

**AMENDED AND RESTATED MEMORANDUM OF AGREEMENT
FOR PROVISION OF SANITATION SERVICES
AIRPORT-LARKFIELD-WIKIUP SANITATION ZONE**

This AMENDED AND RESTATED MEMORANDUM OF AGREEMENT (“**Amended and Restated MOA**”) is made and entered, by and between the SONOMA COUNTY WATER AGENCY (“**Agency**”) and SUTTER WEST BAY HOSPITALS, a California corporation, doing business as Sutter Medical Center Santa Rosa (“**Sutter**”). Agency and Sutter are sometimes collectively referred to as the “**Parties**” and singularly, a “**Party**.”

R E C I T A L S

WHEREAS, Agency owns and operates the Airport-Larkfield-Wikiup Sanitation Zone (the “**Sanitation Zone**”) which provides sanitation services (“**Wastewater Service**”) in the unincorporated area north of Santa Rosa, California (“**Service Area**”).

WHEREAS, Sutter owns and operates the Sutter Medical Center of Santa Rosa/Luther Burbank Memorial Foundation Master Plan (the “**Project**”) located at 30 Mark West Springs Road, Santa Rosa, California. The Project includes the Sutter Medical Center medical campus (“**Medical Campus**”) with a state-of-the-art hospital (“**Hospital**”), a Medical Office Building, and a helistop. The Project also includes a central utility plant and water treatment facilities complex which serves the Medical Campus (“**Sutter Wastewater Facility**”).

WHEREAS, the Sonoma County Board of Supervisors (“**Board**”) approved a Use Permit for the Project in 2010, and revised that Use Permit in 2012.

WHEREAS, the Parties had entered into a Memorandum of Agreement for Provision of Sanitation Services, dated July 21, 2010, which is incorporated herein by reference, and which provided the terms and conditions by which Sutter connected the Sutter Wastewater Facility to the Sanitation Zone’s wastewater treatment system (“**Original MOA**”).

WHEREAS, the Agency has a High Efficiency Fixture Direct Installation Program (the “**HEFDIP**”) in the Sanitation Zone to reduce inflow into the Sanitation Zone treatment facility.

WHEREAS, pursuant to the Original MOA, the Parties agreed to certain terms and conditions which were to be funded by Sutter and administered by the Agency through the HEFDIP, to realize a “zero footprint” for the Project for wastewater treatment needs, and to offset the Project’s total average daily wastewater flow by water conservation in the Sanitation Zone.

WHEREAS, Sonoma County approved an expansion to the Project (“**Hospital Expansion**”), with revised conditions of approval, on June 24, 2018.

WHEREAS, the Original MOA required Sutter to perform certain wastewater flow evaluations once the Project reached a certain level of occupancy and to compare those flows to the estimated flows used to determine the fees paid under the Original MOA (“**Evaluation**”). The Project has reached the required level of occupancy and has performed the Evaluation required to provide accurate flows and determine correct fees. The Parties desire to revise the fees accordingly.

WHEREAS, Sutter has performed certain payment terms of the Original MOA. Section 3.16 of the EIR defines Offset Equivalent Single Family Dwellings (“**Offset ESDs**”) as the equivalent to thirty three (33) gallons per day inflow into the Sanitation Zone treatment facility. Pursuant to the Original MOA, Sutter paid the sum of One Million Eighty Eight Thousand Three Hundred Eighty Eight and 87/100 Dollars (\$1,088,388.87) to the Agency to offset the annual average daily wastewater flows generated by the Project (“**Offset Payment**”). The Offset Payment paid for One Thousand One Hundred Eighty Two and 84/100 (1,182.84) Offset ESDs for the Project (“**Past Offset ESDs**”).

WHEREAS, the Hospital Expansion requires revised payments, as further set forth in this Amended and Restated MOA.

WHEREAS, independent of this Amended and Restated MOA, Sutter has paid the required connection/capacity charges (\$282,797.29).

WHEREAS, Sutter desires to reimburse the Agency for the staff time necessary to review and expedite the MOA, the Project’s required Wastewater Services, and the Offset Program in exchange for the Agency providing Wastewater Services for the Project.

WHEREAS, the Parties desire to contract for the provision of Wastewater Service to the Project in accordance with the terms and conditions described below.

NOW THEREFORE, in consideration for the promises, covenants and agreements of both Parties as set forth below, the Parties agree as follows:

A G R E E M E N T

1. Recitals. The foregoing recitals are true and correct and incorporated herein.
2. Amendment and Restatement. As of the Effective Date of this Amended and Restated MOA, the Original MOA is hereby terminated in its entirety, with the exception of indemnification provisions, and is superseded and replaced with this Amended and Restated MOA.
3. Effective Date. The Effective Date of this Amended and Restated MOA shall be as of the date that this Amended and Restated MOA has been fully executed and dated by both Sutter and the Agency, as evidenced by the date next to the signature of the party

signing last (the “**Effective Date**”).

4. Sutter Responsibilities.

4.1 Offset Fees. Sutter agrees to provide funds (the “**Offset Fees**”) to the Agency to fully offset the expenses incurred to offset wastewater flow generated by the Project by water conservation in the Sanitation Zone. The Offset Fees shall consist of the following:

4.1.1 Expansion Offset ESDs. To provide offset for the Hospital Expansion, Sutter shall pay to the Agency \$513,579.13 (“**Expansion Offset ESDs**”), which amount is based on 558.15 Offset ESDs, as more particularly set forth on **Exhibit A** attached hereto and incorporated herein. Sutter shall pay the Expansion Offset ESDs to the Agency within thirty (30) days of the issuance of a Certificate of Occupancy for the Hospital Expansion by the County (“**Hospital C of O**”) and the Agency Board’s approval.

4.1.2 Additional Hospital Expansion Offset ESDs. Sutter shall evaluate the actual flows generated by the Hospital Expansion and received by the Sanitation Zone collection system (“**Actual Hospital Expansion Flows**”) during the period commencing upon the date the Hospital C of O for the Hospital Expansion was issued and terminating on the date which is three (3) years thereafter (“**Evaluation Term**”). The measurements shall be: (i) conducted daily and average daily flow shall be calculated on a monthly basis; (ii) taken in accordance with methods and procedures approved by the Agency; and (iii) provided to Agency on a monthly basis (“**Monthly Flow Report**”). Upon the expiration of the Evaluation Term, Sutter shall provide a written report of the Actual Hospital Expansion Flows during the Evaluation Term to Agency (“**Final Flow Report**,” and collectively with the Monthly Flow Report, the “**Reports**”). In the event that Agency determines, after receiving the Final Flow Report, that the total Actual Hospital Expansion Flows are more or less than 558.15 Expansion Offset ESDs (“**Additional Hospital Flow**”), then the Agency may determine that the number of Expansion Offset ESDs allocated to the Hospital Expansion should be increased or decreased (“**Additional Hospital Expansion Offset ESDs**”). The Agency shall notify Sutter in writing of its determination within one-hundred and eighty (180) days of receiving the Final Flow Report (“**Additional Hospital Expansion Offset ESDs Notice**”). In the case of a required increase to Expansion Offset ESDs, Sutter shall pay an amount equal to Nine Hundred and twenty and 15/100 Dollars (\$920.15) per Additional Hospital Expansion Offset ESD necessary to offset such additional flow (“**Additional Hospital Expansion Offset ESDs Payment**”). In the case of a decrease to Expansion Offset ESDs, Sutter shall be credited an amount equal to Nine Hundred and twenty and 15/100 Dollars (\$920.15) per Additional Hospital Expansion Offset ESD necessary to offset such decrease in flow (“**Additional Hospital Expansion Offset ESDs Credit**”). Sutter shall pay the Additional Hospital Expansion Offset ESDs Payment to the Agency within thirty (30) days after Sutter receives the Additional Hospital Expansion Offset ESDs Notice. The Agency shall use the Hospital Expansion Offset ESDs and Additional Hospital Expansion Offset ESDs Payments to implement programs to offset the Actual Hospital Expansion Flows. In the case of an Additional Hospital Expansion Offset ESDs Credit, the Agency shall credit Sutter within thirty (30) days after Sutter

receives the Additional Hospital Expansion Offset ESDs Notice. The Agency shall credit to Sutter any portion of the Hospital Expansion Offset ESDs and Additional Hospital Expansion Offset ESDs Payments that remains after the Actual Hospital Expansion Flow has been offset. In the event that the Agency requires or expends additional funding over and above the Additional Hospital Expansion Offset ESDs Payment to offset the Additional Hospital Expansion Flow (“**Additional Hospital Expansion Flow Costs**”), Sutter shall reimburse the Agency the Additional Hospital Expansion Flow Costs within thirty (30) days after Sutter receives notice (with detailed information documenting the Additional Hospital Expansion Flow Costs) from the Agency. The Additional Hospital Expansion Offset ESDs Payment plus the Additional Hospital Expansion Flow Costs, if any, shall be referred to as the Final Offset Fees (“**Final Offset Fees**”).

4.1.3 Reimbursement for Staff/County Counsel Time For Amended and Restated MOA Preparation, Reports Review and Tasks Related to Sewer Capacity Study and Sewer Extension Plans. Sutter shall reimburse the Agency for staff time and County Counsel time for preparation and review of this Amended and restated MOA, review of information and Reports, and other tasks associated with such preparation and review, including but not limited to, review of the sewer capacity study and sewer extension plans, water conservation information, administrative and legal time (“**Agency Time**”). The amount of Agency Time and corresponding money associated with such Agency Time (“**Agency Costs**”) are specified in **Exhibit B**, attached hereto and incorporated herein by this reference. The Agency shall provide Sutter an invoice of such Agency Time incurred (with reasonable detail) (“**Agency Cost Notice**”) and Sutter shall pay the corresponding Agency Cost to the Agency within thirty (30) days of the after receipt of the Agency Cost Notice.

4.2 Sewer Service Fees. Sutter shall be responsible for paying sewer service fees for the Project in accordance with procedures and requirements established by the Agency for the Sanitation Zone.

5. Agency Responsibilities. Subject to Sutter complying with the requirements specified in Section 4 of this Amended and Restated MOA, the Agency shall be responsible for providing Wastewater Services to the Project.

6. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: AGENCY:

Sonoma County Water Agency
404 Aviation Blvd
Santa Rosa, CA 95403
Attention: Kevin Booker
Email: Kevin.Booker@scwa.ca.gov
Facsimile: (707) 524-3782

TO: Sutter:

Heidi Goldstone
Senior Project Manager
Sutter Health
Facility & Property Services
Email:
GoldstH@sutterhealth.org
916-305-8471

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

7. Indemnification.

Sutter agrees to accept all responsibility for loss or damage to any person or entity, including the Agency, and to indemnify, hold harmless, and release the Agency, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Sutter, that arise out of, pertain to, or relate to allegations of Sutter's breach of this Amended and Restated MOA or negligence or intentional misconduct with respect to Sutter's performance of its obligations under this Amended and Restated MOA. Sutter agrees to provide a complete defense for any claim or action brought against the Agency based upon a claim relating to allegations of Sutter's breach of this Amended and Restated MOA or negligence or intentional misconduct with respect to Sutter's performance of its obligations under this Amended and Restated MOA. Sutter's obligations under this Paragraph apply whether or not there is concurrent negligence on the Agency's part, but to the extent required by law, excluding liability due to the Agency's conduct. The Agency shall have the right to select its legal counsel at Sutter's expense, subject to Sutter's approval, which shall not be unreasonably withheld. 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 Sutter or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. This indemnification provision shall survive the termination of the Amended and Restated MOA.

8. Review of MOA/Termination.

The Agency and Sutter shall review this Amended and Restated MOA annually for the purpose of modification; provided, however, that no such modification shall be

effective unless agreed to by both Parties in each such Party's sole and absolute discretion. This Amended and Restated MOA may be terminated by either Party if there is a material breach of the Amended and Restated MOA that remains uncured after the applicable notice and cure period described in Section 9.1 below, or upon mutual consent of the Parties.

9. Miscellaneous Provisions.

9.1 Notice and Cure Rights. In the event of any alleged default or failure to perform any obligation under this Amended and Restated MOA, the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice shall include the acts required to cure the same with reasonable specificity. The defaulting Party shall have a period of thirty (30) days within which to cure such default, which period shall be extended to the extent reasonably necessary to complete such cure so long as the cure was commenced within thirty (30) days after such notice is given and thereafter prosecuted with due diligence. In addition to, and without limitation of, any other legal or equitable remedies that may be available to the non-defaulting Party with respect to a default under this Amended and Restated MOA that continues uncured beyond the applicable cure period, this Amended and Restated MOA shall be specifically enforceable.

9.2 No Continuing Waiver. The waiver by either Party of any breach of any of the provisions of this Amended and Restated MOA shall not constitute a continuing waiver of any subsequent breach of the same, or of any other provision of this Amended and Restated MOA.

9.3 Time of Essence. Time is and shall be of the essence of this Amended and Restated MOA and of each and every provision contained in this Amended and Restated MOA.

9.4 Incorporation of Prior Agreements; Amendments. This Amended and Restated MOA contains all the agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Amended and Restated MOA may be modified in writing only, signed by the Parties in interest at the time of the modification, and this sentence may not be modified or waived by any oral agreement.

9.5 Construction of Amended and Restated MOA. To the extent allowed by law, the provisions in this Amended and Restated MOA shall be construed and given effect in a manner that avoids any violation of statute, regulation or law. The Agency and Sutter agree that in the event any provision in this Amended and Restated MOA is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Amended and Restated MOA.

9.6 Applicable Law and Forum. This Amended and Restated MOA shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Amended and Restated MOA or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the City of Santa Rosa, in the County of Sonoma.

9.7 Counterparts. This Amended and Restated MOA may be executed in counterparts, and transmitted by facsimile or e-mail by and to each of the Parties, and each such counterpart shall be deemed an original, and all of them together shall constitute a single instrument.

9.8 Captions. The captions in this Amended and Restated MOA are for convenience only and are not a part of this Amended and Restated MOA. The captions do not in any way limit or amplify the provisions hereof and shall have no effect upon the construction or interpretation of any party hereof.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Amended and Restated MOA on the day and year first written above.

Date: _____ AGENCY: Sonoma County Water Agency

By: _____
Grant Davis, General Manager

ATTEST:

_____, Clerk of the Board

APPROVED AS TO FORM:

Verne Ball
Deputy County Counsel

Date: _____ SUTTER: SUTTER WEST BAY HOSPITALS,
a California corporation,
doing business as Sutter Medical
Center Santa Rosa

By: _____
Name: _____
Title: CEO

EXHIBIT A

to

**Memorandum of Agreement for Provision of
Sanitation Services
Airport-Larkfield-Wikiup Sanitation Zone**

SCHEDULE OF OFFSET FEES REQUIRED FOR PROJECT

**Offset ESD Fee Analysis
Sutter Santa Rosa Regional Hospital Expansion
March 15, 2019**

Hospital Expansion Offset ESD Analysis	
Usage per Offset ESD	33 GPD
Cost per Offset ESD	\$920.15
Current Flow Analysis	
2017 Flow from Hospital	32,233 GPD
Current Hospital Capacity	84 beds
Flow per Bed	384 GPD
Offset ESD Fees	
Expansion Capacity	48 beds
Estimated Expansion Annual Avg Flow	18,419 GPD
Offset ESD Requirement	558.15
Offset ESD Fees Due	\$513,579.13

EXHIBIT B

Agency/County Counsel Staff Time for MOA Preparation/Review

<u>Employee Title</u>	<u>Hourly Rate*</u>	<u>Hours</u>	<u>Dollars</u>
Water Agency Principal Engineer	306.5	34.5	10,574.25
Senior Office Assistant	81.94	2	163.88
County Counsel	\$205.00	40	8,200.00
Total		76.5	\$18,938.13

* Fully Burden Hourly Rate