

2005-0225  
CO/4004

Yolo County Agreement No. 15-33

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement ("Agreement") is entered into as of April 7, 2015 ("Effective Date") by and between the County of Yolo, a political subdivision of the State of California ("County"), and the City of Davis, a California municipal corporation ("City").

RECITALS

A. The City provides wastewater services to the El Macero County Service Area pursuant to Agreement No. 75-97, entitled "Agreement for Sewage Collection and Treatment (El Macero Sewer Interceptor Project) and entered into on April 7, 1975 ("1975 Agreement"). The El Macero County Service Area is defined in the 1975 Agreement and in this Amendment as the "County Service Area."

B. The City bills the County for sewer operation and maintenance for the El Macero County Service Area at the same monthly wastewater rate as is charged to connections within the City pursuant to Paragraph IV(C)(2) of the 1975 Agreement. The County, in turn, bills the County Service Area.

C. In 2008, the City revised its wastewater rates to include a variable charge component based on the average of the previous year's water use for the months of November through February (winter water usage). Residents of the County Service Area protested the increase in wastewater rates pursuant to the majority protest process for property-related fees under Proposition 218.

D. A dispute arose between the City and the County under the 1975 Agreement regarding the method for calculating the variable share portion of the wastewater rate for the County Service Area and the amount the County owes the City for wastewater services to the County Service Area following the City's adoption of revised wastewater rates in 2008 (the "El Macero Wastewater Fee Dispute").

E. The City and the County now desire to resolve the El Macero Wastewater Fee Dispute as negotiated herein between the City and the County.

AGREEMENTS

NOW THEREFORE, in consideration of the execution of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and subject to the terms and conditions hereof, the County and the City hereby agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

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2. **Amendment to the 1975 Agreement.** The Parties have agreed to resolve the El Macero Wastewater Fee by amending to the 1975 Agreement as set forth in Agreement No. 15- 32 , which is attached as Exhibit A hereto (“2015 Amendment”). The 2014 Amendment has been or is being executed by the Parties. In particular, the 2014 Amendment amends Paragraphs IV(B)(2) and IV(C)(2) of the 1975 Agreement to provide for a wholesale bulk rate to be paid by the County to the City as specified in the 2015 Amendment. The Parties have agreed to apply this wholesale rate retroactively to January 1, 2008. The County acknowledges it owes the City past due balances for sewer services provided to the El Macero Community Service Area from January 1, 2008 through December 31, 2013 (“Reconciliation Period”). The Parties have reconciled the past due balance owed under the wholesale rate established in the 2015 Amendment for the Reconciliation Period and determined that past due amount is \$ 77,397 (“Past Due Payment”). The County agrees to pay the Past Due Payment to the City within 60 days of the Effective Date of this Agreement.

3. **Attorneys’ Fees and Costs.** All Parties to this Agreement agree to bear their own attorneys’ fees and costs incurred in resolving the El Macero Wastewater Fee Dispute and reaching this settlement. However, if any action or other proceeding is brought for the enforcement or interpretation of this Agreement, the prevailing party will be entitled to recover reasonable attorneys’ fees and other costs incurred in the action or proceeding.

4. **Mutual Release.** Except as provided in Section 6 below, the County and the City, and their respective employees, representatives, agents, related entities, officers, directors, members, partners, predecessors, insurers, attorneys, administrators, successors and assigns, do hereby fully and forever completely release, acquit and discharge the other party and its respective employees, representatives, agents, related entities, officers, directors, members, partners, predecessors, insurers, attorneys, administrators, successors and assigns, from any and all damages, claims, actions, disputes, demands, losses, liens, written contracts, costs, expressed and/or implied warranty obligations, attorneys’ fees, costs, actions, causes of action, and liabilities of whatever kind and nature arising from or related to, the El Macero Wastewater Fee Dispute.

The City and Petitioner agree to refrain forever from instituting, initiating, prosecuting, maintaining or participating in any lawsuit, claim or other proceeding in any jurisdiction or forum relating in any way to the El Macero Wastewater Fee Dispute. This release may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against any lawsuit or other proceeding that may be instituted, prosecuted or attempted in breach of this mutual release.

5. **Waiver of Civil Code Section 1542.** The mutual release in Section 4 of this Agreement is intended to be complete and final and to cover not only claims, demands, liabilities, damages, actions and causes of action that are known, but also claims, demands, liabilities, damages, actions and causes of action that are unknown or that the parties do not suspect to exist in their favor that, if known at the time of executing this Agreement, might have affected their actions, and therefore the parties expressly waive the benefit of the provisions of section 1542 of the California Civil Code, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The County and the City hereby waive and relinquish all rights and benefits that they have or may have had under section 1542 of the California Civil Code or the law of any other state, country, or jurisdiction to the same or similar effect to the full extent that they may lawfully waive such rights.

6. **Exceptions to Release and Waiver.** Nothing herein shall be construed as a release by any Party of any obligation or claim arising out of a breach of this Agreement. The mutual releases and waivers contained in Sections 4 and 5 of this Agreement shall apply only to any damages, claims, actions, disputes, demands, losses, liens, written contracts, costs, expressed and/or implied warranty obligations, attorneys' fees, costs, actions, causes of action, and liabilities of whatever kind and nature that arise from or are related to the El Macero Wastewater Fee Dispute. The mutual releases and waivers contained herein shall not apply to any damages, claims, actions, disputes, demands, losses, liens, written contracts, costs, expressed and/or implied warranty obligations, attorneys' fees, costs, actions, causes of action, and liabilities of whatever kind and nature that may arise from or be related to any future negotiations regarding wastewater rates for the El Macero Service Area. Nor do the waivers contained in these Sections 4 and 5 preclude any rights, duties, remedies or rights of relief authorized by the 1975 Agreement between the County and the City, the 2014 Amendment to the 1975 Agreement, or this Agreement. The 1975 Agreement and the 2014 Amendment remain in full force and effect.

7. **Partial Invalidity.** The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

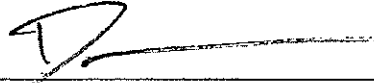
8. **Negotiated Agreement.** This Agreement was the subject of negotiation among the Parties, and no ambiguity or uncertainty in this Agreement shall be construed against any of the Parties based upon drafting/authorship of any of the provisions contained herein.

9. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. **Authority to Execute.** The undersigned warrant that they are fully authorized to execute this Agreement on behalf of the City and the County, respectively.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date stated in the introductory clause.

CITY OF DAVIS



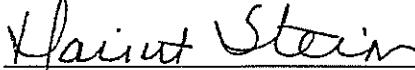
Daniel M. Wolk, Mayor

ATTEST:



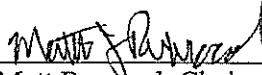
Zoe Mirabile, City Clerk  
City of Davis

APPROVED AS TO FORM:



Harriet A. Steiner  
City Attorney

COUNTY OF YOLO

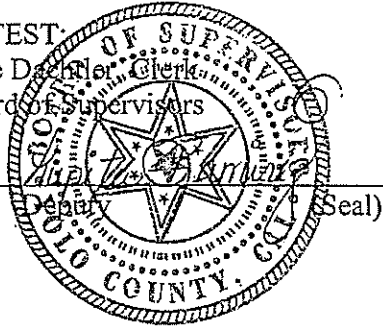


Matt Rexroad, Chair  
Yolo County Board of Supervisors

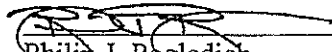
ATTEST:

Julie Decker, Clerk  
Board of Supervisors

By:



APPROVED AS TO FORM:



Philip J. Pogledich,  
County Counsel

**EXHIBIT A**

**AMENDMENT NO. 15-32 TO AGREEMENT NO. 75-97, AGREEMENT FOR  
SEWAGE COLLECTION AND TREATMENT (EL MACERO SEWER  
INTERCEPTION PROJECT)**

**YOLO COUNTY /CITY OF DAVIS AGREEMENT NO. 15-32**

(Amendment to Agreement No. 75-97 with the City of Davis, relating to Sewage Collection and Treatment Services (El Macero Sewer Interceptor Project), to revise the Terms of Payment.)

This Agreement is made and entered into as of this 7th day of April, 2015, by and between the County of Yolo, a political subdivision of the State of California ("County"), and the City of Davis, a California municipal corporation ("City"), who agree as follows.

**RECITALS**

A. The City provides wastewater services to the El Macero County Service Area pursuant to Agreement No. 75-97, entitled "Agreement for Sewage Collection and Treatment (El Macero Sewer Interceptor Project) and entered into on April 7, 1975 ("1975 Agreement"). The El Macero County Service Area is defined in the 1975 Agreement and in this Amendment as the "County Service Area."

B. The City bills the County for sewer operation and maintenance for the El Macero County Service Area at the same monthly wastewater rate as is charged to connections within the City pursuant to Paragraph IV(C)(2) of the 1975 Agreement. The County, in turn, bills its customers within the County Service Area.

C. In 2008, the City revised its wastewater rates to include a variable charge component based on the average of the previous year's water use for the months of November through February (winter water usage). Residents of the County Service Area protested the increase in wastewater rates pursuant to the majority protest process for property-related fees under Proposition 218.

D. A dispute arose between the City and the County under the 1975 Agreement regarding the method for calculating the variable share portion of the wastewater rate for the County Service Area and the amount the County owes the City for wastewater services to the County Service Area following the City's adoption of revised wastewater rates in 2008 (the "El Macero Wastewater Fee Dispute").

E. The City and the County now desire to resolve the El Macero Wastewater Fee Dispute as negotiated herein between the City and the County.

NOW, THEREFORE, the City and the County agree as follows:

1. Paragraph I of Agreement No. 75-97 is hereby amended to add the following definition:

(I) "ccf" shall mean one hundred cubic feet of water (1 ccf = 748 gallons of water).

2. Paragraph IV(B)(2) of Agreement No. 75-97 is hereby amended to read as follows:

(2) For each year that City treats County sewage and in consideration of that year's use of the treatment plant, County shall pay to City, from revenue derived from the County Service

Area, an amount equal to the wholesale rates set forth in Paragraph IV(C)(2) below.

Said payment amount is to be paid in two (2) equal installments on or before December 31st and June 30th of each fiscal year.

3. Paragraph IV(C)(2) of Agreement No. 75-97 is hereby amended to read as follows:

County's share of operation and maintenance cost shall be a fee payable from revenue derived from the County Service Area for each connection within the County Service Area computed as follows:

- (i) Single Family Residences: For each single-family residence connection within the County Service Area, County shall pay to City the County's share of operation and maintenance costs computed at the same fixed base rate(s) and "per ccf" rate as shall be established and from time to time revised by City Parties as monthly charges for sewer operation and maintenance to be charged single-family residence connections within the City, provided, however, that the per ccf rate charged for County Service Area single-family residence connections shall be calculated based upon a wholesale bulk rate per each single-family residence connection equal to the prior year's recorded median winter water use for single-family residence ("SFR") connections within the City ("SFR Wholesale Rate"). The median winter water use bulk rate shall be adjusted annually as set forth below.

For example, as of the Effective Date of this Amendment, pursuant to Davis Municipal Code Section 33.04.050, the City monthly sewer charge for SFR connections was composed of a fixed base rate composed of both a cost/account (\$2.77) and cost/unit (\$19.11), plus a variable rate based on the average of the sewer customer's previous year winter water use from November through February at a rate of \$2.91 per ccf. Thus, pursuant to this Amendment, if the City SFR median was recorded as 6.5 CCF/month\*\* during the prior winter, the City would bill the County \$40.80 per each SFR connection in the County Service Area based upon current monthly billing charges, calculated as follows:  $\$2.77 + \$19.11 + (\text{Wholesale Rate of } \$2.91 \times 6.5/\text{ccf}) = \$40.80$ . [\*\*NOTE: As stated above, the CCF portion of this formula is variable and shall be equal to the prior year's recorded median winter water use for SFR's within the City.]

The City shall provide the County with the prior year's median winter water use for SFRs within the City no later than May 1<sup>st</sup> of each year. The County shall have 60 days from the date of its receipt of winter water use data to review and verify the winter water use data. Payment from the County to the City shall not be due until 30 days after the County's 60-day review period. The City shall provide the County with the median winter water use for SFR's within the City for years 2013/2014 within 60 days of the execution of this amendment, and payment for that period shall be rendered within 30 days after the County's 60-day review period.

- (ii) Multi-Family Residences: For each multi-family connection within the County Service Area, County shall pay to City the County's share of operation and maintenance costs computed at the same fixed base rate(s) and "per ccf" rate as shall be established and from time to time revised by City Parties as monthly charges for sewer operation and

maintenance to be charged to the applicable multi-family customer category connections (e.g., condo, duplex, triplex, or quadplex) within the City, provided, however, that the per ccf rate charged for County Service Area multi-family residence connections shall be calculated based upon a wholesale bulk rate per each multi-family residence equal to 76.1% of the median winter water use for single-family residence connections within the City ("MFR Wholesale Rate"). The median winter water use bulk rate shall be adjusted annually at the same time and in the same manner as the Single Family Residential bulk rate described in (ii) above.

- (iii) Clubhouse. For the El Macero County Club Clubhouse ("Clubhouse"), which is located in the County Service Area, County shall pay to City the County's share of operation and maintenance costs at a monthly rate based on the commercial-restaurant base rate(s), any additional charges that may, in the future, be applicable to commercial - restaurant users, and a variable rate ("per ccf" rate) based on the Clubhouse's winter water use at the same fixed base rate(s) and "per ccf" rate as shall be established and from time to time revised by City Parties as monthly charges for sewer operation and maintenance to be charged to commercial restaurant uses for the base rates and variable rates and any additional charges adopted and applied by City to commercial - restaurant users.
  - (iv) The SRF and MRF Wholesale Rates and the Clubhouse will be adjusted effective July 1 of each year for the next twelve months to reflect the then current (based on the preceding winter) city SRF or MRF median winter water use. This formula shall remain in effect unless the parties agree to a different formula; except as provided in Section 4, below.
  - (v) The County, with cooperation and support from City, will provide educational and informational outreach regarding water consumption and sewer rates to all County Service Area customers. The purpose of this section to provide timely usage data and information so that the County Service Area Customers are aware of their actual usage and fees.
  - (vi) City and County will monitor consumption-based sewer charges based on water usage and will meet at least annually to review this information. City intends to review and may modify the methodology used by the City for sewer charges. The parties shall meet and discuss the then current usage information from County Service Area customers and use their good faith efforts to agree on a bulk rate methodology and total cost to the County for sewer services provided to the County by the City.
4. The parties agree to meet and discuss the wholesale rates starting July 1, 2016 to determine whether the parties can agree to a methodology for on-going wholesale rates. Any such agreement shall be set forth in a new amendment to the 1975 Agreement that shall supersede this Agreement, which shall thereafter be of no further force or effect. If by June 30, 2020 the parties have not agreed on a wholesale rate that would either (1) continue the then current bulk rates or (2) implement a new or different bulk rate that is agreeable to the City and the County and the parties have confirmed this rate agreement through amendment to this Agreement, then either party, at its discretion, may give the other party written notice of intention to terminate




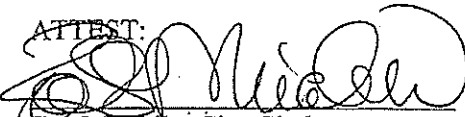
this Agreement three years from the date of such notice. During the period between the notice of intent to terminate and termination, the County shall continue to pay for sewer service in the manner described above. Failure to timely pay for sewer service during this period (or any other period) shall also be grounds for action pursuant to Paragraph IV(G) of the 1975 Agreement. This section is in addition to the provisions of Paragraph VI of the 1975 Agreement, which shall remain in effect.

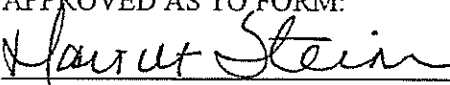
5. The City agrees to include a representative of the El Macero County Service Area Advisory Board in future community discussions of sewer rates and the methodology for determining sewer rates.
6. Except as specifically amended hereinabove, Agreement No. 75-97 shall remain in full force and effect according to its terms. In the event this Amendment is terminated as provided above, the amounts owed by the County to the City for services rendered prior to the effective date of termination shall be calculated pursuant to the terms and provisions of this Amendment. Nothing in this Agreement shall in any way affect any rights either party may have to terminate Agreement No. 75-97.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement as of the day and year first written above.

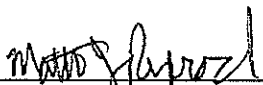
CITY OF DAVIS


  
\_\_\_\_\_  
Daniel M. Wolk, Mayor

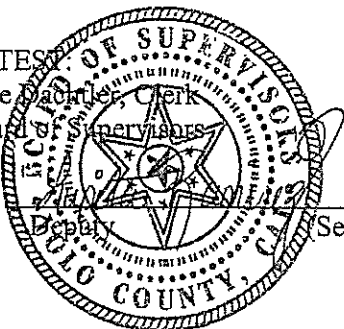
ATTEST:  
  
\_\_\_\_\_  
Zoe Mirabile, City Clerk  
City of Davis


APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Harriet A. Steiner  
City Attorney

COUNTY OF YOLO

  
\_\_\_\_\_  
Matt Rexroad, Chair  
Yolo County Board of Supervisors

ATTEST:  
Julie Dachtler, Clerk  
Board of Supervisors  
By:   
\_\_\_\_\_  
Deputy (Seal)



APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Phillip J. Pogledick  
County Counsel