USER AGREEMENT

THIS AGREEMENT, made and entered into this

__________ day of ________________, 1987,

by and between

CITY OF SANTA BARBARA, a
municipal corporation,
hereinafter referred to as "CITY"

and

hereinafter referred to as "USER",

RECITALS

A. The amount of CITY's potable water supply is limited
and, therefore, water conservation is a primary concern.

B. CITY intends to construct and operate additional
facilities at its El Estero Wastewater Treatment Plant that will
generate reclaimed water of satisfactory quality for use in
irrigating most landscaped areas with unrestricted public access.

C. USER owns, operates and maintains certain landscaped
areas that USER desires to irrigate with reclaimed water supplied
by CITY. Such use of reclaimed water will replace the use of
city-supplied potable water for said irrigation and thereby will
allow CITY and USER to maximize efforts to conserve the potable
water supply.

D. USER agrees to accept reclaimed water for landscaped
area irrigation and CITY agrees to supply reclaimed water to user
for the considerations and under the terms and conditions as
hereinafter set forth, which is the subject of this Agreement.

NOW, THEREFORE, CITY and USER agree as follows:

10/16/87
1. **TERM**

The term of this Agreement is for a period of approximately 22 years commencing on the date first written above and terminating on December 31, 2008, unless terminated earlier under the conditions of Section 15 of this Agreement. It is intended that during the term of this Agreement, CITY will provide reclaimed water to USER for approximately 20 years.

2. **AREA OF USE (SITE)**

USER shall use reclaimed water supplied by CITY on a total of approximately _____ acres of landscaped areas which are herein sometimes referred to as the "Site". The location(s) of the application area(s) is(are) described in attached Exhibit A.

3. **DELIVERY OF RECLAIMED WATER**

CITY shall deliver reclaimed water into USER's irrigation system(s) at normal sprinkler operating pressure and at a rate of a minimum of 6 and a maximum of 12 gallons per minute per acre of application area on the Site. Said delivery shall be on a full-demand basis, and the normal daily delivery period shall be between 9:00 p.m. of each day and 6:00 a.m. of the following day. However, under normal conditions, reclaimed water will be available in the distribution system continually, but for delivery of reclaimed water during any other time period, USER shall provide continued observation of the use of the reclaimed water to minimize public contact with the reclaimed water.

4. **RECEIPT AND APPLICATION OF RECLAIMED WATER**

USER agrees to receive, accept, and apply reclaimed water supplied by CITY during the term of this Agreement for irrigation of USER's landscaped areas at no cost to CITY. USER agrees to use only reclaimed water for irrigation for all landscaped areas on the Site identified in Section 2 of this Agreement, except for portions of the Site and/or landscaped areas where application of the reclaimed water may be prohibited by the California Department of Health Services (DOHS), the Central Coast Regional Water Quality Control Board (RWQCB), or the Santa Barbara County Department of Environmental Health (SBCDEH), regulations or guidelines. This Section 4 shall become effective as soon as CITY can deliver reclaimed water to the
Site. The limitation on use contained in this Section 4 shall not be applicable if CITY cannot deliver reclaimed water to the Site and is only applicable to the extent that CITY can deliver reclaimed water to USER.

5. LIMITATIONS PRECLUDING DELIVERY OF RECLAIMED WATER

Notwithstanding the requirements for CITY to deliver reclaimed water as stated in Section 3 of this Agreement, both parties recognize and agree that such delivery of reclaimed water may at times be precluded for reasons beyond the control of CITY. In this respect, CITY shall be required to deliver reclaimed water as stated in Section 3 of this Agreement unless said delivery is prevented by causes outside the control of CITY including, but not limited to, Acts of God, malfunction of CITY's treatment or distribution systems, acts of a third party, or by order of a governmental regulatory authority.

Whenever the delivery of reclaimed water is interrupted, CITY shall expend its best effort to correct the cause of interruption and restore delivery of reclaimed water to USER as soon as possible. If reclaimed water is interrupted for more than 48 hours because of a malfunction of CITY's treatment plant that prevents the delivery of reclaimed water, or results in production of inadequately treated reclaimed water, CITY shall deliver potable water to USER through the reclaimed water delivery system until it can deliver adequate quantities and satisfactory quality of reclaimed water. Notwithstanding anything contained herein to the contrary, CITY shall not be required to deliver reclaimed water if it is not economically feasible.

6. QUALITY OF RECLAIMED WATER

The reclaimed water delivered to USER by CITY shall be of a quality satisfactory and acceptable for irrigation of landscaped areas with unrestricted access in accordance with Title 22, Division 4 of the California Administrative Code and the regulations and guidelines of the RWQCB, DOHS, and the SPCDEH. USER understands and agrees that the quality of the reclaimed water, especially total salinity, is different from that of USER's potable water supply and that a possibility exists that, with long-term use of reclaimed water, some landscape species may eventually have to be replaced with more tolerant species. Such replacement shall be the responsibility of USER.
7. **RECLAIMED WATER USE REQUIREMENTS**

USER understands and agrees that the use of reclaimed water is regulated by the RWQCB, DOHS, and the SBCDEH. Some of the requirements for use of reclaimed water are contained in attached Exhibit B. CITY and USER shall abide by said reclaimed water use requirements as appropriate, and USER, at its sole costs, shall operate and maintain all facilities for reclaimed water use on the Site.

8. **RECLAIMED WATER SUPERVISOR**

USER shall designate an individual as USER's Reclaimed Water Supervisor who shall be USER's coordinator and direct contact person between CITY and USER. USER agrees that the Reclaimed Water Supervisor shall be responsible for the proper operation of USER's reclaimed water system, training of USER's employees in handling reclaimed water, implementing the requirements of this Agreement relative to the onsite use of reclaimed water, monitoring of USER's reclaimed water system for prevention of potential hazards, and coordination with CITY and the regulatory agencies, when necessary. CITY shall assist in the training of USER's Reclaimed Water Supervisor.

USER shall inform CITY of the name, position, and phone number of USER's Reclaimed Water Supervisor approximately two months prior to startup of USER's reclaimed water system and shall promptly inform CITY of any change of designated Reclaimed Water Supervisor and/or phone number during the term of this Agreement.

9. **ONSITE FACILITY MODIFICATIONS**

USER understands and agrees that certain modifications and/or changes in existing onsite facilities will be required to conform to the special reclaimed water use requirements identified in Section 7 of this Agreement. CITY shall assist USER in identifying the modifications and/or changes required in USER's onsite facilities.

CITY shall be responsible for only the initial cost of the conversion of USER's onsite irrigation system from the potable water supply system to the reclaimed water supply system. CITY's responsibility for the cost of conversion shall include, and is limited to:

(a) Providing and installing required reclaimed water meter(s).
(b) Isolation of USER's potable water system from USER's irrigation system and plugging or removing hose bibs on USER's irrigation system. USER shall be responsible for identifying all locations where USER's irrigation system is connected to USER's potable water system so that any cross connection can be eliminated.

(c) Connection of USER's irrigation system to CITY's reclaimed water delivery system.

(d) Reconnection of USER's potable water system to USER's potable water source where necessary.

(e) Providing and installing required approved reduced-pressure-principle backflow prevention device(s) on USER's potable water service(s) if acceptable backflow prevention is not in place at the time of conversion to reclaimed water service as determined by the SBCDEH.

(f) Providing adequate signs for installation by USER on USER's Site for notification to the public that reclaimed water is in use.

USER and CITY agree that CITY's actual construction, modification, and installation activities shall be restricted to CITY's public rights-of-way. USER and CITY further agree that all construction, modification, and installation activities required on USER's Site, as determined and approved by CITY, shall be performed by USER using modification layout sketches provided by CITY and USER's plans and specifications required for the work as approved by CITY. CITY shall reimburse USER at USER's cost for performing such required work, provided USER obtains prior written authorization from CITY to perform the work. To obtain CITY's prior approval and authorization and subsequent reimbursement of costs, USER shall obtain a minimum of three bids for the required work and shall submit all bids to CITY's Public Works Director for CITY's review and acceptance. CITY, at its sole discretion, may require USER to obtain additional bids. After review of all bids, CITY shall determine the bid on which CITY shall base the amount of its maximum reimbursement to USER. CITY shall then give written notice to USER of the amount of the authorized maximum reimbursement and shall authorize USER to proceed with the work. After the work has been completed and accepted by both USER and CITY, USER shall bill CITY for USER's actual cost of the work performed or the amount of CITY's authorized maximum reimbursement, whichever is the least amount, and CITY shall pay USER that amount in CITY's normal billing/paying cycle.
USER shall perform, and shall be responsible for all costs of, all other onsite modifications that are not specifically the responsibility of CITY as stated in Subsections 9(a) through 9(f) above and any other modifications desired by USER. Such modifications shall include, but are not limited to:

(g) All modifications to USER's potable water system, except CITY shall be responsible for the disconnection and reconnection of USER's potable water source(s) to USER's main potable water system as stated in Subsections 9(b), 9(d), and 9(e) above.

(h) Any modifications to USER's reclaimed water irrigation system necessary to meet the special reclaimed water use requirements stated in Section 7 of this Agreement that are not the responsibility of CITY as stated in Subsections 9(a) through 9(f) above. Such modifications include, but are not limited to, sprinkler changes or modifications, quick-coupler modifications or installation, or new or expanded systems.

(i) Special protection of potable water or other facilities from reclaimed water contact.

(j) All initial and ongoing onsite management and operation of USER's reclaimed water system to ensure meeting CITY's and regulatory agencies' requirements for use of the reclaimed water as stated in Section 7 of this Agreement.

The installation, modification, or construction of new facilities performed by USER on USER's onsite irrigation system(s) shall be in accordance with the requirements of DOHS, RWQCB, and SBCDEH pertaining to nonpotable water systems including, but not limited to, the proper marking of piping, valves, valve boxes, controllers, and all other components to differentiate them from onsite potable water facilities.

10. RECORD DRAWINGS

At the completion of all onsite modifications and changes to USER's reclaimed water and potable water systems, USER shall provide CITY with record drawings of USER's completed reclaimed water system(s) and potable water system(s) on USER's Site. The record drawings shall be accurate to the best
knowledge of USER and shall show the locations of all pipelines, controllers, valves, fountains, buildings, structures, property boundaries, and any other features known or considered to be important to the onsite use of reclaimed water. USER shall not change or modify the reclaimed water system(s) on the Site without prior written approval of CITY's Public Works Department. Such approval shall not be unreasonably withheld and CITY's Public Works Department shall respond to a request for a change or modification as soon as possible but in no event more than 10 working days. Failure by CITY to give a timely response shall be deemed to be an automatic approval. However, USER shall give CITY notice when the change or modification is completed.

11. PRICE OF RECLAIMED WATER

USER understands and agrees that the rates for potable water may vary with the amount of water consumed. For the purpose of this Section 11, "reclaimed water" includes all reclaimed water and potable water delivered to USER through CITY's reclaimed water delivery system. USER shall pay CITY for reclaimed water at a rate equal to 80 percent of the rate that USER would have paid if USER had received the same amount of potable water.

CITY shall read the reclaimed water meter(s) approximately monthly consistent with CITY's normal meter reading schedule for billing purposes and shall bill USER for the total quantity delivered during the billing period in accordance with CITY's standard billing practices. USER may periodically review CITY's meter readings if desired. USER shall pay CITY within 20 days of receipt of CITY's bill.

12. PERMISSION TO ENTER

USER agrees to allow CITY, DOHS, RWQCB, and SBCDEH, acting through their duly authorized employees, agents, representatives, or contractors, reasonable access at reasonable times to enter USER's Site, where USER is planning to apply or is applying reclaimed water, for the purposes of observing construction or modification of reclaimed water facilities and subsequently for observing and verifying that USER is operating its reclaimed water facilities, and is using the reclaimed water, in a proper manner and in accordance with the reclaimed water use requirements stated in Sections 4 and 7 of this Agreement and the requirements of the regulatory agencies. When entering USER's premises, CITY or the regulatory agencies shall not interfere with USER's operations and use of the premises.
13. **GENERAL CONDITIONS**

(a) This Agreement shall be construed and interpreted in accordance with the laws of the State of California and venue shall be in the State courts in the County of Santa Barbara.

(b) This Agreement contains all agreements of the parties with regard to the subject of this Agreement and cannot be enlarged, modified, or changed in any respect except by written agreement between the parties.

(c) The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal, but the parties shall negotiate as to the effect of said unenforceability, invalidity, or illegality on the rights and obligations of the parties.

(d) The captions, titles, and headings in this Agreement shall have no effect on the interpretation of this Agreement or any part thereof.

(e) This Agreement shall be binding on the heirs, successors, lessees, sublessees, assigns, and transferees of the parties.

14. **INDEMNIFICATION**

CITY shall indemnify, defend, and save USER and USER's agents, officers, employees, or contractors, harmless against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever arising from or connected with CITY's construction, ownership, operation, or maintenance of CITY's own delivery facilities or other reclaimed-water-related activities, including any workers' compensation suits, liability, or expense arising from or connected with services for or on behalf of CITY.

USER shall indemnify, defend, and save CITY and CITY's agents, officers, employees, or contractors, harmless against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever arising from or connected with USER's construction, ownership, operation,
or maintenance of USER's own delivery or application facilities or other reclaimed-water-related activities, including any workers' compensation suits, liability, or expense arising from or connected with services for or on behalf of USER.

15. TERMINATION

Should one party breach any of the terms and conditions in this Agreement, written notice of such breach shall be given to the breaching party by the other party. If reasonable steps toward correcting the breaching conditions are not taken within five days from such notice, the other party may, in addition to any remedies provided in this Agreement and/or by law, terminate this Agreement on ten days' written notice to the breaching party.

In addition:

(a) CITY may terminate this Agreement immediately if:

(1) CITY, at its sole determination, is, or will be, unable to deliver properly and adequately treated reclaimed water to USER for any reason whatsoever for a period greater than ten days, provided the reason for nondelivery is outside the reasonable control of CITY.

(2) The RWQCB changes CITY's discharge requirements for irrigation of landscaped areas to a more stringent level and CITY cannot reasonably meet the new requirements.

(3) City is ordered to cease delivery of reclaimed water to USER by a governmental authority having appropriate jurisdiction to do so.

(b) USER may terminate this Agreement on 30 days' written notice to CITY if the land use on USER's entire reclaimed water application area(s) is changed and no landscaped area(s) contain(s) landscaping. If any portion of the reclaimed water application area remains in landscape use, USER understands and agrees that USER must use reclaimed water for irrigation of all allowable landscaped areas on USER's Site identified in Section 2 of this Agreement, even though other portions of the site have been converted to a use which does not contain landscaping.

If this Agreement is terminated:

(c) By CITY under Subsection 15(a) above or because CITY does not intend to extend the term of this
agreement after December 3, 2008, or by USER because of breach of this Agreement by CITY, CITY shall be responsible for the restoration of potable water service to USER's reclaimed water irrigation system at no cost to USER. In this occurrence, USER shall perform all work deemed actually necessary by CITY that must be performed on USER's premises to effect such restoration of potable water service, and CITY shall reimburse USER for said work in accordance with the prior approval and authorization procedures stated in Section 9 of this Agreement.

(d) By USER at the end of the term of this Agreement when CITY has announced its intention to extend said term, or by CITY because of breach of this Agreement by USER, any restoration of potable water service to USER's reclaimed water irrigation system that is Desired by USER shall be the responsibility of USER and shall be at no cost to CITY. In this occurrence, CITY shall perform all work deemed actually necessary by CITY that must be performed on CITY's public rights-of-way to effect such restoration of potable water service, and USER shall reimburse CITY for said work at CITY's actual cost.

For restoration of potable water service to USER's reclaimed water irrigation system that is desired by USER pursuant to Subsections 15(c) and 15(d) above, CITY shall exert every effort to perform the work for which CITY is responsible under those Subsections above in a timely manner to minimize the interruption of irrigation on USER's Site.

16. NOTICES

Any notices necessary to be given by either party to the other relative to this Agreement shall be in writing. Both parties agree that any such notice shall be effective when signed by the Public Works Director of the City of Santa Barbara, or the designee of said Director, and/or USER, as appropriate, and personally delivered or deposited, postage paid, in the U.S. Mail addressed as follows:

CITY:
Public Works Director
City of Santa Barbara
630 Garden Street
P. O. Box 33
Santa Barbara, CA 93102

USER:

10/16/87
17. REPRESENTATION AND WARRANTY OF AUTHORITY

Each person executing this Agreement on behalf of an entity, whether a corporation, partnership, joint-venture, association or otherwise, represents and warrants that he or she has authority to execute this agreement on behalf of said entity and that entity has entered into the appropriate resolution or authorization for granting such authority.

18. RECORDATION

Either party to this Agreement may record a Memorandum of Agreement which gives constructive notice of this Agreement to future owners, lessees, and other occupants of the Site and requires that they comply with the terms and conditions of this Agreement.

IN WITNESS WHEREOF, CITY and USER have executed this agreement as of the date and year first written above.

CITY OF SANTA BARBARA
A Municipal Corporation

USER:

______________________________
Mayor

______________________________
ATTEST:

______________________________
City Clerk

APPROVED AS TO CONTENT:
Public Works Director

______________________________
By:
(Signature)

______________________________
(Type or Print Name)

______________________________
(Type or Print Title)

______________________________
By:
(Signature)

______________________________
(Type or Print Name)

______________________________
(Type or Print Title)

Phone No:______________________

APPROVED AS TO FORM:
Steven A. Amerikaner, City Attorney

______________________________

10/16/87
## EXHIBIT A

**LOCATIONS OF APPLICATION AREAS**

The location(s) of USER's application area(s), the aggregate of which shall be known as USER's Site, is (are) as follows:

<table>
<thead>
<tr>
<th>Application Area Name</th>
<th>Application Area Street Address</th>
<th>Approximate Irrigation Area (Acres)</th>
</tr>
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10/16/87
EXHIBIT B

SPECIAL RECLAIMED WATER USE REQUIREMENTS

1. Reclaimed water and spray shall be confined to the authorized use area.

2. Signs shall be provided to inform the public that reclaimed water is being used. For golf courses, notification shall also be placed on score cards.

3. Public contact with reclaimed water must be minimized.

4. Reclaimed water piping, controllers, valves, etc., shall be marked to differentiate the reclaimed water facilities from the potable water facilities.

5. Reclaimed water valves, outlets, quick couplers, and sprinklers shall be of a type, or secured in a manner, that permits operation only by USER's authorized personnel.

6. Use or installation of hose bibs on the reclaimed water system shall not be permitted.

7. In accordance with DOHS requirements, there shall be at least a 10-foot horizontal and 1-foot vertical separation between all pipelines transporting reclaimed water and those transporting potable water, with the potable water pipeline above the reclaimed water pipeline. (This is intended to be for all new construction.)

8. An air-gap separation or reduced-pressure-principle device shall be provided at all potable water service connections to reclaimed water use areas. There shall be no connection between potable water supply and reclaimed water piping. Supplementing reclaimed water with any other source shall not be allowed except through an air-gap separation.

9. Drinking water facilities shall be protected from reclaimed water spray.

10. There shall be no reclaimed water irrigation or impoundment within 500 feet of any well used for domestic supply.

11. Adequate measures shall be taken to minimize ponding and runoff and to prevent the breeding of vectors of public health significance.

12. Inspection, supervision, and employee training shall be provided by USER to assure safe and proper operation of the reclaimed water system. Records of inspection and training should be maintained by USER.

10/16/87

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