

**MONTECITO WATER DISTRICT  
RECYCLED WATER USER AGREEMENT**

This Montecito Water District Recycled Water User Agreement (“MWD User Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between the Montecito Water District, a county water district, and \_\_\_\_\_, (“User”) relative to the real property located at \_\_\_\_\_, [APN# \_\_\_\_\_] (“Property”).

**RECITALS:**

- A. Whereas, Montecito Water District (“MWD”) and Goleta Water District (“GWD”) have entered into a “Recycled Water Trucking Agreement” whereby GWD has agreed to deliver and distribute water treated through the Goleta Sanitary District Water Reclamation System (“Recycled Water”) via its Recycled Water Hauling Program (“Program”) to properties in the MWD service area, and MWD has agreed to allow its customers to participate in the Program; and
- B. Whereas, User has entered into a “Special User Agreement for Delivery and Application of Recycled Water” with GWD dated \_\_\_\_\_ for the delivery, application and use of Recycled Water at User’s Property attached hereto as Exhibit “A”; and
- C. Whereas, as a condition of participation in the Program by User, MWD requires the execution of this MWD User Agreement.

Therefore, MWD and User agree as follows:

**1. User Responsibilities**

1.1 User agrees to comply with all terms of the “Special User Agreement for Delivery and Application of Recycled Water” between User and GWD, including but not limited to terms concerning “User’s Responsibilities” and further agrees that any failure to comply with those terms represents a breach of this MWD User Agreement and grounds for MWD to terminate User’s participation in the Program.

**2. User Acknowledgment and Release**

2.1 User acknowledges and understands that the Program is conducted by GWD and that MWD involvement includes only those “Purveyor’s Responsibilities” in Section 4 of the “Recycled Water Trucking Agreement”, which include inspection of backflow devices for Users who receive Recycled Water under the Program.

2.2 User acknowledges and understands that the purpose of recycled water systems, including the Water Reclamation System from which GWD obtains Recycled Water to deliver and apply for use at User’s Property, is to control the biological quality of the Recycled Water resulting from its operation; and said system is not equipped to detect, treat, or remove harmful chemicals, toxic materials, or particulates except as

required to meet federal, state, and local regulatory agency discharge standards. MWD does not make any representation as to the fitness or suitability of the Recycled Water for User's intended use and User accepts all risks associated with participation in the Program

2.3 User further agrees to fully release and forever discharge MWD and its agents, directors, employees, managers, and officers from any and all past, present or future actions, causes of action, claims, costs, demands, damages, expenses, fees, and liabilities of every kind and nature whatsoever in any way arising out of User's participation in the Program. **User hereby, consciously, expressly, knowingly and voluntarily, abandons, relinquishes and waives each and every benefit, protection and right that User would be entitled to now, or at any time after the execution of this agreement, under California Civil Code Section 1542 as to any and all past, present or future actions, causes of action, claims, class actions, costs, demands, damages, expenses, fees, and liabilities of every kind and nature whatsoever as against MWD in any way arising out of participation in the Program.**

2.4 By entering into this MWD User Agreement, User agrees to waive the right to initiate or participate in a class action, representative action, private attorney general litigation, or consolidated action related to this MWD User Agreement or arising out of participation in the Program.

### **3. Costs and Deposit**

3.1 User agrees to pay all costs incurred by MWD, including costs for inspection of backflow devices, arising from User's participation in the Program User shall provide MWD with a deposit in the amount of \$100 as the estimated amount of costs incurred by MWD. If the costs incurred by MWD are less than the deposit, the portion remaining shall be refunded to User. If the costs incurred by MWD are greater than the amount of the deposit, User agrees to pay the additional amounts due upon receipt of MWD's invoice for same.

### **4. Indemnification**

4.1 All activities arising out of or relating to participation in the Program shall be at the risk of User and User voluntarily assumes such risk. To the fullest extent permitted by law, User shall defend (with counsel chosen by MWD), indemnify and hold harmless MWD and its agents, directors, employees, managers and officers against any and all claims, costs, suits, actions, legal or administrative proceedings, judgments, debts, demands, incidental and consequential damages (including injury or death to any person or persons and damage to any property including loss of use resulting therefrom), liabilities, interest, costs, attorneys' fees and expenses of whatsoever kind or nature, which are in any manner directly, indirectly, in whole or in part arising out of or relating to User's participation in the Program. All defense and indemnity obligations set forth herein shall survive the termination of this MWD User Agreement.

4.2 The defense, indemnity and hold harmless requirements of this MWD User Agreement include, but are not limited to, defense and indemnity for any property loss or damage or death or personal injury suffered or alleged to be suffered by any person or entity from exposure to, or as a result of using or consuming, the Recycled Water, based on any theory of recovery, including but not limited to theories of product liability, toxic tort, or environmental impairment. The loss and expense relating to such liabilities to third parties to which the indemnity provided in this provision extends shall include, without limitation, any and all special, incidental, consequential, exemplary, and other similar damages awarded to such third parties.

## 5. General Provisions

5.1 GOVERNING LAW AND VENUE. This MWD User Agreement shall be construed and governed in accordance with the laws of the State of California. Venue for any arbitration, litigation, or other proceeding arising out of or relating to this MWD User Agreement, or breach thereof, shall be in Santa Barbara County.

5.2 ARBITRATION. Any controversy or claim arising out of or relating to this MWD User Agreement, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof and venue as required by provision 5.1. User shall be required to comply with all claim requirements of the Government Code prior to initiating any arbitration pursuant to this provision.

5.3 ATTORNEY'S FEES AND COSTS. In the event of a dispute between the Parties arising out of or relating to this MWD User Agreement, or breach thereof, reasonable attorney's fees and costs shall be awarded to the prevailing party. Notwithstanding the foregoing regarding attorney's fees, if either party fails or refuses to participate in a requested mediation, the party failing or refusing to participate shall not be entitled to any award of attorney's fees.

5.4 NOTICES. All notices, requests, demands, amendments, modifications or other communications under this MWD User Agreement must be in writing.

Notices for MWD shall be sent to:

Montecito Water District  
Attn: General Manager  
583 San Ysidro Road, Santa Barbara, CA 93108

Notices for User shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_

Notice is sufficient for all such purposes if personally delivered, sent by first class, registered or certified mail, return receipt requested, delivery by courier with receipt of

delivery, facsimile transmission with written confirmation of receipt by recipient, or email delivery with verifiable and unmodifiable proof of content, time and date of sending by sender, and delivery to recipient. If email is used, a copy of the notice shall be mailed by first class mail not later than the next business day to the email recipient. Time shall run from the date of receipt or the date of email transmission if the copy of the notice is timely mailed. If a copy of the notice is not timely mailed, then the date of mailing of the copy of the notice sent by email shall govern.

5.5 ENTIRE AGREEMENT. This MWD User Agreement constitutes the final, complete, and exclusive statement of the terms of this MWD User Agreement between MWD and User pertaining to participation in the Program and supersedes all prior and contemporaneous understandings or agreements between the Parties hereto. No Party has been induced to enter into this agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this MWD User Agreement. Execution of this MWD User Agreement signifies that each Party has read the document thoroughly, has had any questions explained by independent counsel and is satisfied.

5.6 MODIFICATION OF AGREEMENT. This MWD User Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this MWD User Agreement will be binding unless it is in writing and signed by both Parties.

5.7 ASSIGNMENT. User shall not transfer or assign any rights or interest in this MWD User Agreement, without the prior written consent of the District. User shall notify MWD of any change in ownership of the Property and the new owner will be required to execute an MWD User Agreement to participate in the Program.

5.8 AUTHORITY. The Parties represent and acknowledge that they have full authority to enter into this MWD User Agreement. User specifically acknowledges that they are the owner of the Property, or have received the written authorization of the owner to participate in the Program. User agrees to provide such written authorization, which must predate the date of this MWD User Agreement, upon request by MWD.

5.9 TERM/TERMINATION The term of this User Agreement shall begin on the date set forth above and terminate 12 months thereafter. Either party may terminate this MWD User Agreement without cause by providing notice of termination in writing to the other party at least ten (10) days prior to the date of termination.

The Parties have set forth their signatures as of the date set forth above.

MONTECITO WATER DISTRICT

By: \_\_\_\_\_  
Nicholas Turner, General Manager

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

Approved as to Form:

By: \_\_\_\_\_  
Robert M. Cohen, General Counsel

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

USER:

By: \_\_\_\_\_

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