

## **DRAFT Memorandum of Understanding by and between Occidental County Sanitation District and Graton Community Services District for Feasibility Study**

This Memorandum of Understanding (“MOU”) is by and between **Occidental County Sanitation District** (“District”) and **Graton Community Services District**, a special district of the State of California (“Graton”). The Effective Date of this MOU is the date the MOU is last signed by the parties to the MOU, unless otherwise specified in Paragraph 7.1. District and Graton are sometimes individually referred to as a “Party” and collectively as “Parties.”

### **RECITALS**

- A. District has been actively working toward solving its wastewater challenges since the 1990s.
- B. Sonoma County Water Agency (Sonoma Water) operates and manages District under contract with District. References to District employees are understood to be Sonoma Water employees acting on behalf of District.
- C. In January 2000, Sonoma Water’s Board of Directors recommended that sanitation systems serving fewer than 1,000 Equivalent Single Family Dwellings either be consolidated into larger regional systems or be transferred to local entities for management and operation. District currently serves 272 Equivalent Single Family Dwellings within a 55-acre service area.
- D. District and Graton both have sewer service charges which are among the highest rates in California. The high rates are due to the cost associated with operating a small wastewater systems in areas with stringent wastewater treatment requirements.
- E. Graton has implemented aggressive efforts to reduce operational costs, but could need significant rate increases to fund infrastructure and equipment replacement.
- F. District and Graton agree to conduct a feasibility study to assess transporting untreated wastewater from District to Graton for treatment and disposal, to assess the capacity of the Graton wastewater treatment plant (WWTP) to treat and dispose of the total combined flow, and to construct a pipeline from District to Graton to reduce District’s costs and to provide Graton with additional income necessary to prevent significant rate increases in the near future.
- G. Under this MOU, District will be responsible for conducting the feasibility study.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### **MEMORANDUM OF UNDERSTANDING**

#### **1. RECITALS**

- 1.1. The above recitals are true and correct.

## 2. **LIST OF EXHIBITS**

- 2.1. The following exhibits are attached hereto and incorporated herein:
- Exhibit A: Sonoma Water Schedule of Hourly Rates
  - Exhibit B: Insurance Requirements

## 3. **FEASIBILITY STUDY**

- 3.1. A feasibility study will be performed under a separate contract to assess transporting untreated wastewater from District to Graton for treatment and disposal. . The Parties agree to prepare and execute such contract for the study.
- 3.2. The feasibility study will evaluate constructing a pipeline to convey untreated wastewater from District to Graton for treatment and disposal and assess the capacity of the Graton WWTP to treat and dispose of the total combined flow.
- 3.3. The feasibility study will be predominantly based upon consideration of existing conditions and will include limited site assessments, identification of project alternatives, and engineering, and economic analysis of project alternatives. An engineering feasibility study report will be prepared.

## 4. **GRATON'S RESPONSIBILITIES**

- 4.1. *Meetings:* Attend meetings as requested by District to review draft and final documents and reports.
- 4.2. *Communication:* Provide regular communication monthly via email or phone with District on budget tracking and other issues as required.
- 4.3. *Access:* Provide access to work sites, records, programs, or procedures in support of the feasibility study by District or District's consultant.
- 4.4. *Cooperation with District:* Cooperate with District in support of the feasibility study hereunder. Graton shall coordinate the work with District's Project Manager. Contact information and mailing addresses:

<b>District</b>	<b>Graton</b>
Project Manager: Michael Thompson 404 Aviation Boulevard Santa Rosa, CA 95403-9019  Phone: 707-521-1863  Email: <a href="mailto:michael.thompson@scwa.ca.gov">michael.thompson@scwa.ca.gov</a>	Contact: Jose Ortiz P.O. Box 534 Graton, CA 95444  Phone: 707-823-1542 Mobile: 707-330-3542 Email: <a href="mailto:joseortiz.gcsd@gmail.com">joseortiz.gcsd@gmail.com</a>

## 5. **DISTRICT'S RESPONSIBILITIES**

- 5.1 *Consultants:* District shall award, execute in its own name, and administer such contracts as required to conduct the feasibility study. District shall review the

scope of work and draft agreements with Graton prior to final District Board approval of execution of the agreement, commencement of the work, and/or selection of the consultant. District shall review consultant's work products with Graton. Decisions between District and Graton shall be made by consensus, with each party making best efforts to reach consensus with the understanding that the feasibility study must be concluded in an expeditious manner.

- 5.2 *Access:* Provide access to work sites, records, programs, or procedures in support of the feasibility study by District or District's consultant.
- 5.3 *Operations:* Conduct work in a manner as to not disrupt Graton's operations or give rise to any injuries or property damage.
- 5.4 *District Liability:* District is a separate legal entity from Sonoma County Water Agency, operated under contract by Sonoma County Water Agency. Graton agrees that it shall make no claim for compensation for Graton's services against Sonoma County Water Agency funds and expressly waives any right to be compensated from other funds available to Sonoma County Water Agency.

## **6. PAYMENT**

- 6.1. *Method of Payment:* District agrees to finance 100% of the feasibility study and accept reimbursement from Graton for District's costs through a reduction in future connection fees that District would owe Graton should the District connect to Graton's facilities. District's costs for the feasibility study shall be all costs including salary, benefits, overhead, county counsel expenses, and consultant's costs. If the feasibility study finds that the proposed project to construct a pipeline from District to Graton is not feasible, District will be solely responsible for the costs of the feasibility study.
- 6.2. *Tracking:* District will provide Graton with a report of services performed and costs incurred at the conclusion of the feasibility study.

## **7. TERM OF MOU AND COMMENCEMENT OF WORK**

- 7.1. *Term of MOU:*
  - a. This MOU shall expire on December 31, 2022, unless terminated earlier in accordance with the provisions of Article 8 (Termination).
  - b. District shall have two options to extend this MOU for a period of one year each by providing written notice to Graton thirty days in advance of the expiration date noted in this Article and of the first extension option.
- 7.2. *Commencement of Work:* District will proceed immediately with the performance of this MOU upon the Effective Date of this MOU.

## **8. TERMINATION**

- 8.1. District may terminate its participation in this MOU by giving thirty (30) calendar days advance written notice to Graton of its intent to terminate its participation in this MOU. In the event of termination by District, District will be responsible for District's costs and expenses. District's right to terminate may be exercised by Sonoma County Water Agency's General Manager.

## **9. MUTUAL INDEMNIFICATION**

- 9.1. Each party to this MOU (the "Indemnifying Party") agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the "Indemnified Party"), and the Indemnified Party's officials, officers, agents, and employees, from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including the Indemnifying Party, to the extent resulting from the Indemnifying Party's breach of any material term of this MOU, or Indemnifying Party's negligence or willful misconduct in connection with the performance of this MOU, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from Indemnified Party's breach of any material term of this MOU, or Indemnified Party's negligence or willful misconduct in connection with the performance of this MOU. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party's expense, subject to the Indemnifying Party'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 the parties hereto or their agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## **10. INSURANCE**

- 10.1. With respect to performance of work under this MOU, each Party shall maintain and shall require all of its contractors, subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit B (Insurance Requirements).

## **11. MISCELLANEOUS PROVISIONS**

- 11.1. *Construction:* To the fullest extent allowed by law, the provisions of this MOU 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 that any provision of this MOU is 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. Graton and District acknowledge that they have each contributed to the making of this MOU and that, in the event of a dispute over the interpretation of this MOU, the language of the MOU will not

be construed against one party in favor of the other. Graton and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this MOU.

- 11.2. *Consent:* Wherever in this MOU the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed. No Party shall have the authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent to bind the other Party to any obligation whatsoever, except as the other Party may specify in writing.
- 11.3. *No Third-Party Beneficiaries:* Except as provided in Article 9 (Mutual Indemnification), nothing contained in this MOU shall be construed to create and the parties do not intend to create any rights in third parties.
- 11.4. *Applicable Law and Forum:* This MOU 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 MOU or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 11.5. *Captions:* The captions in this MOU are solely for convenience of reference. They are not a part of this MOU and shall have no effect on its construction or interpretation.
- 11.6. *Merger:* This writing is intended both as the final expression of the MOU between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the MOU, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this MOU, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this MOU. No modification of this MOU shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 11.7. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this MOU will survive its completion or termination for any reason.
- 11.8. *Time of Essence:* Time is and shall be of the essence of this MOU and every provision hereof.
- 11.9. *Counterparts/Digital Signature(s):* This MOU may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. If either Party uses digital signature(s) to execute this MOU, or to execute documents required to be executed by this MOU, the digital signature(s) shall comply with

Government Code section 16.5. By using digital signature(s), either Party warrants and represents that it intends the digital signature to have the same force and effect as the use of a manual signature.

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IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date last signed by the parties to the MOU.

Reviewed as to funds:

TW 19/20-122

By: \_\_\_\_\_  
Sonoma County Water Agency  
Division Manager - Administrative  
Services

Approved as to form:

By: \_\_\_\_\_  
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with  
District

Date/TW Initials: \_\_\_\_\_

**Occidental County Sanitation District**

**Graton Community Services District**, a special  
district of the State of California

By: \_\_\_\_\_  
Grant Davis  
General Manager  
Authorized per Board of Directors Action  
on April 13, 2021

By: \_\_\_\_\_  
David Clemmer  
GCSD Board President  
Authorized per Board of Directors Action on  
March 15, 2021

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

### Sonoma Water Schedule of Hourly Rates

<b>Title</b>	<b>Total Hourly Weighted Rate*</b>
Intern	\$41.50
Office Assistant	\$97.71
Senior Office Assistant	\$121.65
Accountant II	\$141.06
Accountant III	\$159.34
Administrative Aide	\$127.79
Department Analyst	\$128.28
Administrative Services Officer I	\$192.87
Administrative Services Officer II	\$215.78
Administrative Services Division Manager	\$232.68
Program Specialist I	\$149.22
Program Specialist II	\$169.51
Principal Program Specialist	\$232.17
Environmental Specialist	\$176.51
Senior Environmental Specialist	\$191.06
Principal Environmental Specialist	\$239.54
Environmental Resources Coordinator	\$283.17
GIS Analyst	\$164.18
CAD/GIS Manager	\$184.23
Technical Writing Specialist	\$180.97
Senior Technical Writing Specialist	\$191.66
Technical Writing Manager	\$210.33
Engineering Technician I	\$121.80
Engineering Technician II	\$147.16
Engineering Technician III	\$179.68
Engineering Technician IV	\$184.58
Engineer I	\$189.48
Engineer II	\$225.23
Engineer III	\$259.79
Engineer IV	\$291.14
Principal Engineer	\$315.53
Hydrogeologist II	\$229.41
Hydrogeologist III	\$259.79
Hydrogeologist IV	\$306.84



<b>Title</b>	<b>Total Hourly Weighted Rate*</b>
Principal Hydrogeologist	\$315.53
Assistant General Manager	\$348.27
Deputy Chief Engineer	\$341.88
Chief Engineer	\$354.66
<b>Expenses</b>	<b>Cost</b>
Publication costs for paid advertisements	At cost
Facility costs for community meetings	At cost
Rentals for community meetings including, but not limited to, sound system, chairs, podium, if needed	At cost
Printing costs for materials and signs	At cost
Light refreshments for community meetings	At cost
Monitoring equipment	At cost
Vehicle Use	At cost
*Rates as of July 1, 2020. Rates subject to change.	

## **Exhibit B**

### **Insurance Requirements**

With respect to performance of work under this MOU, each Party shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this MOU.

Each Party reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this MOU or failure to identify any insurance deficiency shall not relieve each Party from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this MOU.

#### **1. INSURANCE**

##### **1.1. Workers Compensation and Employers Liability Insurance**

- a. Required if the Party has employees as defined by the Labor Code of the State of California.
- b. If a Party currently has no employees as defined by the Labor Code of the State of California, said Party agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should employees be engaged during the term of this MOU or any extensions of the term.

##### **1.2. General Liability Insurance**

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If a Party maintains higher limits than the specified minimum limits, the other Party requires and shall be entitled to coverage for the higher limits maintained by the Party first mentioned.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by the other Party. Each Party is responsible for any deductible or self-insured retention of their own and shall fund it upon the other Party's written request, regardless of whether the other Party has a claim against the insurance or is named as a party in any action involving that Party.
- d. Sonoma County Water Agency, Occidental County Sanitation District, their officers, agents, and employees, shall be endorsed as additional insureds for

liability arising out of operations by or on behalf of Graton in the performance of this MOU. Graton Community Services District, their officials, agents, and employees shall be endorsed as additional insureds for liability arising out of operations by or on behalf of District in the performance of this MOU.

- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between each Party’s additional insureds and the Party and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance to be furnished to the other Party:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
  - ii. Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If a Party currently owns no autos, that Party agrees to obtain such insurance should any autos be acquired during the term of this MOU or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance to be furnished to the other Party: Certificate of Insurance.

1.4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate. Option for attorneys: Minimum Limit: \$1,500,000 per claim or per occurrence; \$1,500,000 annual aggregate.
- b. Any deductible or self-insured retention of a Party shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by the other Party.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this MOU shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an

extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this MOU.

- e. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

1.5. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.6. Documentation

- a. The Certificate of Insurance must include the following reference:  
TW 19/20-122.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this MOU. Graton agrees to maintain current Evidence of Insurance on file with District for the entire term of this MOU and any additional periods if specified in Sections 1.1, 1.2, 1.3, or 1.4, or above.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Occidental County Sanitation District, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Each Party shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.7. Policy Obligations

- a. Each Party's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.8. Material Breach

- a. If one Party fails to maintain insurance which is required pursuant to this MOU, it shall be deemed a material breach of this MOU. The other Party, at its sole option, after providing a 30-day written notice, may terminate this MOU and obtain damages from the breaching Party resulting from said breach. Alternatively, the non-breaching Party may purchase the required insurance, and without further notice to the breaching Party, may deduct from sums due to the breaching Party any premium costs advanced by the non-breaching Party for such insurance. These remedies shall be in addition to any other remedies available to the non-breaching Party.

