

REMOTE MEETING NOTICE

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- Your name will be called on when it's your turn to speak.
- When your name is called, you will be prompted to unmute yourself.
- When your time is up, you will be muted.
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Meeting ID: 816 6454 2932

Passcode: 511665

**AGENDA
NOTICE OF SPECIAL MEETING
OF THE GOVERNING BOARD
OF THE
GOLETA SANITARY DISTRICT**

August 8, 2022

A Special Meeting of the Governing Board of the Goleta Sanitary District will be held at the District Office, 1 William Moffett Place, Goleta, California at 11:00 a.m. on Monday, August 8, 2022.

CALL TO ORDER: 11:00 a.m.

ROLL CALL OF MEMBERS

BOARD MEMBERS: Steven T. Majoewsky
George W. Emerson
Sharon Rose
Edward Fuller
Jerry D. Smith

Business:

1. PUBLIC COMMENTS
2. Review and Consideration of Agreement with Goleta West Sanitary District for Participation in Biosolids & Energy Strategic Plan Phase 1 Project

ADJOURNMENT

DATED: August 5, 2022

GOLETA SANITARY DISTRICT

Robert O. Mangus, Jr., Governing Board
Secretary

AGENDA ITEM: 2

MEETING DATE: August 8, 2022

I. NATURE OF ITEM

Review and Consideration of Agreement with Goleta West Sanitary District for Participation in Biosolids and Energy Strategic Plan Phase 1 Project

II. BACKGROUND INFORMATION

At its meeting on June 6, 2022, the Goleta Sanitary District (“GSD”) Governing Board took action to (i) adopt a final mitigated negative declaration (the “MND”) for the Biosolids and Energy Strategic Plan Phase 1 Project (the “BESP Project”), and (ii) approve the BESP Project. By separate resolution, the Board also took action to approve financing for the BESP Project.

The BESP Project is subject to that certain Agreement for Expansion of the Goleta Sanitary District Sewage Disposal Treatment Plant Facilities dated November 28, 1960 (the “1960 Agreement”) between GSD, the Goleta West Sanitary District (“GWSD”), the Regents of the University of California (“UCSB”), the City of Santa Barbara, and the County of Santa Barbara (collectively, the “Contract Parties”). The 1960 Agreement, among other things, provides for the shared use of, and allocates the costs of certain expansion and operation costs related to, the GSD sewage treatment plant (the “Plant”).

The 1960 Agreement was amended in 1964 (the “1964 Amendment”) to provide for the expansion of the Plant, the construction of an ocean outfall line, changes to the capacity rights of the Contract Parties in the Plant, and the establishment of the capacity rights of the Contract Parties in the new ocean outfall line. The 1960 Agreement was amended a second time in 1970 (the “1970 Amendment”) to provide for the further expansion of the Plant to create additional capacity, the purchase of additional land, and changes the capacity rights of the Contract Parties in the expanded treatment facilities. The 1960 Agreement was amended a third time in 2007 (the “2007 Amendment”) to document the agreement of the Contract Parties to the conversion of the Plant to provide full secondary treatment, confirm that the costs of the conversion would be paid by the Contract Parties in proportion to their existing capacity rights, and address billing and payment procedures.

The 1960 Agreement requires GSD to obtain the consent of GWSD and UCSB before undertaking certain Plant improvements. Consent need not be in writing. Exceptions apply to the consent requirement for (i) emergency improvements, (ii) improvements costing no more than \$1,000, (iii) improvements that benefit only GSD, and (iv) improvements needed to meet regulatory requirements. UCSB

has provided its consent to the BESP Project in a brief email to GSD. In response to GSD's request that GWSD consent to the BESP Project, GWSD has raised a number of concerns. As GSD's General Manager and legal counsel ("GSD Staff") understand it, these concerns relate to the following issues:

- The lack of communication by GSD relating to the BESP Project and late notice for such a large project with significant financial impacts for GWSD.
- The environmental review process followed by GSD, a lack of notice in connection with GSD's adoption of the MND, and GWSD's duties as a responsible agency under CEQA due to its consent to the BESP Project.
- Documenting the separation of Phase 2 from Phase 1 for CEQA purposes.
- The need to document the projected cost of the BESP Project, GWSD's share of those costs, and GWSD's authority to approve cost increases.
- The potential exposure of GWSD to liabilities arising from GSD's undertaking of the BESP Project.

GWSD has proposed that its concerns be addressed in a formal agreement, which will also document GWSD's consent to the undertaking of the BESP Project by GSD. GSD staff has been working with GWSD's General Manager and legal counsel ("GWSD Staff") to develop such an agreement, which is currently in draft form. GWSD Staff provided its most recent proposed revisions to the draft agreement on Thursday August 4. On Friday August 5, GSD Staff sent GWSD Staff a further revised draft setting forth GSD's additional proposed changes. A copy of GSD's draft dated 08-05-2022 is included with this agenda report. GSD's proposed changes are redlined in that draft. The redlined changes have not been discussed with or approved by GWSD Staff. A Zoom meeting is scheduled for 8:00 a.m. on Monday August 8 between GSD Staff and GWSD Staff to discuss the changes proposed by GSD in the draft agreement dated 08-05-2022. GSD Staff will provide an update as to the status of the agreement at the special GSD Board meeting at 11:00 on August 8.

In brief summary, the proposed agreement does the following:

- Describes the BESP Project (Recitals C and E and Exhibit A)
- Documents GWSD's consent to the BESP Project. (Section 3)
- States that GWSD shall be responsible for the costs of the BESP Project in proportion to its capacity rights in the Plant. (Section 4.a.)
- Identifies total estimated project costs, including soft costs and costs paid by GWSD to date. (Sections 4.b. and 4.d.)

- Grants GWSD approval rights over material cost increases. (Sections 3, 4.b. and 4.d.)
- Addresses billing and payment procedures. (Section 4.c.)
- Addresses GSD's responsibilities in connection with the undertaking of the BESP Project. (Section 5)
- Provides for GWSD's participation in the grant application process. (Section 6)
- Allows GWSD to audit GSD's documents, records, and other information that relate to the BESP Project. (Section 7)
- Confirms that Phase 1 and Phase 2 are separate and independent projects. (Section 8)
- Requires GSD to adopt a notification policy within 90 days to ensure that GWSD and the other Contract Parties remain informed regarding future projects and have sufficient time and information to evaluate those projects and comply with CEQA. This provision was proposed by GSD. (Section 9)
- Addresses GSD's role as lead agency under CEQA. (Section 10)
- Provides that each Contract Party will be responsible for its own financing costs. (Section 11)
- Includes meet-and-confirm and mediation requirements to resolve disputes. (Section 12)
- Addresses liability, indemnity, and insurance issues. (Section 13)

III. COMMENTS AND RECOMMENDATIONS

The process for obtaining the consent of GWSD and UCSB to projects proposed by GSD has been handled informally for all projects undertaken since the 1970 Amendment, with the exception of the relatively brief 2007 Amendment that was entered into for the upgrade to full secondary treatment. The agreement proposed by GWSD for the BESP Project is not required under the 1960 Agreement and goes far beyond the level of documentation that has been requested for any of the other projects that GSD has undertaken since 1970. GSD Staff is nevertheless recommending that the GSD Board approve a formal agreement with GWSD for the BESP Project because doing so will:

- Be responsive to the concerns raised by GWSD;

- Demonstrate the importance that GSD places on its ongoing relationship with GWSD;
- Establish clear procedures to be followed by GSD for future projects, as set forth in the policy that GSD will be required to adopt; and
- Facilitate GWSD's consent to Phase 1 of the BESP Project.

An agreement has been reached at the staff level with respect to most of the provisions of the proposed agreement. An exception is the issue of indemnity under Section 13. GWSD has requested that GSD be required to indemnify GWSD against certain liabilities that might arise in connection with the BESP Project. GSD staff has taken the position that GSD should not be required to indemnify GWSD. This position by GSD Staff is based on the following considerations:

- The 1960 Agreement does not require GSD to indemnify GWSD or any of the other Contract Parties against liabilities that arise in connection with projects undertaken by GSD.
- The GSD Plant is a regional facility that was originally constructed for the mutual benefit of the Contract Parties and their respective constituents. Plant improvement projects are also undertaken for the mutual benefit of the Contract Parties and their respective constituents. As such, the costs, as well as the potential liabilities arising in connection with all such projects, should be borne by the Contract Parties in proportion to their respective capacity rights in the Plant.
- The 1960 Agreement provides under Section 3 that (i) it is entered into for the purpose of obtaining for each party facilities for the collection, treatment and disposal of sewage, (ii) each party has in common the power to acquire, construct, use, maintain, repair, manage, operate and control facilities for that purpose, and (iii) that purpose will be accomplished and the common power will be exercised in the manner set forth in the Agreement. This provision supports the statement above that the Plant is for the benefit of all of the Contract Parties.
- Requiring GSD to indemnify GWSD in connection with the BESP Project would (i) fundamentally change the nature of the parties' contractual relationship under the 1960 Agreement, (ii) impose on GSD significant new liabilities not shared by GWSD or the other Contract Parties, (iii) likely result in requests from the other Contract Parties to be similarly indemnified, and (iv) establish a precedent for future projects. Doing so would also be inconsistent with Section 9 of the 1960 Agreement which provides, in part, as follows:

The parties hereto mutually agree that it is not the intention of any party by this Agreement to assume or undertake the obligation imposed by law upon any other party in the performance of its governmental duty to safely and properly dispose of the sewage arising within its territorial limits.

- If fundamental changes to the contractual relationship are to be made, it should be through amendments to the 1960 Agreement. Such changes should not be made on a piecemeal basis in the context of a particular proposed project.
- The 1960 Agreement is a joint powers agreement. Government Code Sections 895 et seq. provide that, whenever any public entities enter into a joint powers agreement under which a public entity undertakes to perform any function, service or act with or for any other public entity, they are jointly and severally liable upon any liability for injury caused by a negligent or wrongful act or omission occurring in the performance of such agreement. Although the joint and several liability can be changed by contract, the 1960 Agreement does not change the default liability allocation provisions of the Government Code.
- To the knowledge and recollection of GSD Staff, GSD has not agreed to indemnify any of the Contract Parties against liabilities arising in connection with any of the other projects that GSD has undertaken over the past 62 years.
- To the knowledge and recollection of GSD Staff, GWSD has never been named in a lawsuit or incurred liabilities in connection with a Plant project undertaken by GSD. Therefore, any exposure to risk by GWSD would appear to be, at best, remote.
- A decision by the GSD Board to decline to provide indemnification would be consistent with the position that the GSD Board took in connection with the 2007 Amendment for the upgrade to full secondary treatment. At that time, GWSD requested that GSD indemnify it against liabilities arising in connection with the upgrading project, but GSD declined to do so.

The draft agreement as presented to the GSD Board with this agenda report includes alternative provisions for Section 13.a. to address the indemnity/liability issue. The first provision has been proposed by GWSD, with certain proposed revisions by GSD. The second provision has been proposed by GSD as an alternative way to address the issue.

GSD Staff is recommending that the Board (i) make a decision with respect the approval of the proposed agreement with GWSD, subject to such changes as the Board deems appropriate, and (ii) provide direction to GSD Staff regarding the

provisions to be included under Section 13. The Board may also wish to consider establishing an ad hoc committee to work with GSD Staff and with GWSD representatives to address unresolved issues under the proposed agreement.

IV. REFERENCE MATERIALS

Agreement Regarding the Undertaking of Phase 1 of the Biosolids and Energy Strategic Plan Project by Goleta Sanitary District (Draft 08-05-2022)

**AGREEMENT REGARDING THE UNDERTAKING OF
PHASE 1 OF THE BIOSOLIDS AND ENERGY STRATEGIC
PLAN PROJECT BY GOLETA SANITARY DISTRICT**

THIS AGREEMENT (“Agreement”), effective as of the date last signed below, which is _____, 2022, is made and entered into by and between the **GOLETA SANITARY DISTRICT (“GSD”)** and the **GOLETA WEST SANITARY DISTRICT (“GWSD”)**, both public agencies organized and existing under Part I of Division 6 of the California Health and Safety Code. GSD and GWSD may be referred to herein individually as a **“Party”** or collectively as the **“Parties”**.

RECITALS

A. On November 28, 1960, GSD, GWSD (formerly known as the Isla Vista Sanitary District), the Regents of the University of California (“UCSB”), the City of Santa Barbara, and the County of Santa Barbara (collectively, the **“Contract Parties”**) entered into that certain Agreement for Expansion of the Goleta Sanitary District Sewage Disposal Treatment Plant Facilities (as amended from time to time, the **“1960 Agreement”**). The 1960 Agreement, among other things, provides for the shared use of, and allocates the costs of certain expansion and operation costs related to, the Goleta Sanitary District Sewage Disposal Treatment Plant (the **“Plant”**) located at the site now known as 1 William Moffett Place, Goleta, California.

B. The 1960 Agreement was amended on July 1, 1964 by a document entitled “Amendment to Agreement for Expansion of the Goleta Sanitary District Sewage Disposal Treatment Plant Facilities” (the “1964 Amendment”), on September 9, 1970 by a document entitled “Second Amendment to Agreement for Expansion of the Goleta Sanitary District Sewage Disposal Treatment Plant Facilities” (the “1970 Amendment”), and on December 14, 2007 by a document entitled “Third Amendment to Agreement for Expansion of the Goleta Sanitary District Sewage Disposal Treatment Plant Facilities” (the “2007 Amendment”). ~~To the extent not addressed by this Agreement, all of the terms and provisions of the 1960 Agreement, as amended by the 1964 Amendment, the 1970 Amendment, and the 2007 Amendment, shall continue in full force and effect.~~

A.C. GSD is proposing to undertake certain improvements to the Plant, including installation of a new 500,000-gallon anaerobic digester to replace digester #1; installation of a combined heat and power system with a 160kW generator to convert biogas to electricity; a new biogas conditioning system and exhaust gas purification system; as well as site work, piping, utility, and control system improvements associated with the new equipment. Said work is referred to herein as **“Phase 1”** of GSD’s Biosolids and Energy Strategic Plan project, which project is referred to herein as the “BESP Project” or the “Project”. The Parties anticipate that subsequent improvements ~~will~~ may be ~~performed~~ undertaken at the Plant pursuant to a future phase (**“Phase 2”**) of the Project, the terms and conditions of which may be agreed to at a later date. For clarity and the avoidance of doubt, this Agreement relates only to Phase I of the Project, and the Parties in no way intend for this Agreement to be a commitment to agree to or undertake Phase 2 of the Project. All references herein to the Project are to Phase 1 unless expressly stated otherwise.

B.D. The 1960 Agreement requires, among other things, that GSD obtain GWSD's consent before undertaking certain improvements, as further described in the 1960 Agreement.

C.E. On February 2, 2022, GSD's engineering consultant Hazen and Sawyer provided a description of and preliminary construction cost estimate for the Project. A summary document describing the Project and providing the preliminary construction cost estimate is attached hereto as Exhibit A and incorporated herein.

D.F. On June 6, 2022, GSD's Governing Board approved Resolution No. 22-683, adopting a final Mitigated Negative Declaration for Phase 1 of the BESP Project.

E.G. GSD has previously invoiced GWSD for certain Soft Costs (as defined in Section 4(d.) of this Agreement) related to the Project, and GWSD has made payments on such invoices in the amounts set forth in Exhibit B, attached hereto and incorporated herein.

F.H. The purpose of this Agreement is for GWSD to consent to GSD's undertaking of the Project and to set forth the terms and conditions applicable to GSD's undertaking of the Project. GWSD expects that, to the extent required by the 1960 Agreement, GSD is obtaining the consent of the other Contract Parties and that GSD is otherwise complying with the terms of the 1960 Agreement, as applicable.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The Parties acknowledge and agree that the foregoing Recitals are true and correct and are incorporated herein by reference.
2. **Term.** This Agreement shall be effective upon the date of full execution, as the same is set forth in the preamble, and shall apply to and govern the Project in perpetuity, unless the Parties mutually agree in writing to amend or terminate this Agreement.
3. **Consent.** GWSD hereby consents to GSD's undertaking of the Project, as described in Exhibit A. ~~Further,~~ GSD affirms that it shall make good faith and commercially reasonable efforts to do, or cause to be done, all things necessary, proper, or advisable to complete the Project as contemplated in this Agreement. Any Material Change (as defined in this Section) to the Project shall require GWSD's express written consent, which may be withheld in GWSD's reasonable discretion. The term "**Material Change**" means any change to the Project that results in a net cost increase of \$100,000 or more, ~~unless, following the change, the total estimated construction cost for the Project at the time remains below the total preliminary estimated construction cost of \$12,773,870 ("Total Estimated Construction Costs"), as set forth in Exhibit A.~~ Changes that do not rise to the level of a Material Change shall not require GWSD's prior written consent unless and until the cumulative total dollar value of all such changes exceeds \$500,000, in which case, prior to undertaking additional changes, GSD must obtain GWSD's express written consent, which may be withheld in GWSD's reasonable discretion.

Notwithstanding the foregoing, GWSD's express written consent shall not be required for (i) Material Changes, or (ii) changes that do not rise to the level of a Material Change but have a cumulative total dollar value exceeding \$500,000, unless, following the changes, the total estimated construction cost for the Project at the time remains below the total preliminary estimated construction cost of \$12,773,870 ("Total Estimated Construction Costs"), as set forth in Exhibit A.

4. Allocation and Payment of Project Costs.

a. GWSD shall be responsible for the costs of the Project in proportion to its capacity rights in the Plant. For ease of reference, the Contract Parties' current existing capacity rights in the Plant are set forth below.

GSD:	47.87%
GWSD:	40.78%
UCSB:	7.09%
City of Santa Barbara:	2.84%
County of Santa Barbara:	1.42%

b. As documented in Exhibit A, the Total Estimated Construction Costs ~~are~~ \$12,773,870. Accordingly, GWSD's 40.78% share of the Total Estimated Construction Costs is \$5,209,184.19. Any changes to the Project costs to be paid by GWSD shall require GWSD's express written consent, except as set forth in Section 3 of this Agreement. The Parties acknowledge and agree that, to the extent required by the 1960 Agreement, GSD shall independently secure the consent of other Contract Parties to GSD's undertaking of the Project. The Parties further acknowledge and agree that GSD's inability to obtain both the consent and required proportionate payment for construction of the Project from the other Contract Parties shall not for any reason result in ~~either an increase in the Total Estimated Construction Costs, as set forth in Exhibit A, or~~ an increase in GWSD's 40.78% share of either the Total Estimated Construction Costs or the Project's associated Soft Costs (as this term is defined in Section 4.(d.) of this Agreement).

c. GSD shall submit detailed invoices to GWSD no later than sixty (60) days after Project costs (including Soft Costs, as defined in Section 4.(d). of this Agreement) have been incurred by GSD. Said invoices shall be supported by reasonable backup documentation, including without limitation invoices, receipts, progress payment requests from the contractor, and vouchers. GWSD shall make payment on all undisputed portions of such invoices within sixty (60) days of GWSD's receipt.

d. The Parties expressly acknowledge and agree that GWSD has already made payments for its proportionate share of certain ~~Soft Costs~~ (as hereafter defined) related to the Project, as is further set forth on Exhibit B. The term "Soft Costs" includes costs incurred in connection with the Project which do not directly relate to construction activities (e.g., costs for planning, design, studies, engineering, environmental review, permitting, grant applications ~~costs~~, etc.) ~~("Soft Costs"), as is further set forth on Exhibit B.~~ Grant application costs shall be included in Soft Costs any and all hard if they represent costs incurred by GSD paid by GSD to third parties

(~~including, but not limited to, e.g.,~~ consultant costs related to the preparation and submittal of ~~such grant~~ applications), but shall ~~expressly be~~ excluded ~~if they relate to~~ GSD staff costs. GWSD agrees to pay its proportionate share, as set forth in Section 4.~~(a.)~~ above, of the Project's additional Soft Costs up to a maximum of [AMOUNT TO BE PROVIDED BY GSD]. Any request for GWSD's payment of Soft Costs over this amount shall require GWSD's prior written consent, which may be withheld in GWSD's reasonable discretion. The Soft Costs paid by GWSD as contemplated in this Section 4.~~(d.)~~ shall not count against the ~~not-to-exceed~~ amount of \$5,209,184.19 set forth in Section 4.~~(b.)~~ above.

5. Performance of the Work.

a. GSD shall cause GSD's contractors to construct the Project in strict adherence with GSD's construction plans, which plans shall be submitted to GWSD upon request. GSD shall cause the Project to be constructed in a good and workman like condition and in accordance with all applicable laws, ordinances, rules, and regulations.

b. GSD shall be solely responsible for advertising, bidding, negotiating, and supervising the Project. GSD shall abide by all federal, state, and local laws, ordinances, rules, and regulations applicable to the Project. GSD shall obtain and maintain all permits, licenses, and certificates necessary for the construction of the Project.

6. Grants. GWSD will work cooperatively with GSD in pursuing grants for the Project. GSD shall notify all Contract Parties in the writing of any and all grant and similar funding opportunities ("**Grants**") that it pursues for the Project, either upon approval by GSD's governing board ("**GSD Board**") or, where such approval is not required, upon application submittal. All grant applications that have been submitted prior to the effective date of this Agreement are listed in the attached Exhibit C. The outcome of all grant applications shall similarly be reported to the Contract Parties upon approval or rejection. All grant proceeds received by GSD in connection with the Project shall be (i) applied in full to reduce the total Project cost and the proportionate share thereof payable by the Contract Parties, and (ii) delineated on any invoices submitted to GWSD. ~~The hard-e~~Costs incurred by GSD in applying for grants for the Project ~~shall be that are~~ included in the Project's Soft Costs ~~pursuant to Section 4.d., above, and~~ shall be paid by the Contract Parties in proportion to their respective capacity rights in the Plant regardless of whether the grants are awarded.

7. Audit. GWSD shall have the right to audit GSD's documents, records, and other information that relate to the Project or the performance of this Agreement, and GSD shall promptly reply to any and all of GWSD's requests for such documentation, records, or other information.

8. No Commitment to Other Phases of the Project; Environmental Review ~~and Financing for Future Phases.~~

a. GSD hereby affirms that Phase 1 and Phase 2 of the Project are distinct from, and independent of, one another and that the Phase 1 improvements can operate and function fully and independently of Phase 2. GWSD's consent to Phase 1 of the Project shall not commit or bind

GWSD to consent to any part of Phase 2, and the Parties hereby expressly acknowledge and agree that none of the terms and conditions set forth herein are applicable to Phase 2. At this time, neither GSD nor GWSD has decided whether GSD should undertake Phase 2, and they each reserve their full authority to make such a decision, provided that neither Party shall make any such decision regarding Phase 2 unless and until there has been compliance with all applicable laws, including but not limited to the California Environmental Quality Act (“CEQA”), including analysis of a no project alternative and/or taking no further action, to the extent required by CEQA.

b. GWSD is aware that, as referenced in Section 4.(d.) of this Agreement, certain Soft Costs have been paid by GWSD prior to the effective date of this Agreement. As of the effective date of this Agreement, any and all funds paid by GWSD pursuant to the 1960 Agreement or this Agreement (i) shall not be allocated towards the construction of Phase 2 of the Project or to any Future Projects (as defined in Section 9 of this Agreement) unless and until environmental review has been completed as required under CEQA, and (ii) shall not be construed as a commitment by GWSD to or approval of Phase 2 of the Project or any Future Project.

9. Notification Policy. In order to ensure that GWSD (i) remains informed regarding all projects that GSD desires to undertake in the future in connection with the operation, maintenance, repair, replacement, improvement, or expansion of the Plant (collectively, “**Future Projects**”), (ii) has sufficient time and information to determine whether it should agree to a proposed Future Project in cases where such agreement is required under the 1960 Agreement, (iii) has sufficient time and information to plan and budget for its share of the costs associated with any proposed Future Projects, and (iv) has sufficient time and information to comply with CEQA, as applicable, GSD’s Board will, within ninety (90) days after the effective date of this Agreement, adopt a formal policy (the “**Project Policy**”) providing, among other things, that:

- GSD’s General Manager will meet with GWSD’s General Manager on at least a quarterly basis to review and discuss proposed Future Projects, including the timing and expected cost thereof. After each such meeting, GSD’s General Manager will prepare a written report summarizing the meeting and deliver the report to GWSD’s General Manager for distribution to and review by GWSD’s governing board (“**GWSD Board**”). The contents of such reports and the timing for the delivery thereof will be specified in the Project Policy.
- GSD’s General Manager will make a presentation to the GSD Board on at least an annual basis addressing (i) the state of the Plant facilities, and (ii) proposed Future Projects, including the timing and expected cost thereof. The timing and procedure for notifying GWSD’s General Manager and the GWSD Board regarding the annual presentation and the arrangements for their attendance will be specified in the Project Policy.
- In undertaking Future Projects, (i) the Parties shall cooperate in regard to CEQA, and including that (ii) GSD shall comply with any and all consultation and approval procedures required pursuant to CEQA, and the 1960 Agreement, and this Agreement, including, but not limited to, the requirement that a lead agency consult with responsible agencies throughout the CEQA process and solicit comments from responsible agencies regarding the choice and content of the environmental documents.

GSD shall give GWSD a reasonable opportunity to review and comment on the Project Policy prior to the adoption thereof by the GSD Governing Board.

10. Environmental Review. GSD shall be the lead agency for purposes of complying with the CEQA as it applies to the Project and affirms that, prior to the effective date of this Agreement, it completed environmental review of Phase 1 of the Project in compliance with all laws and regulations, including but not limited to CEQA.

11. Financing. If either Party obtains financing to pay all or any portion of its share of the cost of the BESP Project, that Party shall be solely responsible and shall assume all liability for (i) all costs and expenses incurred in connection with such financing, including but not limited to interest, finance charges, the repayment of principal, and attorney's fees, and (ii) the performance of all obligations and covenants applicable to such financing.

12. Disputes.

- a. Any disputes, difference, or question ("**Dispute**") with respect to this Agreement or the Project shall be reduced to a writing and delivered to the other Party's General Manager within sixty (60) days of the event leading to the dispute. The General Managers shall meet and confer within ten (10) days of receipt of written notice of a dispute and shall make a good faith effort to resolve the dispute. If the General Managers cannot come to a mutually acceptable resolution within forty-five (45) days, either Party may request that the dispute be submitted to mediation. In the event that the Parties cannot agree to a mediator, the Parties shall each select a mediator, and the selected mediators shall select a qualified neutral third party who shall then mediate the dispute as the sole mediator. All costs, fees, and expenses of the mediator(s) and the mediation shall be shared equally by the Parties. ~~Initiation of and compliance with this mediation process shall be a condition precedent to litigation.~~
- b. In the event that a Dispute remains unresolved after compliance with the process set forth in Section 12.(a.) of this Agreement, resolution of the Dispute shall follow the process outline in Section 21 of the 1960 Agreement.

13. IndemnificationLiabilities.

- a. [GWSD's proposed subsection a.] To the fullest extent permitted by law, GSD shall defend and indemnify GWSD and GWSD's officers, directors, agents, servants, attorneys, employees, and contractors from and against any claim, dispute, litigation or other legal action arising from or related to GSD's alleged non-compliance with any federal, state, or local law, ordinance, rule or regulation purportedly applicable to the Project ("Project Work Claim"). To the extent a Project Work Claim is decided by a final unappealable decision of an appropriate court of law with jurisdiction and the decision requires payment to the claimant (not including attorney's fees) or directly results in increased costs for the Project,

GWSD shall pay its proportional share (~~e.g.i.e.~~, 40.78%) of such payment owed for the Project. If a Project Work Claim is denied, GWSD shall pay its proportional share of the costs incurred by GSD in defending the claim.

[GSD's proposed subsection a.] The Parties acknowledge, agree, and confirm that (i) the Plant is a regional facility that has been constructed for the mutual benefit of the Contract Parties and their respective constituents, (ii) the Project is being undertaken for the mutual benefit of the Contract Parties and their respective constituents, and (iii) as such, the costs as well as the potential liabilities arising in connection with the undertaking of the Project should be borne by the Contract Parties in proportion to their respective capacity rights in the Plant, as set forth in Section 4.a. hereof. Accordingly, in the event that any liabilities, losses, damages, costs, or expenses, including attorneys' fees and court costs ("Liabilities"), are incurred in connection with the undertaking of the Project, such Liabilities shall be billed to and paid by the Contract Parties as a Project cost in proportion to their respective capacity rights. Any Contract Party that pays more than its proportionate share of any Liability shall be entitled to contribution from the other Contract Parties. Nothing in this Section 13.a. shall release GSD from any liability it may incur to GWSD in connection with any breach by GSD of its obligations under the 1960 Agreement or this Agreement, or GSD's wrongful acts or omissions in connection with the undertaking of the Project.

In order to limit the exposure of GWSD to potential Liabilities arising in connection with the undertaking of the Project, GSD shall (i) require the contractor who is retained to construct the Project to name GWSD, the other Contract Parties, and their respective officers, directors, agents, servants, attorneys, employees, and contractors as additional insureds under all insurance policies provided to GSD by the contractor, and (ii) deliver certificates evidencing such policies to GWSD and the other Contract Parties.

- b. To the fullest extent permitted by law, GSD shall defend, indemnify and hold GWSD and GWSD's officers, directors, agents, servants, attorneys, employees, and contractors harmless from and against any and ~~all liability, loss, damages, costs, or expenses (including reasonable attorneys' fees and court costs)~~ (collectively, the "Liabilities") arising from GSD's noncompliance with CEQA (or other similar laws requiring environmental review) in connection with the Project ~~or this Agreement~~.
- c. ~~GSD shall reimburse GWSD for any reasonable costs~~ If GWSD initiates litigation to incur in connection with establishing a right to indemnification under this Agreement, the prevailing Party in such litigation shall be entitled to recover all costs and expenses of the litigation, including reasonable attorneys' fees if GWSD prevails and establishes indemnity.
- d. ~~GSD's~~ The respective obligations of the Parties under this Section 13 shall survive the expiration or termination of this Agreement.

e. The Parties acknowledge, agree, and confirm that this Agreement is being entered into and that the provisions set forth in this Section 13 have been included and mutually agreed upon as a result of the unique circumstances relating to the CEQA and notification process followed by GSD in connection with the Project. As such, except as expressly set forth herein to the contrary, neither the entering into of this Agreement nor any of the terms or provisions set forth herein shall set a precedent for the process to be followed by the Parties or the respective rights and obligations of the Parties with respect to any Future Projects.

14. **No Personal Liability.** No director, officer, agent, consultant, or employee of either Party shall be individually or personally liable for the obligations set forth herein.

15. **Further Assurances.** GSD and GWSD each agree to take such actions and execute such documents as may be reasonably required to carry out the intent of this Agreement.

16. **Amendment.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by the Parties.

17. **No Third Party Beneficiaries.** Except as specifically set forth herein, this Agreement shall not be deemed to confer any rights upon any individual or entity which is not a Party hereto, and the Parties hereto expressly disclaim any such third-party benefit.

18. **Applicable Law.** This Agreement and all documents provided for herein shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising from this Agreement shall be adjudicated in the courts of Santa Barbara County, State of California.

19. **Waiver.** GWSD's review or acceptance of, or payment for, any work associated with the Project shall not be construed to operate as a waiver of any rights GWSD may have under this Agreement or of any cause of action arising from GSD's actions under this Agreement. A waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

20. **Severability.** Should a court of competent jurisdiction decide any part, term, or provision of this Agreement conflicts with law or is otherwise unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected and, to that end, the Parties declare the parts, terms, and provisions of this Agreement to be severable.

21. **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties.

22. **Integration.** This Agreement represents the full and entire agreement of the Parties with respect to the matters covered herein.

23. Execution; Warranty. The legislative bodies of the Parties have each authorized execution of this Agreement, as evidenced by the respective signatures attested below. The persons signing below warrant for the benefit of the Party for which they sign that they have actual authority to bind their respective principals to this Agreement.

24. Counterparts. This Agreement may be executed in any number of counterparts, electronic or otherwise, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

24.25. Effect on 1960 Agreement. To the extent not addressed by this Agreement, all of the terms and provisions of the 1960 Agreement, as amended by the 1964 Amendment, the 1970 Amendment, and the 2007 Amendment, shall continue in full force and effect.

[Signatures are set forth on the following page.]

DRAFT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) set forth below.

GOLETA SANITARY DISTRICT

GOLETA WEST SANITARY DISTRICT

By: _____
Steven T. Majoewsky,
Governing Board President

By: _____
Larry Meyer,
Governing Board President

COUNTERSIGNED:

COUNTERSIGNED:

By: _____
Robert O. Mangus, Jr.,
Governing Board Secretary

By: _____
Brian McCarthy,
Governing Board Secretary

Dated: _____, 2022

Dated: _____, 2022

ATTACHMENTS

- Exhibit A – Project Description, Preliminary Construction Cost Estimates, and Preliminary Schedule
- Exhibit B – Amounts Already Paid by GWSD for Phase 1 ~~for~~ Soft Costs
- Exhibit C – ~~Grant Applications Submitted Prior to Effective Date of this Agreement~~

EXHIBIT A
Project Description, Preliminary Construction Cost Estimates, and Preliminary Schedule

Project Description: Installation of new 500,000-gallon anaerobic digester to replace digester #1. Installation of combined heat and power system with 160kW generator to convert biogas to electricity. New biogas conditioning system and exhaust gas purification system. Site work, piping, utility, and control system improvements associated with new equipment.

Preliminary Construction Cost Estimate as January 24, 2022	
Demolition	\$88,256
Digester No 4	\$5,228,744
Combined Heat and Power	\$918,718
Digester Gas Pretreatment	\$158,246
Digester Gas Blower	\$129,794
Power and Maintenance Building	\$71,213
Site Work	\$67,849
Yard Piping	\$510,421
Electrical and I&C	\$1,507,221
General Conditions 18%	\$1,538,635
Subtotal:	\$10,219,096
Contingency (10%)	\$1,021,910
Construction Management (15%)	\$1,532,864
Total Preliminary Estimated Construction Cost:	\$12,773,870

Preliminary Construction Schedule: Summer 2023 to Fall 2024

EXHIBIT B
Amounts Already Paid by GWSD for Phase 1 ~~for~~ Soft Costs

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EXHIBIT C
Grant Applications Submitted Prior to Effective Date of this Agreement

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