

**OUT-OF-DISTRICT SEWER SERVICE AGREEMENT
BETWEEN THE GRATON COMMUNITY SERVICES DISTRICT AND PROPERTY
OWNER, MANZANA PRODUCTS CO INC, APNs: 130-090-002, 130-090-020, and 130-090-021
No. XXXXXX**

I. PARTIES

This Out-of-District Sewer Service Agreement between the Graton Community Services District and Manzana Products Co, Inc. (“Agreement”) is entered into by and between the GRATON COMMUNITY SERVICES DISTRICT, a body corporate and politic of the State of California, (“District”) and MANZANA PRODUCTS CO INC, (collectively “Landowner”).

II. RECITALS

- A. Landowner owns real property used for food processing purposes, commonly known as Manzana Products Co. Inc., 9141 and 1943 Green Valley Road and 3860 Ross Road, Sebastopol, CA 95472, ~~AP No. XXXXXXXX~~ Sonoma County APNs: 130-090-002, 130-090-020, and 130-090-021, which are collectively referred to as “Property” or “the Property” (“Property”). A map depicting the Property is attached hereto as Exhibit “A” which is incorporated herein by reference.
- B. On April 30, 2020, the District approved an Outside Service Area Agreement for public sewer service for the Property;
- ~~A.C.~~ Manzana previously paid all required connection fees for the April 30, 2020 public sewer service;
- D. District is willing to provide, and Landowner consents to accept, subject to the conditions set forth herein, collection and treatment of wastewater produced as a result of the business and associated processes performed by Landowner in accordance with this Agreement.
- ~~B.E.~~ District has capacity to serve the Landowner, as is set forth herein, with no physical changes to the environment.
- ~~C.F.~~ Landowner shall be responsible for the proper installation of all connection to the District’s sewer collection system infrastructure and must comply with all regulatory water quality requirements imposed by the District.

III. AGREEMENT

District and Landowner agree that the RECITALS set forth above are true and correct and are made a part of this Agreement, and further agree as follows:

- 1. TERM.** This Agreement shall have no defined term. Landowner or District may terminate this Agreement at any time during the Term by giving the other party ~~thirty (30) one (1) year) days~~ advance written notice of termination. Upon termination, any outstanding fees and balances shall become immediately due and owing.

2. **COST OF SEWER SERVICES FOR PROCESS WASTE WATER.** The District shall assess, annually, the adopted fee for providing sewer service to Landowner. Landowner ~~asserts~~ ~~represents~~ that the volume of process wastewater discharged into the District's sewer collection system is estimated to be 37,000 gallons per day (101 Equivalent Service Dwellings) with a strength of 50 mg/l of BOD and 50 mg/l of TSS. The initial first year fee will be based on this ~~assertion~~ estimate. On the calendar anniversary of the first wastewater discharge, and each subsequent year. ~~In subsequent years,~~ the District shall adjust the annual fee based on the actual reported volume process wastewater discharged and strength reported for the previous year.

~~The District contracts with the County of Sonoma and collects annual sewer service fees using the property tax bills. The District anticipates that this mechanism can be utilized as well for Landowner. In the event that the District cannot collect sewer fees using the services of the County of Sonoma, To accommodate adjustments to the annual fee,~~ Landowner's payment for sewer services shall be due within thirty (30) days of receipt of a semi-annual invoice.

Additionally, the District assesses "Connection and Capacity Fees" to all new connections. ~~These fees are due and payable at the time of connection.~~ Both Parties agree to a \$400,000 one-time Connection and Capacity Fee payment to District by Landowner; this payment shall be due and payable at the time the Landowner physically connects its system to the District's system.

3. **EQUIPMENT.** Landowner will pay for the installation, maintenance and repair of all equipment required to discharge wastewater into the District's public sewer collection system. District will maintain all municipal collection and treatment infrastructure.
4. **OPERATION.**

a. Both parties to this Agreement recognize and agree that the wastewater flow from Landowner will include co-mingled process wastewater from making food products from apples and domestic waste from the previously approved public sewer connection.

a-b. Both parties to this Agreement recognize and agree that the process wastewater discharge into the District's sewer system may be impacted by unforeseen conditions related to wet weather. Landowner agrees to cease discharge and store process wastewater, on-site at the request of the District. The District agrees to allow Landowner to increase process wastewater discharge volume, up to an amount not exceeding 45,000 gallons per day during dry weather periods, such that the average discharge does not exceed 37,000 gallons per day annually.

b-c. Other than in an emergency, District will attempt to give reasonable notice of any reduction, interruption, or cessation of process wastewater discharge by the Landowner in an effort to cause as minimal disturbance as possible to the Landowner and Landowner's discharge needs. However, District makes no guarantee that it will minimize prevent any such disturbances.

e-d. Landowner shall operate and maintain a continuous flow meter to monitor process flows prior to mixing with domestic wastewater. This flow data will be reported to the District annually, in writing, and available to the District on-line.

~~d.e.~~ Landowner shall collect process wastewater samples no less than weekly to measure BOD, pH and TSS concentrations. Additionally, Landowner will utilize the services of a certified third party analytical laboratory to collect monthly quarterly samples to measure BOD, pH and TSS concentrations. Samples shall be collected ~~for process wastewater prior to it being comingled with domestic wastewater. at the outlet of the Landowner's private system directly prior to discharge to the District.~~ Landowner agrees to conduct any additional reasonable process wastewater monitoring, requested by the State or in the event that at the request of the District is experiencing a treatment process upset; and is required to adequately assess and characterize the process wastewater to manage its impact on the District's treatment process.

~~e.f.~~ Landowner shall coordinate with District regarding any all-process wastewater discharge service needs or changes.

5. COMPLIANCE WITH LAW.

- a. Landowner agrees to pre-treat and discharge process wastewater, under this Agreement, in such a manner that is in compliance with all applicable laws.
- b. Landowner shall comply with all of the terms of the Wastewater Discharge Permit issued by the District.
- c. Landowner's non-compliance with relevant water quality laws, ordinances, permit requirements or regulations governing the use of the District's municipal sewer collection and treatment system, will be a breach of this Agreement and the District may immediately terminate this agreement.
- d. Landowner hereby grants District, its employees, officers, directors, and agents, permission to enter the property for the purpose of conducting inspections to confirm compliance with all applicable laws, ordinances, regulations, and the terms of this Agreement. District shall be accompanied by Landowner or its representative at all times while on the property.

6. CHANGE IN OWNERSHIP USE. Should a change of ownership (by sale, death, assignment or otherwise) occur, Landowner's successor(s) in interest must enter into a new Agreement with the District for sewer service. This Agreement is NOT assignable to a new owner.

7. LIMITED RIGHTS. This Agreement does not create any entitlement to sewer service or any other right or interest under California and/or Federal laws, nor does it create any right or interest which attaches to the Property.

8. NO THIRD-PARTY BENEFICIARIES. The Parties expressly acknowledge that it is not their intent to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The Parties intend and expressly agree that only the parties to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of the

Commented [TW1]: This will be the basis for a use permit, so it must run with the land. I think the issue is a change in use and an accompanying change in wastewater that would be sent to the district.

performance or failure to perform any term or condition of this Agreement, or to bring an action for breach of this Agreement.

9. MEDIATION OF DISPUTE/ ARBITRATION.

- a. **MEDIATION.** The parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action, provided that the disputes that are listed below as not being required to be arbitrated hereunder shall not be required to be mediated hereunder, whether or not the Arbitration of Disputes provision is initialed below. Mediation fees, if any, shall be divided equally among the parties involved. If any party commences a court action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, or does not participate in the mediation in a good faith attempt to resolve any claim, dispute or other matter that is the subject of the mediation, then that party shall not be entitled to recover attorneys' fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

- b. **ARBITRATION OF DISPUTES.** The parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge, justice or attorney, experienced with the arbitration of real estate disputes in Sonoma County and with no personal or business relationship with the owners, unless the parties mutually agree to a different arbitrator. The arbitrator shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The following types of disputes are not required to be arbitrated hereunder: (i) Non-judicial or judicial foreclosure, (ii) other actions to enforce a lien, (iii) an action for unlawful detainer, (iv) any probate court or small claims court matter, and (v) the filing or enforcement of a mechanic's lien.

“NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION IS VOLUNTARY.”

“WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL ARBITRATION.”

Landowner Initials

District Initials

10. INDEMNIFICATION: Landowner, on behalf of itself, its heirs, guests, agents, contractors, subsidiaries, affiliates, shareholders, officers, directors, successors in interest, assignees, and beneficiaries, agrees to assume all risk of loss or damage to its operation arising out of or in any way related to the delivery of the services provided by the District. Landowner further agrees to defend, indemnify, and hold harmless district, its officers, directors officials, employees, agents, attorneys, volunteers, and operators from any claims, damages, costs, attorney’s fees, or causes of action which they have or may have in the future, as a result of damages, injuries, including death, sustained or incurred by any party related to use and delivery of recycled water, from whatever cause, including, but not limited to, the negligence, breach of contract, or wrongful conduct of the parties.

District, on behalf of itself, its heirs, guests, agents, contractors, subsidiaries, affiliates, shareholders, officers, directors, successors in interest, assignees, and beneficiaries, agrees to assume all risk of loss or damage to its wastewater treatment facility arising out of or in any way related to the delivery of the services provided by the District. District further agrees to defend, indemnify, and hold harmless Landowner, its officers, directors officials, employees, agents, attorneys, volunteers, and operators from any claims, damages, costs, attorney’s fees, or causes of action which they have or may have in the future, as a result of damages, injuries, including death, sustained or incurred by any party related to the provision of wastewater treatment services, from whatever cause, including, but not limited to, the negligence, breach of contract, or wrongful conduct of the parties.

~~10.~~**11. LAFCO:** This agreement shall not be effective until Sonoma County LAFCO has reviewed and approved it and this Agreement has been recorded with the Sonoma County Recorder’s Office.

12. ENTIRE AGREEMENT. This Agreement integrates all terms and conditions, and constitutes the entire agreement between the Parties. Any prior arrangements, agreements, warranties, representations, or undertakings are superseded. No verbal agreements or conversations with any public official or employee of the District, either before or after execution of this Agreement, shall affect or modify any of the terms or obligations contained in this Agreement.

~~11.~~**13. Domestic Wastewater.** Nothing in this Agreement shall change District’s April 30, 2020 agreement to accept domestic waste from the Property.

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IN WITNESS THEREOF, the Board of Directors of ~~the Forestville Water Distr~~ Graton Community Services District ~~et~~ approved this Agreement at their ~~June 8, 2021~~ Board Meeting; and the Parties hereto have executed this Agreement as set forth below. Landowner’s signature verifies that he or she has read, understands, acknowledges, and agrees to all terms of this Agreement as well as regulations pertaining to process wastewater discharge ~~recycled water~~ as referenced herein.

MANZANA PRODUCTS CO INC:

By: _____

Name: _____

Date: _____

GRATON COMMUNITY SERVICES
DISTRICT

By: _____

President, Board of Directors

Date: _____