

AMENDMENT NO. 2

TO

PARTICIPATION AGREEMENT

BETWEEN

CITY OF UKIAH

AND

UKIAH VALLEY SANITATION DISTRICT

This Agreement is entered on Dec. 15, 2004 ("Effective Date"), in Ukiah, California, between the City of Ukiah ("City"), a general law municipal corporation, and the Ukiah Valley Sanitation District ("District"), a special district. The City and the District may be referred to herein as a "Party," or collectively as "the Parties."

RECITALS:

1. The Parties entered a Participation Agreement on July 19, 1995, under which (1) they share the cost and use of a waste water treatment plant owned and operated by the City, and (2) the City operates and maintains the sewer mains, laterals and related facilities owned by the District.
2. On July 19, 1995, the Parties entered an Amendment No. 1 to the Participation Agreement. That agreement affirms that the annual costs for the entire sewer system (treatment plant, trunk sewer and collection system of the City and the District), including maintenance, operation, administration, repair and replacement, upgrading, debt service, insurance and financial services are allocated between the City and the District based upon the ratio of City and District sewer service units for each year of operation. "Sewer service unit" is defined in the Participation Agreement and is referred to herein as "Sewer service unit" or "ESSU."
3. Amendment No. 1 also requires a separate written agreement between the City and the District for expense categories not included in an approved budget for the sewer system prior to the 1997/1998 fiscal year, if the expense is a capital expense in excess of \$100,000 other than a repair or replacement of existing facilities or equipment.
4. The wastewater treatment plant is at or near its capacity to treat and discharge treated wastewater in compliance with its Waste Discharge/NPDES Permit from the North Coast Regional Water Quality Control Board ("NCRWQCB").
5. Using pre-treatment methods recommended by Brown and Caldwell, Environmental Engineers and Consultants, on an interim basis only, the City has increased the treatment capacity

of its sewage treatment plant by a total of 1388 Equivalent Sewer Service Units ("ESSUs"), assuming that availability of these ESSUs is not affected by any orders or determinations by the NCWRQCB or any other administrative or judicial body with jurisdiction over the City's sewer discharges.

6. In addition to expanding its treatment capacity, many of the structures and treatment processes within the treatment plant have exceeded their useful design life and need to be replaced or rehabilitated.

7. The City has obtained a preliminary design from Brown and Caldwell for two related projects: (1) a project to increase the capacity of the wastewater treatment plant to permit additional new connections in both the District and the City ("the Capacity Project"); and (2) a project to rehabilitate and upgrade the wastewater treatment plant ("the Upgrade/Rehabilitation Project"), collectively, "the Project." The engineer's cost estimates for the projects are approximately \$21,000,000 for the Capacity Project and \$42,000,000 for the Upgrade/Rehabilitation Project, for a combined Project cost of \$63,000,000. The City currently estimates that both projects will be completed in 2008. Many factors could affect the estimated completion date, and the Parties acknowledge that this is an estimate only.

8. The Parties estimate that upon its completion, the Capacity Project will increase the wastewater treatment plant's capacity by an additional 2400 ESSU's ("Increased Capacity"), including the number made available temporarily as described in Recital Number 5, above.

9. Allocating the costs of the Capacity Project and the upgrade portion of the Upgrade/Rehabilitation Project requires a separate written agreement under Amendment No. 1, because those portions of the projects will involve expense categories not included in an approved budget for the sewer system prior to the 1997/1998 fiscal year, which are capital expenses in excess of \$100,000 other than a repair or replacement of existing facilities or equipment. Accordingly, the Parties require this Amendment No. 2 to allocate the available ESSU's and to share the cost of the Project.

AGREEMENT:

NOW, THEREFORE, in consideration of the above-recited facts and the terms and conditions as stated below, the Parties agree as follows:

1. Allocation of ESSU's Prior to Completion of Project and of Increased Capacity after Project Completion.

1.1 ESSU's During Interim Period. The ESSU's made available through the use of the pre-treatment process recommended by Brown and Caldwell shall be allocated as follows: 938 to the District; 442 to the City. If either party uses its remaining connections before the other party, it may give the other party written notice that it requests negotiations to share the other party's remaining connections. Not later than fifteen (15) days after such notice has been given, the

Parties shall meet and negotiate the sharing of the remaining connections. The Parties are not required to agree to share the remaining connections, but each party shall carefully consider the interests and concerns of the other party and make a good faith effort to accommodate them, while still protecting its own governmental interests.

1.2 The Increased Capacity. The Increased Capacity shall be allocated as follows: 65% to the District; 35% to the City. This allocation of Increased Capacity shall be subject to the same review and opportunity for adjustment as is provided for the allocation of Capacity Project costs under Section 2.1 of this Agreement.

2. Allocation of the Project Costs. All of the costs of the Project ("Project Costs"), including, but not limited to, planning, engineering, design, design review, administration, construction, legal and financing (including fees, financial services, transaction costs and debt service) shall be allocated between the City and the District as follows:

2.1. The Capacity Project. 35% of the Project Costs of the Capacity Project shall be paid by the City and 65% of those Project Costs shall be paid by the District. This allocation of Capacity Project Costs is based on an estimate of the number of new Sewer service units that will be needed in the City and in the District through the year 2020. The allocation of these costs shall be reviewed annually by the Parties to insure that the cost sharing reflects the actual proportion of new connections in the City and the District. Each year, commencing twelve months after the completion of the Project, the Parties shall meet to conduct this review, taking into account the number of new service connections within each party during the previous twelve months, the total number of new connections within each party's jurisdiction since the Effective Date, the likely number of new connections in the next one, three and five year time periods, any changes in organization, including annexations or detachments, which may have occurred, and any other facts or conditions the Parties consider relevant. Based upon this review, the Parties may adjust the allocation of these costs between them.

2.2. The Upgrade/Rehabilitation Project. The Project Costs of the Upgrade/Rehabilitation Project shall be allocated between the City and the District based upon the ratio of City and District ESSUs for each year of operation, commencing in the year when Project Costs are first incurred, as provided in the Participation Agreement. Consistent with the Participation Agreement, these allocations shall be calculated each year at the same time and in the same manner as other costs allocated under Section 1 of the Participation Agreement.

2.3. Rate Setting to Recover Costs. Each party agrees to establish rates (connection fees and sewer service fees) which are sufficient to pay its share of Project Costs as apportioned pursuant to this Agreement.

3. Compliance with waste discharge/NPDES requirements. Each party in its management of its sewer system agrees to comply with the Waste Discharge/NPDES permits issued to the City for the operation of the waste water treatment plant and sewer system and with applicable provisions of state and federal law, which regulate discharges to the waters of the State

of California and the United States, including the Porter Cologne Water Quality Act and the Clean Water Act; provided, however, that the legal and other costs of defending a citizen suit or other enforcement action and any settlement or judgment shall be an expense of the entire sewer system, subject to apportionment under the Participation Agreement. Such costs shall not be apportioned and shall be allocated to one Party, if the other Party gives that Party written notice of actions it must take to avoid such a violation and that Party fails to take such action within the time provided in the notice.

4. Notice. Whenever written notice is required or permitted by this Agreement, the Participation Agreement, Amendment No. 1, or any future amendments to the Participation Agreement, it shall be deemed given when actually received, if delivered by personal delivery, fax, registered or certified mail or overnight courier, or 48 hours after deposit in the United States Mail with proper first class postage affixed thereto, when addressed or sent as follows:

CITY OF UKIAH

Attention: City Manager
Ukiah Civic Center
300 Seminary Avenue
Ukiah, CA. 95482

FAX: 463-6204

UKIAH VALLEY SANITATION
DISTRICT

Attention: Chairman
County of Mendocino
County Administration Center
501 Low Gap Road
Ukiah, CA. 95482

FAX: 463-4245

5. Effect on Participation Agreement. This Amendment No. 2 constitutes a second amendment to the Participation Agreement, and is not intended to alter the terms of the Participation Agreement and Addendum No. 1, except as expressly provided herein. Collectively, the Participation Agreement, Amendment No. 1 and this Amendment No. 2 ("the Agreements") contain the entire agreement between the City and the District concerning the wastewater treatment plant and the City's operation of the sewer systems in the City and the District. Together, these agreements supercede and replace any other statements, agreements, or understandings between the Parties concerning this subject matter. The Participation Agreement, including Amendment No. 1 and this Amendment No. 2 may be modified only by a written agreement approved by the governing bodies of the Parties and executed by an authorized officer of each Party.

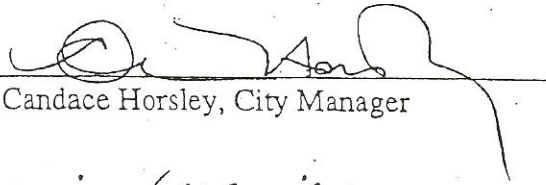
6. Duplicate Originals. Two or more copies of this Amendment No. 2 may be executed by the Parties. Each such copy, bearing the original signatures of the Parties, shall be considered an original agreement, admissible in any administrative or judicial proceedings as evidence of the agreement between the Parties.

7. No Third Party Beneficiaries. Unless otherwise agreed in bond indentures or other agreements or documents prepared in connection with financing the Project, which documents have been approved by the governing bodies of the Parties and signed by authorized

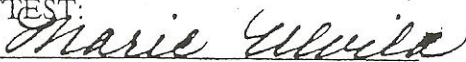
representatives of the Parties, the Parties intend this agreement for the sole benefit of the Parties and do not intend to confer any rights under the Agreements or any right to enforce the Agreements on any person or entity who is not a Party.

WHEREFORE, the Parties have entered this Agreement on the Effective Date.

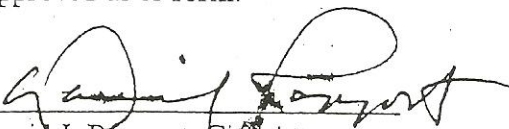
CITY OF UKIAH

By 
Candace Horsley, City Manager


ATTEST:


Marie Ulvila, City Clerk

Approved as to form:


David J. Rapport, City Attorney

UKIAH VALLEY SANITATION DISTRICT

By: 
MICHAEL DELBAR, Chairman

Approved as to form:


H. Peter Klein, County Counsel

ATTEST:

Kristi Furman, Clerk of the Board
Mendocino County Board of Supervisors

