated County islands in southwest Santa Rosa, and SPCSD serves approximately 50% of the Roseland Area Annexation, with the remaining portion of the District located within the unincorporated areas of Sonoma County; and

WHEREAS, annexation of the Roseland Area into the City will not allow for a dissolution of SPCSD because less than 70% of the property served by SPCSD will be within the City’s boundaries; and

WHEREAS, Water Agency and City staff, in consultation with Sonoma County Local Agency Formation Commission staff, reviewed various options for SPCSD in connection with the Roseland Area Annexation giving consideration to the financial viability of SPCSD and differences between SPCSD’s and the City’s sewer rate structures and based on these conditions determined that providing a transition period in relation to sewer rates and governance prior to transferring SPCSD to the City was the best available option; and

WHEREAS, Water Agency and City staff collaborated on the preparation of the proposed "First Amendment to the Amended and Restated Agreement" (First Amendment), which provides time for SPCSD to pursue rate restructuring towards volumetric rates that are more similar to the City's sewer rates, addresses how City residents who will continue to be served by SPCSD will process development projects, and sets forth provisions for the future transfer of governance of SPCSD; and

WHEREAS, on August 2, 2017, Sonoma County Local Agency Formation Commission approved the Roseland Area Annexation subject to several conditions being met, including the requirement that the City and SPCSD address issues related to SPCSD through approval of a First Amendment to the Amended and Restated Agreement prior to the recordation of the Roseland Area Annexation on November 1, 2017; and

WHEREAS, on October 5, 2017, the Board of Public Utilities adopted a resolution recommending that the City Council approve the First Amendment to the Amended and Restated Agreement with the SPCSD.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa adopts a resolution approving the First Amendment to the Amended and Restated Agreement with the SPCSD, in substantially the form attached hereto as Exhibit A, subject to approval by the City Attorney, and made part of this Resolution.

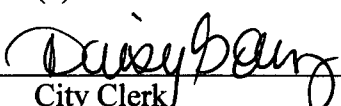
IN COUNCIL DULY PASSED this 24th day of October, 2017.

AYES: (7) Mayor Coursey, Vice Mayor Tibbetts, Council Members Combs, Olivares, Rogers, Sawyer, Schwedhelm

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

ATTEST: 
City Clerk

APPROVED: 
Mayor

APPROVED AS TO FORM:

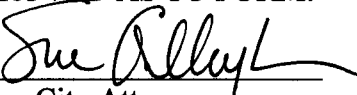

City Attorney

Exhibit A – First Amendment to Amended and Restated Agreement Regarding South Park County Sanitation District Operations and Transfer to the City of Santa Rosa

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

This First Amendment to the Amended and Restated Agreement Regarding South Park County Sanitation District operations and Transfer to the City of Santa Rosa (“First Amendment”) is made and entered into as of this October 24, 2017 by and between the South Park Sanitation District (“District”) and the City of Santa Rosa, a municipal corporation (“City”).

RECITALS

- A. On June 26, 2012, District and the City entered into that certain Amended and Restated Agreement Regarding South Park County Sanitation District Operations and Transfer to the City of Santa Rosa (“Agreement”) for the purpose of addressing the eventual dissolution of the District upon annexation of the territory underlying the District.**
- B. On November 29, 2016, the City approved a Roseland Pre-Annexation Agreement and directed staff to file an application to annex certain County islands in the southwest Santa Rosa, including the large island commonly known as Roseland.**
- C. The District and City have determined that the proposed Roseland Annexation will only result in the annexation of less than 70% of the territory underlying the District, and therefore the District cannot be fully dissolved in conjunction with the Roseland Annexation.**
- D. The District and the City now wish to amend the Agreement in order to set forth a process that will allow the eventual transfer of all District operation and function to the City.**

District and City agree as follows:

- 1. The Sonoma County Water Agency shall continue to operate the District up to and following the completion of Roseland Annexation consistent with and subject to the provisions set forth in the Agreement and this First Amendment, including the continued pursuit of any necessary and appropriate capital improvements and repairs within the District.**
- 2. The District shall pursue a process of rate restructuring in order to implement a volumetric rate structure that is similar to that currently in effect within the City of Santa Rosa. The District agrees to pursue rate restructuring generally consistent with the following schedule:**

Year 1 (FY 2017/18) – Develop example fixed plus volumetric rates for wastewater customers to consider.

- Year 2 (FY 2018/19) – Begin billing fixed plus volumetric rates on tax roll.**
- Year 3 (FY 2019/20) – Increase volumetric rate share and decrease fixed share.**
- Year 4 (FY 2020/21) – Prepare example monthly bill for customers to consider.**
- Year 5 (FY 2021/22) – Implement monthly billing.**

The District further agrees that within the next three years from the date of this Amendment that the District will work with the City to revisit the District’s connection fees and capacity charges in an effort to identify and consider any issues that may present a substantial issue for transition of the District to the City as set forth herein.

- 3. The District and the City agree that the District may contract with the City to perform billing operations for the District in order to facilitate a monthly billing program, provided that the District shall provide ample notice to the City prior to the implementation of monthly billing. The District shall pursue additional rate structure adjustments to implement a monthly, volumetric rate structure that is generally in line with the City of Santa Rosa’s rates for wastewater collection, treatment, and disposal services, on or before December 31, 2026. Prior to and concurrent with the rate re-structuring, the District will undertake, with the cooperation of the City, a public outreach program in an effort to educate and prepare customers within the District.**
- 4. At such time as the District rates have been restructured as set forth in Section 2 above, then the District and the City will work cooperatively to transfer all billing accounts to the City. Prior to or concurrent with such transition, the District shall transfer control of the full operation and function of the District to the City. Prior to the transfer of control of the District, the Sonoma County Water Agency will supply the City with an audit of the District and with a comprehensive list of assets and liabilities. The District will seek a termination of the management agreement with the Sonoma County Water Agency and approval of a new agreement with the City to document transfer of control.**
- 5. Upon the annexation of the Roseland area, the City will serve as the lead organization for sanitation development review services for the portion of the District within the City’s boundaries. Until the transfer of control of the District to the City pursuant to Paragraph 4, the City will receive, review and approve sanitary sewer plans from developers and ensure compliance with the City of Santa Rosa’s Design and Construction Standards which shall be construed as complying with the District’s Design and Construction Standards, provided that the District’s Board or General Manager first makes a finding, pursuant to section 1.02 of the District’s Sanitation Code, that the City’s design and construction standards, together with any additional conditions determined to be necessary, as agreed by the parties, are adequate to protect public health and the environment. Such finding will apply to all sewer projects reviewed by the City until the City assumes control of the District pursuant to Paragraph 4. The City agrees to defend, indemnify, hold harmless, and release the District, the Sonoma County Water Agency (“Water Agency”), and their**

officers, agents, and employees (“Indemnitees”), from and against any actions, claims, damages, liabilities, disabilities, or expenses that may be asserted by any person or entity, including Indemnitees, that arise out of, pertain to, or relate to City’s or its agents’, employees’, contractors’, or subcontractors’ review of sanitary sewer plans pursuant to this Section 5. The City agrees to provide a complete defense, including payment of attorneys fees, for any claim or action brought against Indemnitees based upon a claim relating to the City’s or its agents’, employees’, contractors’, or subcontractors’ review of sanitary sewer plans pursuant to this Section 5. The City’s obligations under this Paragraph apply whether or not there is concurrent or contributory negligence on the Indemnitees’ part, but excluding liability arising from Indemnitees’ sole, active negligence or intentional misconduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the City or its agents under workers’ compensation acts, disability benefits acts, or other employee benefit acts.

The City will collect connection fees and capacity charges established by the District, as well any costs imposed by the District upon the developer, and remit such fees, charges, and costs to the District no more frequently than monthly. The City will refer all developer plans, requests for connection and customer fee inquiries to the District and the District will submit any necessary final fee calculations to the City within two weeks from any such request. For each project, the City will provide the District with record drawings and a summary of project costs within thirty (30) days of final inspection and approval. The City will also notify the District of any project resulting in an increase or decrease to the number of equivalent standard dwelling units that should be allocated to a property, including, as an example, a project to change the property’s use type. The City will charge its plan check and inspection fees directly to developers. The Water Agency and District will not be responsible for plan check or inspection fees. Any areas that continue to be outside the boundaries of the City yet within the District, shall continue the current review structure. The foregoing provision does not establish terms for the imposition of planning conditions on new developments, or limit or supersede existing agreements or arrangements among the City, the District, and the County of Sonoma with regard to environmental compliance review of sanitary sewer projects.

- 6. The City and District hereby agrees that it shall create a new Board of Directors which shall be delegated the responsibility to manage the operation of the District, including but not limited to all of the responsibilities identified in Section 12 of the Agreement. The new Board of Directors shall be comprised of two members of the Santa Rosa City Council and one member from the Sonoma County Board of Supervisors. The new Board of Directors shall remain in place until such time as the District is able to be dissolved. The District hereby agrees that it will not allow any new annexations into the District without the prior consent of the City, and in the event of any annexations of new land into the District, the District shall require, prior to any connection, that the landowner first record a covenant against any**

property to be served by the District in which covenant the owner will agree not to engage in any future protest against future annexation of such property into the boundaries of the City of Santa Rosa. The covenant will provide that it runs with the land.

7. Pursuant to Clean Up and Abatement Order No. R1-2007-0040, issued by the North Coast Regional Water Quality Control Board on May 16, 2007, and modified September 21, 2010 ("Abatement Order"), the District has undertaken certain sewer rehabilitation projects to be completed by the deadlines stated in the Abatement Order, as amended. The final outstanding project is in progress as of the date of this First Amendment, and the District agrees to use its best efforts to ensure timely completion of the project before control of the District is transferred to the City.

[Signatures on Next Page]

REVIEWED AS TO FORM
BY CITY ATTORNEY:



City Attorney

Dated: 10/5/17,

CITY OF SANTA ROSA

By: 
Mayor, City of Santa Rosa

ATTEST:



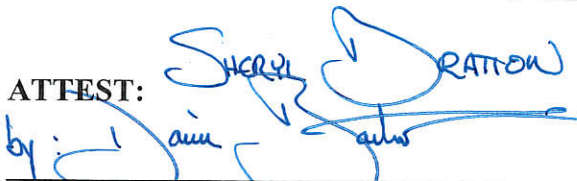
City Clerk, City of Santa Rosa

Dated: 10/24/17,

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