

**AMENDMENT AND RESTATEMENT OF PROFESSIONAL SERVICES
AGREEMENT**

This AMENDMENT and RESTATEMENT ~~TO~~of Professional Services AGREEMENT Agreement (“AGREEMENTAmendment and Restatement”) is entered into as of the 20th-12th day of JanuaryOctober, 2016-2021 (“Commencement Date”), by and between San Simeon Community Services District (“SSCSD”) and Grace Environmental Services, LLC, a California limited liability corporation (“GES”) (collectively, (“Parties”)).

I. RECITALS

A. SSCSD is formed and operates pursuant to Government Code Section 61000, et seq. in the County of San Luis Obispo.

B. GES is a California Limited Liability Corporation registered with the State of California; Charles Grace (“Mr. Grace”) is GES’ sole and managing member.

A.C. ~~The~~ SSCSD owns and has all applicable permits for:

- (a) a wastewater collection and treatment system located in and around San Simeon, CA, generally consisting of less than 5 miles of sewer lines, headworks, biological wastewater treatment, disinfection, effluent disposal via ocean outfall, and related equipment; and
- (b) a water supply, storage, and distribution system located in and around San Simeon, generally consisting of 2 wells, 1 emergency well, 1 storage tank, up to 250 connections, less than 5 miles of distribution lines, and related equipment; and
- (c) local two-lane roads (less than 5 miles) maintained by the SSCSD; and
- (d) a street lighting system with approximately 50 active streetlights; and
- (e) the District office building

The foregoing shall be collectively known and referred to hereinafter as “FACILITY”. ~~The SSCSD affirms that all such facilities (“FACILITY”) are built in accordance with all applicable local, state and federal regulations and that FACILITY is in compliance with applicable, state and federal regulation, does not contain any known regulatory violations or defective equipment, and is suitable and adequate for the reasonable needs of its present and expected future operations.~~

D. In January 2016, SSCSD entered into a Professional Services Agreement with GES (“2016 Agreement”) for the operation of the FACILITY and general management of the district as more specifically identified in Section IV of the 2016 Agreement (“2016 Scope of

Services”).

E. Since the execution of the 2016 Agreement, certain ambiguities have arisen in regards to the rights, roles, and obligations of the Parties related to the 2016 Agreement.

F. The purpose of this Amendment and Restatement is to clarify areas of ambiguity in the 2016 Agreement, more specifically define the rights and obligations of the Parties and amend and restate the 2016 Agreement to effectuate the Parties’ intent for the benefit of good governance and transparency.

II. STATEMENT OF PURPOSE

This ~~Amendment and Restatement~~**AGREEMENT** provides for GES to furnish to SSCSD ~~certain comprehensive~~ services for the ~~general~~ management, maintenance and operation of ~~the SSCSD and the~~ FACILITY, and to receive compensation from SSCSD for those services rendered in accordance with the ~~below presented~~following terms and conditions.

IVIII. ADMINISTRATION OF THIS AMENDMENT AND RESTATEMENT

It is expressly understood that GES will perform its contractual obligations at the pleasure of the SSCSD Board of Directors, subject to termination at any time, with or without cause. Neither GES, nor its managing members, agents or employees, shall have any discretion as to the administration and/or interpretation of this Amendment and Restatement. —Any perceived ambiguities shall be brought to the Board for discussion and resolution. Other than emergency expenses (subject to limitations in Section V.H) GES shall not incur any expenses on behalf of the SSCSD or obligate the SSCSD to any costs or obligations without the expressed and advanced authorization of SSCSD Board of Directors.

IIIV. TERM OF AMENDMENT AND RESTATEMENT~~AGREEMENT~~

This ~~AGREEMENT—Amendment and Restatement~~ shall remain in effect ~~from—the Commencement Date for a Five (5) year period~~until January 20, 2023, subject to the right of either party to terminate as set forth in ~~Article—Section VIII~~X.—This ~~AGREEMENT shall automatically extend for an additional period of two (2) years unless notice to cancel is received sixty (60) days prior to AGREEMENT termination.~~

IV. SCOPE OF SERVICES

Unless otherwise specifically stated, all direct operational costs for the below listed operation and maintenance services are included in GES's costs and included as part of the base Amendment and Restatement AGREEMENT price.

A. Scope General Management. GES shall furnish all necessary labor, materials, equipment, and supplies necessary for the management and operations of the FACILITY. This shall include the day-to-day physical tasks of operating the FACILITY, performing routine water and wastewater quality monitoring, physically performing the preventative maintenance of the FACILITY, and maintaining the daily operational records of the FACILITY.

GES shall also act as appointed general manager of SSCSD pursuant to California Government Code Section 61050 and as defined by Government Code Section 61002(f). As appointed general manager, GES shall be responsible for the following tasks as identified in Government Code Section 61051:

- (a) The implementation of the policies established by the board of directors for the operation of the district.
- (b) The appointment, supervision, discipline, and dismissal of the district's employees, consistent with the employee relations system established by the board of directors.
- (c) The supervision of the district's facilities and services.
- (d) The supervision of the district's finances.

GES shall also serve as the General Manager and fulfill the duties of General Manager as identified in and pursuant to the provisions of Sections 4.03 and 5.01 of the SSCSD Policy Handbook. As GES' sole and managing member, Mr. Grace shall take the oath of office for public officers.

B. Office Management. GES further agrees to provide ~~, on behalf of the SSCSD,~~ the following services associated with office management:

- 1) Maintaining District files, Board Ordinances, Resolutions and Minutes
- 2) District customer billing and collection
- 3) Preparation and mailing of customers' water bills
- 4) Depositing of collected funds
- 5) Maintaining records of deposits for auditing
- 6) Respond to customer inquiries
- 7) Coordinate with the District's accountant
- 8) Process accounts receivable, accounts payable and aged receivables
- 9) Attend Board of Director meetings
- 10) Prepare and post Board packets and prepare minutes of meetings

- 11) Respond to public records requests
- 12) Participate in annual budget preparation with District's Budget Sub-Committee
- 13) Prepare and distribute quarterly newsletter
- 14) Staff and operate the District office. Schedule regular hours, answer telephones, respond to mail
- 15) Oversee the maintenance of District's permits and licenses as required by regulatory agencies
- ~~15)~~16) The employment, supervision, discipline, and dismissal of GES employees

A.C. Definitions. For the purposes of this ~~AGREEMENT~~ Amendment and Restatement the following definitions shall apply:

1. "Preventive Maintenance" shall mean periodic scheduled maintenance including valve exercising and line flushing.
2. "Corrective Maintenance or Repair" shall mean any non-preventive maintenance or repair of the machinery, equipment, structures or improvements constituting a part of the FACILITY and having a cost (excluding overhead, profit and all costs associated with the labor of -GES or its employees, agents or subcontractors), up to two thousand five hundred dollars (\$2,500.00).
3. "Capital Maintenance, Repairs, or Replacements" shall mean means any renewal, repair or replacement of the machinery, equipment, structures or improvements constituting a part of the FACILITY and having a cost (excluding overhead, profit and all costs associated with the labor of GES or its employees, agents or subcontractors) equal to or greater than two thousand five hundred dollars (\$2,500.00).
4. Change in the Scope of Services" means those events or services which either change the basis of cost or add additional scope to the services provided in this AGREEMENT. Any change in scope increasing the cost to GES shall result in an increase in cost to SSCSD.

~~B.D.~~ FACILITY Operation and Maintenance. To the limit of \$40,000 annually, GES shall provide Preventive and Corrective Maintenance or Repairs for FACILITY, consistent with good preventive maintenance practice or manufacturer's specifications. GES employees' on-site labor cost shall not be included when calculating such annual FACILITY maintenance amounts. GES shall not add any markup, such as for profit or overhead, to the costs for outside contractors it uses for Preventive or Corrective Maintenance or Repair work herein. SSCSD shall be responsible for and pay all Capital

Maintenance, Repair and Replacement costs as defined above.

~~C.E.~~ FACILITY Maintenance Rebates. If, in any fiscal year, the above limit is not exceeded, GES will, at SSCSD's option: -(a) rebate to SSCSD, within sixty (60) days of the end of said year, the difference between such annual limit and the amount expended by GES, or (b) add the difference to the subsequent year's maintenance fund. SSCSD shall be responsible for and pay all Preventive and Corrective Maintenance or Repair costs exceeding said annual limit, but GES shall not make said excess expenditures without SSCSD's prior approval. SSCSD shall not unreasonably withhold such approval.

~~D.F.~~ Payment of Expenses. All vendors and subcontractors retained by GES to assist GES in providing FACILITY management, maintenance and operation, will be timely paid by GES. Should GES fail to timely pay such invoices, SSCSD may, but is not required to, pay the invoices and withhold such payments from GES' monthly compensation.

~~E.G.~~ Repairs Accounting. GES shall on a monthly basis provide SSCSD with copies of all maintenance and repairs provided pursuant to this Amendment and Restatement AGREEMENT.

~~F.H.~~ Emergency Maintenance. GES shall have the right to make reasonable emergency capital expenditures up to two thousand five hundred dollars (\$2,500.00) with the approval from one of the Board of Directors if: (a) SSCSD is not available for prior approval of such action; and (b) if such expenditures are necessary to continue operation of FACILITY in order to provide for public safety and environmental protection; and (c) GES notifies SSCSD as soon as reasonably possible of its actions. SSCSD shall reimburse GES within forty five (45) days of such expenditure by GES.

~~G.I.~~ Operational Testing. Sample collection and analyses required for governmental reporting on FACILITY as of the effective date of this Amendment and Restatement AGREEMENT shall be performed by GES, which shall be included in the Amendment and Restatement AGREEMENT price.

~~H.J.~~ Chemical and Materials Inventory. GES shall purchase and maintain an inventory of chemicals routinely used in the operation of FACILITY. Chemical inventories shall be stored at the site in compliance with OSHA and in quantities sufficient for the continuous operation of FACILITY.

~~I.K.~~ Sludge Disposal. SSCSD shall retain ownership of all FACILITY water and wastewater sludge and byproducts; GES shall dispose of same in a manner approved by State of California regulatory agencies. GES's price herein includes the cost of disposing of wastewater sludge. Any change in that method, quantity, or its cost caused solely by third parties shall be a change of scope and cause for a price adjustment.

~~J.L.~~ Electricity. The cost for electricity (including the electric power for operating the street

lights) needed to operate the FACILITY are included in GES's scope of work.

~~K.M.~~ K. Unit Cost Increase/Decrease for Electric Power. ~~The parties acknowledge that the total electrical costs for SSCSD from August 2014 through August 2015 were \$68,216.~~ GES agrees to pay the electrical cost of the SSCSD up to an amount of \$66,000 per fiscal year. Any overage shall be paid by SSCSD. ~~for by the CLIENT.~~ If at the end of the fiscal year the electrical cost to the SSCSD is less than \$66,000, GES will rebate the client the difference. —A reasonable estimate of electrical overage cost shall be included in the SSCSD annual budget.

~~L.N.~~ SSCSD Interaction. Representatives of GES shall attend regular SSCSD Board meetings where the scope of its services is involved, as reasonably requested. GES shall respond to scope related correspondence and/or inquiries from SSCSD in a prompt and professional manner.

~~M.O.~~ Staffing. GES shall staff the FACILITY eight (8) hours per day, five (5) days per week. Staffing shall be reviewed and approved by SSCSD. GES shall respond to after-hours emergency calls for service within sixty (60) minutes. GES shall provide weekend and holiday coverage as necessary for permit compliance.

~~N.P.~~ Emergency Response. GES shall respond to emergency calls regarding FACILITY within sixty (60) minutes from the time of notification. GES shall respond to such calls twenty-four (24) hours per day, seven (7) days per week. Such emergency response calls are included in GES's price for services listed herein.

~~O.Q.~~ Reports. GES shall promptly prepare and submit regular monthly and/or yearly compliance reports as may be required by the Regional Water Quality Control Board, or any other local, state, or federal agency having jurisdiction over FACILITY. All regulatory reports shall be approved and signed by the operator of record. Copies of all regulatory reports and communications (if such are required) shall be sent to SSCSD each month and made available at the District Office for review.

~~P.R.~~ Water Customer Service. GES shall perform meter readings for FACILITY and supply the data to SSCSD. GES's base Amendment and Restatement AGREEMENT price includes reading the meters for up to two hundred and fifty (250) connections on a scheduled monthly basis. Should connections exceed 250, GES shall receive an additional \$250 per meter.

~~Q.S.~~ Turn-on and Turn-off Services. As necessary, GES shall perform turn-on and turn-off services directly related to the proper care and maintenance of the FACILITY. The Amendment and Restatement AGREEMENT price includes all turn-on and/or turn-off service up to twenty four (24) meters per year. GES shall receive \$250 per meter when the number of turn-on/turn/off services GES performed is more than twenty four (24) per year.

~~R.T.~~ Billing and Collection. GES shall bill each SSCSD customer for water in accordance with SSCSD's then current Rate Structure and for sewer services in accordance with SSCSD's current rate. GES shall deposit all money received for both water and sewer into an account at a bank or other qualified depository designated by SSCSD. GES shall provide these services out of the San Simeon Community Services District Office, and all inquiries, communications and services shall be provided from/to that point. Normal and reasonable response to account inquiries by SSCSD customers to the Billing and Collection staff are included in the fee. The billing and collection duties of GES in this AGREEMENT include the following:

- 1) Initiating service orders for billing-related fieldwork.
- 2) Proofing deposits and refunds prior to distribution.
- 3) Preparing, printing, and mailing accurate bills on time.
- 4) Maintaining and preparing aged receivables for SSCSD for resolution according to SSCSD's policy or Board directives.
- 5) Researching and responding to customer inquiries and,
- 6) Working with SSCSD's accountant for maintenance of the SSCSD's books.

~~S.U.~~ Sewer Collection Calls. GES shall promptly respond to all collection system call-out to assess initial GES, SSCSD or property owner responsibility. If the problem is a clearable blockage within the SSCSD's sanitary sewer lines and not within property owner's line(s), ~~GES shall clear the sewer blockage. If the blockage cannot be cleared using available equipment, -) GES's on-scene coordinator shall exercise best professional judgment to contact a subcontractor or to rent necessary and appropriate equipment for use by GES personnel. The SSCSD shall be billed the direct costs for any third party costs to clear blockages to its sanitary sewer lines, and repair.~~

~~T.V.~~ Sewer Collection Cleaning. The collection system shall be cleaned approximately ~~50~~100% ~~each every other~~ year. SSCSD shall provide the necessary water for sewer line cleaning at no cost to GES. During the annual line cleaning, GES shall inspect and report on manholes, noting where repairs are needed.

~~U.W.~~ Street Sweeping and flushing. GES shall provide semi-annual street sweeping and regular system flushing through fire hydrants and exercising of all system valves.

~~V.X.~~ Weed Abatement. GES shall provide for FACILITY weed abatement, however the cost for weed abatement in unimproved right of ways shall be independently budgeted and approved by the SSCSD Board of Directors.

~~W.Y.~~ Miscellaneous Expenses of GES. Unless otherwise specified herein, GES shall pay for all lab supplies, tools and equipment owned by GES, uniforms, chemicals, oxygen, postage and deliver specific to customer billing, conferences for GES staff and personnel, safety supplied for use of GES staff and personnel, office expenses and supplies, training and education for GES staff and personnel, office telephone and internet service and cell phones for GES staff and personnel, FACILITY garbage and waste disposal, alarm service,

automobile expenses, fuel, insurance, and the cost of GES computer equipment supplies and maintenance.

VI. RIGHT TO AUDIT

GES shall establish and maintain a reasonable accounting system that enables SSCSD to readily identify GES's expenses, costs of goods, and use of funds arising out of or related to those services to be provided by GES in accordance with Section V, subsections D, H, K, M, S, T and U of this Amendment and Restatement ("Auditable Provisions"). SSCSD and its authorized accountants and auditors shall have the right to audit, examine, and make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the above referenced Auditable Provisions owned by GES, including, but not limited to those kept by GES, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; memoranda; and correspondence. GES shall, at all times during the term of this Amendment and Restatement and for a period of three years after the completion of this Amendment and Restatement maintain such records, together with such supporting or underlying documents and materials. GES shall at any time requested by SSCSD, whether during or after completion of this Amendment and Restatement, and at GES's own expense make such records available for inspection and audit (including copies and extracts of records as required) by SSCSD. Such records shall be made available to SSCSD during normal business hours at the SSCSD's business office without delay. GES shall ensure these rights shall be explicitly included in any subcontracts or agreements formed between the GES and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the GES's obligations to SSCSD under this Section VI. If the audit identifies misappropriation or misallocation of SSCSD funds or overpricing or overcharges (of any nature) by GES to SSCSD in excess of one-half of one percent (.5%) of the total contract allocations, GES shall reimburse SSCSD for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, SSCSD may recoup the costs of the audit work from GES. Any adjustments and/or payments that must be made as a result of any such audit or inspection of GES invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of SSCSD's findings to GES.

VII. THE SSCSD'S RESPONSIBILITIES

- A. Payment. SSCSD shall pay to GES compensation for the services specifically described herein the lump sum payment of \$56,231.95 per month. Payment is due on the second Wednesday of the month that service is to be rendered. Late payments shall be subject to a service charge of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is less. Interest shall accrue from the last day of the month following the date of invoice until the payment is received by GES. SSCSD is responsible for all “Capital Maintenance, Repairs, or Replacements”.
- B. General Provision for Adjustments. If any changes in the scope of operations under this AGREEMENT Amendment and Restatement should occur, including, but not limited to, changes in government regulations, reporting requirements and water supply conditions or standards that change the cost of contract operations, at no fault of GES, GES shall request receive from SSCSD an AGREEMENT a compensation adjustment for the additional scope. Such compensation adjustment shall be negotiated in good faith by SSCSD and GES within sixty (60) days of receiving such request.
- C. Annual Adjustment. At the start of each new SSCSD fiscal year (July 1 through June 30), the monthly invoiced amount shall increase by the most recent July-June Consumer Price Index as published by the U.S. Bureau of Labor Statistics (CPI-U) for the Los Angeles-Riverside-Orange Co. (CA) Region. Section V. items D and M shall not be included when calculating the annual adjustment.
- D. Licenses. SSCSD shall remain the named licensee on any and all licenses that may be required, shall pay for all costs, and shall meet all regulatory requirements not specifically assumed herein by GES as its responsibility.
- E. Permits. SSCSD shall remain the named permittee on any and all permits that may be required, shall pay for all costs, and shall meet all regulatory requirements not specifically assumed herein by GES as its responsibility.
- F. Record Drawings and Data. SSCSD shall provide GES with the available set of record drawings of FACILITY upon commencement of the AGREEMENT Amendment and Restatement. GES shall maintain these drawings in a manner which allows their efficient and effective use in solving system problems. Both parties agree that operating data from the FACILITY is and remains the property of SSCSD.
- G. Equipment. SSCSD shall provide its equipment onsite for use in the operation and maintenance of FACILITY at no cost to GES. GES shall maintain said equipment and use it with reasonable care, according to manufacturer’s recommendation.
- H. Accounting. SSCSD shall provide for all bookkeeping, accounting, and audit services not otherwise provided by GES herein.
- I. Capital Cost. SSCSD is responsible for paying for all “Capital Maintenance, Repairs, or

Replacements”, as defined above, for the project.

J. Foreseeable Costs. SSCSD shall budget for reasonable and foreseeable costs not specifically allocated to GES by this Amendment and Restatement on an annual basis.

VIII. INSURANCE

- A. Following execution of this ~~AGREEMENT~~Amendment and Restatement, GES shall have its insurance carrier(s) issue direct to SSCSD certificates of insurance for the following coverage:
1. Worker’s Compensation as prescribed by law;
 2. Comprehensive General Liability, including umbrella coverage of \$2,000,000;
 3. Vehicle Liability Coverage (for bodily injury and property damage, combined single limit) of not less than \$1,000,000;
 4. Employer’s Liability (covers criminal or fraudulent acts of employees) of \$2,000,000.
- B. GES affirms that above referenced insurance shall be maintained in force throughout the term of this Amendment and Restatement.~~AGREEMENT~~.
- C. The insurance provided by GES will be primary and noncontributory.
- D. SSCSD, its Board members, agents and attorneys, must be named as additional insureds under the General Liability, Vehicle Liability and Employer’s Liability policies.
- E. Each insurance policy required by this Amendment and Restatement~~AGREEMENT~~ must contain a provision that no termination, cancellation, or change of coverage can be made without thirty (30) days’ notice to SSCSD.
- F. Insurance required by this Amendment and Restatement ~~AGREEMENT~~ will be satisfactory only if issued by companies admitted to do business in California, rated “B+” or better in the most recent edition of Best’s Key Rating Guide, and only if they are of a financial category Class VII or better.

VHIX. GUARANTEES, INDEMNITY AND LIMITATIONS

- A. Standard of Skill. GES affirms that GES staff is skilled in the professional calling necessary to perform the work agreed to be done pursuant to this AGREEMENT Amendment and Restatement. SSCSD relies upon the skill of GES staff to do and perform such work in a skillful manner. The acceptance of GES's work by the SSCSD shall not operate as a release of GES from such standard of care and workmanship.
- B. Certified Personnel. GES affirms that FACILITY shall be operated under the supervision of ~~personnel~~ who possess valid and current water operator certification as and if required by the State of California and shall provide uninterrupted, safe, timely professional and reliable management of the FACILITY in a cost effective and businesslike manner and in accordance with this AGREEMENT Amendment and Restatement.
- C. GES General ~~Manager~~ Management. ~~GES shall appoint a manager of of the FACILITY (the "General Manager")~~ Mr. Grace, as the sole and managing member of GES, warrants and represents that he is ~~who shall be~~ experienced and proficient in the management and operation of a Special District including water and wastewater treatment systems comparable to the FACILITY and be otherwise appropriately certified under Applicable Law. GES acknowledges ~~that the performance of the individual serving from time to time as the General Manager will have a~~ that the appointment of Mr. Grace has a material bearing on the quality of service provided hereunder, and that effective cooperation between the SSCSD and Mr. Grace ~~the General Manager will be essential~~ is essential to effectuating the intent and purposes of this AGREEMENT Amendment and Restatement. ~~Accordingly, not fewer than sixty (60) days prior to the date on which any candidate for General Manager from time to time during the Term is proposed by GES to assume managerial responsibility for the Facility, GES shall: (1) provide SSCSD with a comprehensive resume of the candidate's licenses, training, experience, skills and approach to management and customer relations; and (2) afford the SSCSD an opportunity to interview the candidate with respect to such matters. The SSCSD shall have the right within thirty (30) days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The initial General Manager, Charles Grace, shall not be replaced, unless otherwise approved by the SSCSD in its sole discretion, for a period of two years after the Commencement Date absent retirement, death, disability, resignation or cessation of employment with GES~~
- D. Safety Requirement. GES affirms that all work under this AGREEMENT Amendment and Restatement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL OSHA with respect to all matters within GES's responsibility and control.
- E. Guarantees. GES shall use generally accepted business practices to procure materials and replacement equipment. GES shall not be responsible to SSCSD for any guaranty in connection with such materials or replacement equipment. GES shall assert reasonable efforts to obtain the normal guaranties applicable in the particular industry manufacturing

such materials or replacement equipment, and shall assign same to SSCSD.

- F. Damage to FACILITY. GES shall not be required to repair any portion of FACILITY damaged due to flood, fire, explosion, riot, revolution, civil disturbance, war, or other acts of God or any other cause whatsoever beyond the control of GES or due to the acts or omissions of any other entity or person(s) other than GES, its employees, agents, representatives, or subcontractors. GES agrees to notify SSCSD of such damage, both orally and in writing, as soon as possible after the occurrence of the above crises or acts.
- G. Ownership. Each and every report, draft, work product, map, record and other document reproduced, prepared, or caused to be prepared by GES pursuant to the business of the SSCSD shall be the exclusive property of the SSCSD.
- H. Indemnity. GES hereby agrees to indemnify and hold harmless SSCSD, its Board members, agents, servants, and attorneys, from any liability for damages or claims for personal injury (including death) or for property damages which directly arise from its willful or negligent operations under this Amendment and Restatement AGREEMENT, whether such operations be conducted by GES or any of its employees, agents or subcontractors. GES shall not be liable to SSCSD and SSCSD shall indemnify and hold harmless GES, its officers, supervisors, employees, agents and representatives from any claim, loss, liability, damage, injury, or expense, including attorney's fees which arise or are related to this Amendment and Restatement from any cause other than intentional, willful, or negligent operations or conduct of GES or any of its employees, agents or subcontractors.
- I. Force Majeure. GES shall not be deemed to be in default if performance of the obligations required by this Amendment and Restatement AGREEMENT is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the parties ("Force Majeure"). Upon occurrence of any such event, GES shall operate FACILITY on a "best reasonable effort" basis and shall not be responsible for damages, fines, penalties, or claims resulting therefrom. If any additional expense is incurred by GES in such operation, those expenses shall be reimbursed to GES by SSCSD.
- J. Prior Experience. GES has trained personnel who shall be assigned to perform the Services required under this Amendment and Restatement AGREEMENT, and such GES personnel have experience operating and maintaining facilities similar to the FACILITY in accordance with Prudent Industry Practices. GES has planned and budgeted for providing experienced personnel that shall be available to ensure compliance with this Amendment and Restatement AGREEMENT.
- K. Fines and Penalties. GES shall pay any and all fines or penalties against SSCSD as a result of actions taken by the California Department of Health, Regional Water Quality Control Board or U.S. EPA arising from the negligent operation of the FACILITY. In- other cases

beyond GES' control, such as, force majeure, SSCSD shall be responsible for paying any and all fines and penalties levied by the California Department of Health, Regional Water Quality Control Board or U.S. EPA or other organization.

- L. Independent Contractor. GES is retained and employed by SSCSD only to the extent set forth in this Amendment and Restatement AGREEMENT, and GES' and all of its employees', agents' and subcontractors' relationship to the SSCSD is that of independent contractor.
- M. Invalid Provisions. The parties agree that in the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity thereof shall in no way affect any other provision in this Amendment and Restatement AGREEMENT unless it materially affects either SSCSD or GES in their respective rights and obligation hereunder.
- N. Interest of GES. GES covenants that it presently has no interest, (and shall not acquire any such interest without prompt notification to SSCSD), direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. GES further covenants that, in the performance of this Amendment and Restatement AGREEMENT, no subcontractor or person having such an interest shall be employed. GES certifies that no one who has or shall have any financial interest under this Amendment and Restatement AGREEMENT is an officer or employee of SSCSD, respectively. It is expressly agreed that, in the performance of the services hereunder, GES shall at all times be deemed an independent contractor and not an agent or employee of SSCSD, respectively.

N.O. The Parties mutually agree to cooperate in good faith regarding any necessary amendments and/or modifications to this Amendment and Restatement.

VHX. TERMINATION OF AMENDMENT AND RESTATEMENT AGREEMENT

- A. Notwithstanding any other provision of this Amendment and Restatement AGREEMENT, SSCSD may terminate this Amendment and Restatement AGREEMENT, at any time, with or without cause by giving at least thirty (30) days prior written notice to GES. In the event that Mr. Grace is unable or unwilling to perform his obligations as managing member of GES pursuant to this Amendment and Restatement, SSCSD may, at its sole discretion, terminate this Amendment and Restatement immediately.
- B. If either party fails to perform any term, covenant or condition in this Amendment and Restatement AGREEMENT and that failure continues for fifteen (15) calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Amendment and Restatement AGREEMENT may be terminated for cause.
- C. In the event of termination, SSCSD shall pay GES compensation pursuant to this

Amendment and Restatement AGREEMENT up to the date of termination (pro-rated for less than a full month, if necessary) and any unpaid expenses incurred by GES pursuant to this Amendment and Restatement AGREEMENT.

IXI. MISCELLANEOUS

- A. Integration; Amendment. This Amendment and Restatement AGREEMENT represents the entire understanding of SSCSD and GES as to those matters contained in it. ~~Bo~~ No prior oral or written understanding will be of any force or effect with respect to the terms of this Amendment and Restatement AGREEMENT. The Amendment and Restatement AGREEMENT may not be modified or altered except in writing signed by both parties.
- B. Assignability. This Amendment and Restatement AGREEMENT shall not be assigned by either party without the prior written consent of the other.
- C. Flow rate. Both parties agree that this Amendment and Restatement AGREEMENT is based on the FACILITY; (a) treating an annual average of 100,000 gal/day, 200 lbs/day BOD₅ and 250 lbs/day TSS₅ at the wastewater treatment plant and (b) treating and supplying an annual average of 100,000 gal/day of potable water. Should the actual flows or loadings treated change from any of these levels by more than ten percent (10%) the price differential for such operation shall be agreed to by the parties. ~~per the General Provision for Adjustment within Section V. of this AGREEMENT.~~
- ~~D. Attorney fees. In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this AGREEMENT, or the breach thereof, the prevailing party shall be entitled, in addition to other such relief as may be granted, to a reasonable sum as and for attorney fees.~~
- ~~E.~~ D. Notice. Such notice as required under this Amendment and Restatement AGREEMENT shall be in writing and shall be sent by certified or registered mail, return receipt requested, overnight courier, or personal delivery to the intended party's address of record. Notice shall be deemed to have been given when the notice was mailed to the following addresses of record:

GES

Grace Environmental Services, LLC.
2060 E. Avenida De Los Arboles
Thousand Oaks CA. 91362

SSCS

San Simeon Community Services District
111 Pico Avenue
San Simeon, CA 93452

F.E. Governing Law; Jurisdiction. This Amendment and Restatement~~This AGREEMENT~~ will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Amendment and Restatement~~AGREEMENT~~ will be in San Luis Obispo County, California.

G.F. Severability. If any part of this Amendment and Restatement ~~AGREEMENT~~ is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Amendment and Restatement~~AGREEMENT~~ will remain in full force and effect.

H.G. Waiver of Breach. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Amendment and Restatement~~AGREEMENT~~.

In witness whereof, GES and SSCSD have caused this Amendment and Restatement~~AGREEMENT~~ to be executed by their duly authorized officers.

FOR SSCSD

San Simeon Community Services District

Name

Signature

DATE: _____

FOR GES

Grace Environmental Services, LLC.

Name

Signature

DATE: _____