AGREEMENT TO USE RECLAIMED WATER

THIS AGREEMENT, made and entered into this 11th day of March, 1988,

by and between

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

and

SANTA BARBARA COMMUNITY COLLEGE DISTRICT - SANTA BARBARA CITY COLLEGE, herebyinafter referred to as "USER".

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 (the Reclamation Project) that will generate reclaimed water of satisfactory quality for use in irrigating most landscaped areas with unrestricted public access. Before undertaking construction of the Reclamation Project, the City needs to be assured that there are sufficient numbers of customers for the reclaimed water to justify the substantial capital cost.

C. USER occupies certain real property in or near the City, known as Santa Barbara City College and designated Assessor's Parcel Nos. 33-120-20,-25 and 45-250-07,-09,-10 (the "real property"). User maintains certain landscaped areas on the real property 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 is willing to agree to accept reclaimed water for landscaped area irrigation and CITY is willing to agree to supply reclaimed water to user for the considerations and under the terms and conditions set forth below. NOW, THEREFORE, CITY and USER agree as follows:

1. TERM

The term of this Agreement commences on the date first written above and terminates on December 31, 2008, unless terminated earlier under the conditions of Section 15 of this Agreement.

2. AREA OF USE (SITE)

USER shall use reclaimed water supplied by CITY on a total of approximately thirty-nine (39) acres of landscaped area which are herein sometimes referred to as the "Site". The location of the Site is described in attached Exhibit A. Upon mutual agreement of the parties hereto, the Site and Exhibit A may be amended.

3. DELIVERY OF RECLAIMED WATER

Upon completion of the Reclamation Project, and the necessary pipes and related improvements to deliver it to the Site, CITY shall deliver reclaimed water into USER's irrigation system(s) at normal sprinkler operating pressure and at a rate of a minimum of six (6) and a maximum of twelve (12) gallons per minute per acre of 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. Since reclaimed water ordinarily will be available in the distribution system continually, USER shall provide continued observation of any use of reclaimed water between 6:00 a.m. and 9:00 p.m. to minimize public contact with it.

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 the Site at no cost to CITY. USER agrees to use only reclaimed water for irrigation for all landscaped areas on the Site, except for portions of the Site as to which (i) 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) [hereafter collectively "the regulatory agencies"], regulations or guidelines, or (ii) the conversion to the use of potable water is necessary to avoid the destruction of a substantial amount of
landscaping. 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

A. 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.

B. 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, Article 4, Section 60313(b) of the California Administrative Code and the regulations and guidelines of the regulatory agencies. USER understands and agrees that the quality of the reclaimed water, including and particularly 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 accomplished at USER'S sole cost, and USER shall have no rights or recourse against the CITY due to replacement of landscaping.

7. RECLAIMED WATER USE REQUIREMENTS

USER understands and agrees that the use of reclaimed water is regulated by the regulatory agencies. Some of the requirements for use of reclaimed water are contained in attached
Exhibit B. CITY and USER shall abide by all statutes and regulations regarding reclaimed water use and USER, at its sole costs, shall operate and maintain all facilities for reclaimed water use on the Site.

8. RECLAIMED WATER SUPERVISOR

A. USER shall designate and maintain 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.

B. 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 or phone number during the term of this Agreement.

9. ONSITE FACILITY MODIFICATIONS

A. USER understands and agrees that certain modifications 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.

B. 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 be limited to each of the following activities, and only the extent that the work is reasonably necessary to accomplish the conversion:

1. Providing and installing required reclaimed water meter(s).

2. Isolation of USER's potable water system from USER's irrigation system and plugging or replacing existing hose bibs with quick couplers 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.

3. Connection of USER's irrigation system to
CITY's reclaimed water delivery system.

(4) Reconnection of USER's potable water system to USER's potable water source.

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

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

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

C. USER and CITY agree that CITY's 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 estimate all administrative costs, shall obtain a minimum of three bids for the required work and shall submit all bids, and associated administrative costs, to CITY's Public Works Director for CITY's review and acceptance. After review of all bids, and associated administrative costs, 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. If there are any additional costs, USER shall give prompt notice to CITY's Public Works Director who shall review those costs and increase the amount of maximum reimbursement if those costs are reasonable. 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.

D. USER shall perform, and shall be responsible for all costs of, all onsite modifications that are not specifically the responsibility of CITY as stated in Subsections 9,B(1) through 9,B(7) above and any other modifications desired by USER. Such modifications shall include, but are not limited to:

(1) All modifications to USER's potable water system.
(2) 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. Such modifications include, but are not limited to, sprinkler changes or modifications, quick-coupler modifications or installation (other than those identified in Subsection 9.B, or new or expanded systems.

(3) All initial and ongoing onsite management and operation costs 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.

E. The installation, modification, or construction of new facilities performed by USER on USER's onsite irrigation system shall be in accordance with the requirements of the regulatory agencies 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. DRAWINGS

At the completion of all onsite modifications and changes to USER's reclaimed water and potable water systems, USER shall provide CITY with detailed drawings of the completed reclaimed water system(s) and potable water system(s) on the Site. The 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. Any modifications to system USER desires may be implemented by USER, at USER's expense, provided such modifications comply with the requirements of the regulatory and Title 22, Division 4 of the California Administrative Code. USER shall provide CITY with an accurate drawing reflecting the modifications within twenty (20) working days of completion of the modifications.

11. PRICE OF RECLAIMED WATER

A. 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 not-to-exceed 80 percent of the rate that USER would have paid if USER had received the same amount of potable water.

B. 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 and the regulatory agencies, acting through their duly authorized employees, agents, representatives, or contractors, reasonable access at reasonable times to enter the site for the purposes of (i) observing construction or modification of reclaimed water facilities, and (ii) 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. 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

A. 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.

ReclH20S.BCC - Final
February 10, 1988
B. 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 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

A. For Breach of Agreement. 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 by law, terminate this Agreement on ten days' written notice to the breaching party.

B. End of Term. This agreement terminates at the end of its term unless the parties agree to extend it.

C. By CITY. CITY may terminate this Agreement upon 2 hours written notice to USER 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.

D. USER may terminate this Agreement on 30 days' written notice to CITY if the land use on USER's Site is changed and no landscaped area remains. If any portion of the Site remains in landscape use, USER understands and agrees that USER must use reclaimed water for irrigation of all such remaining landscaped areas on USER's Site.

E. Responsibilities Following Termination.

(1) The CITY shall be responsible for the restoration of potable water service to the Site at no cost to USER if either (i) the CITY terminates the agreement pursuant to Section 15.C, or (ii) the USER has offered to extend the term of the agreement on the same terms and conditions and the CITY has declined the offer, or (iii) USER terminates the agreement due to
a breach by the CITY, provided USER has complied with Section 15,A. If the CITY must restore potable water to the Site pursuant to this paragraph, the USER shall perform the work to effect such restoration and the CITY shall reimburse USER for the work in accordance with the procedures stated in Section 9.

(2) USER shall be responsible for restoration of potable water service to the Site, at no cost to the CITY, if either (i) the CITY has offered to extend the term of this agreement on the same terms and conditions and USER has declined the offer, or (ii) CITY terminates the agreement due to a breach by the USER, provided CITY has complied with Section 15,A. If USER must restore potable water service to the Site pursuant to this paragraph, the CITY shall perform all work needed within the public right of way to effect the restoration of potable water service to the Site, within the CITY's reasonable judgment, and USER shall reimburse the CITY for the work at the CITY's actual cost.

(3) The CITY agrees to undertake its responsibilities under this Section 15,E in a timely manner in order to minimize the interruption of irrigation to the Site and the consequent damage to landscaping.

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:
Business Manager
Santa Barbara City College
721 Cliff Drive
Santa Barbara, CA 93101

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. BINDING ON SUCCESSORS

This agreement is an instrument affecting the title and possession of real property. All the terms, covenants, conditions and restrictions herein imposed shall be binding upon
and inure to the benefit of the successors in interest of USER and shall run with the real property and each part thereof. Upon any sale or division of the real property, the terms of this agreement shall apply separately to each parcel and the owner of each parcel shall succeed to and be bound by the obligations imposed on USER by this agreement.

19. **RECORDATION**

This agreement may be recorded by either party.

20. **FUTURE USE OF POTABLE WATER ON THE SITE**

It is the parties' intent that USER'S agreement to apply reclaimed water to the Site shall not adversely affect USER'S ability to change the use of the property. For the purpose of calculating the historical consumption of water on the Site, reclaimed water shall be considered to be potable water.

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

________________________
Mayor

ATTEST:

________________________
City Clerk

APPROVED AS TO CONTENT:
David H. Johnson
Public Works Director

________________________
By:

________________________
USER:

SANTA BARBARA COMMUNITY COLLEGE DISTRICT
(Type or Print Name)

By:_______________________
(Signature)

________________________
Charles L. Hanson
(Type or Print Name)

______________
Business Manager
(Type or Print Title)

By:_______________________
(Signature)

________________________
________________________
(Type or Print Name)
(Type or Print Title)

Phone No: 965-0581, Ext. 357

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

________________________
By:

ReclH20S.BCC - Final
February 10, 1988
INSTRUCTIONS

1. This agreement will be recorded. Your signature(s) must be acknowledged by a notary. Inform the notary that the acknowledgement is for an instrument to be recorded. (California Civil Code §1169, et seq.)
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>Irrigation Area Street Address</th>
<th>Approximate Area (Acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Campus</td>
<td>721 Cliff Drive</td>
<td>31.3</td>
</tr>
<tr>
<td>Football Field &amp; Vicinity</td>
<td>721 Cliff Drive</td>
<td>3.8</td>
</tr>
<tr>
<td>Upper Field &amp; Vicinity</td>
<td>721 Cliff Drive</td>
<td>4.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>39.3</td>
</tr>
</tbody>
</table>
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.