

DRAFT Agreement for Wastewater Treatment Services

This agreement (“Agreement”) is by and between **Occidental County Sanitation District** (“Occidental”) and **Graton Community Services District**, a special district of the State of California (“Graton”). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 5.1.

RECITALS

- A. Sonoma County Water Agency (Sonoma Water) currently operates and manages Occidental under contract with Occidental. References to Occidental employees are understood to be Sonoma Water employees acting on behalf of Occidental.
- B. Occidental is authorized and empowered to own, operate, and maintain wastewater collection, treatment, and disposal facilities and has undertaken such actions to construct these facilities.
- C. Graton approached Sonoma Water to express its interest in providing wastewater treatment and disposal services to Occidental.
- D. Graton has sanitation expertise, knowledge, and experience necessary to provide sanitation services to Occidental.
- E. Occidental, in collaboration with Graton, has completed a feasibility study to better understand the costs and benefits of connecting Occidental’s and Graton’s wastewater treatment and disposal service systems. This study indicated that there would be significant financial benefits to both Graton and Occidental from construction of a pipeline from Occidental to Graton to transfer Occidental’s wastewater to Graton for treatment (Pipeline Project).
- F. Occidental and Graton do not have the financial capacity to finance Pipeline Project implementation. The Pipeline Project was recommended by Congress in the Consolidated Appropriations Act of 2023 (P.L. 117-328) (FY 2023 Appropriations Act) and will be funded through the Environmental Protection Agency’s Community Grant Programs.
- G. Under this Agreement, Graton will provide wastewater treatment services to Occidental.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct and are incorporated herein.

2. LIST OF EXHIBITS

- 2.1. The following exhibit is attached hereto and incorporated herein:
 - a. Exhibit A: Insurance Requirements.

3. SCOPE OF SERVICES

- 3.1. *Graton’s Specified Services:* Upon connection of Occidental’s pipeline to Graton’s system and commencement of wastewater transfer from Occidental to Graton, Graton shall treat and dispose of Occidental’s wastewater in accordance with Graton’s National Pollutant Discharge Elimination System (NPDES) and all other applicable state and federal regulations.
- 3.2. *Cooperation with Occidental:* Graton shall cooperate with Occidental in the performance of all work hereunder. Graton shall coordinate the work with Occidental’s Project Manager. Contact information and mailing addresses:

Occidental	Graton
Project Manager: David Royall 404 Aviation Boulevard Santa Rosa, California 95403-9019 Phone: 707-521-1892 Email: david.royall@scwa.ca.gov	Contact: Chad Davisson P.O. Box 534 Graton, California 95444 Phone: 707-823-1542 Email: chaddavisson.gcsd@gmail.com
Remit invoices to:	Remit payments to:
Accounts Payable Same address as above or Email: ap.agreements@scwa.ca.gov	Chad, is this the same address as above?

- 3.3. *Performance Standard and Standard of Care:* Graton hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with all applicable federal, state and local laws, it being understood that acceptance of Graton’s work by Occidental shall not operate as a waiver or release.
- 3.4. *Assigned Personnel:*
 - a. Graton shall assign only competent personnel to perform work hereunder.
 - b. In the event that any of Graton’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Graton’s control, Graton shall be responsible for timely provision of adequately qualified replacements.

4. PAYMENT

- 4.1. *Annual Service Charges:* Occidental shall pay Graton for accepting and treating wastewater from Occidental in accordance with Graton’s current rate ordinance at the time the wastewater is accepted and treated. Graton’s rate ordinance

includes a basis for charging customers based on biological oxygen demand (BOD), totals suspended solids (TSS), and wastewater flow. Occidental will collect and analyze influent collected at the Occidental lift station for BOD and TSS twice per month. Wastewater flow will be measured based on meter readings at the connection point of the Occidental/Graton pipeline (Pipeline).

- 4.2. *Treatment Plant or Pipeline Capacity Impairments:* Should Graton's treatment plant not have the ability to accept some or all of Occidental's wastewater, the unaccepted wastewater may need to be trucked from Occidental to another treatment plant for treatment unless otherwise noted. Payment for trucking and treatment costs during such periods shall be shared between Occidental and Graton as follows:
- a. *Wet Weather Impairment of the Graton Treatment Plant:* Should combined inflows from Occidental and Graton to the Graton treatment plant exceed Graton's treatment plant capacity (____ gallons per minute [to be determined by Graton]), trucking will be necessary. A trucking day will be defined as a day in which a minimum of 3,000 gallons of wastewater is trucked from Occidental to another treatment plant. Occidental will pay for trucking and wastewater treatment at its sole cost for up to 14 days per calendar year. Trucking costs beyond 14 days per calendar year will be shared equally between Graton and Occidental. When trucking is necessary in excess of 14 days per year, Occidental will pay treatment costs up to the cost of Graton's treatment and Graton will cover the difference in treatment cost above and beyond Graton's treatment cost. The alternate wastewater treatment facility will be approved by Graton for trucking beyond 14 calendar days per year.
 - b. *Occidental Impairments:* Should wastewater flow from Occidental to Graton exceed the capacity of Occidental's conveyance facilities, Occidental will pay trucking costs to either Graton or another wastewater treatment plant and for wastewater treatment costs.
 - c. *Graton Impairments:* Should Graton's collection system or treatment plant experience impairments that reduce or eliminate its ability to accept and/or treat Occidental's wastewater, Graton will pay for trucking to either Graton or another wastewater treatment plant approved by Graton, and Occidental will pay for treatment up to the cost of Graton's treatment.
- 4.3. *Occidental Operation and Maintenance:* Occidental will pay for the construction, replacement, operation and maintenance of the Pipeline, and all other costs associated with operating and maintaining Occidental's facilities.
- 4.4. *Graton Operation and Maintenance:* Graton will pay for the construction, replacement, operation, and maintenance of all facilities owned by Graton.

- 4.5. *Connection Fee:* Occidental shall pay Graton an estimated Connection Fee of \$2,500,000. The actual fee will be based on Occidental's 10-year average of flow, biological oxygen demand, and total suspended solids over the 10 years immediately preceding execution of this agreement based on Graton's rate. This payment will be made either (1) upon the successful completion of the Pipeline Project and functional operation of the Pipeline using available state or federal funds, or (2) over a 10-year period after completion of the Pipeline using funding from Sonoma County Water Agency and/or other local sources.
- 4.6. *Method of Payment:* [TBD based on discussion between Sonoma Water and Graton]
- 4.7. *Invoices:* [TBD based on discussion between Sonoma Water and Graton]
- 4.8. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within the normal course of Occidental business after presentation of an invoice in a form approved by Occidental for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by Occidental.

5. **TERM OF AGREEMENT**

- 5.1. This Agreement shall expire on December 30, 2073, unless terminated earlier in accordance with the provisions Article 6 (Termination).
- 5.2. This Agreement shall expire if Occidental and Graton merge.
- 5.3. Occidental shall have two options to extend this Agreement for a period of 25 years each by providing written notice to Graton six months in advance of the expiration date noted in this Article and of the first extension option. The extension shall be formalized in an amended agreement or amendment signed by Occidental and Graton.

6. **TERMINATION**

- 6.1. *Authority to Terminate:* Occidental's right to terminate may be exercised by Sonoma County Water Agency's General Manager.
- 6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, Occidental shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Graton.
- 6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Graton fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Occidental may immediately terminate this Agreement by giving Graton written notice of such termination, stating the reason for termination.

- 6.4. *Delivery of Records and Final Payment Upon Termination:* In the event of termination, Graton, within 30 days following the date of termination, shall deliver to Occidental all records, reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Graton or Graton's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 10.9 and shall submit to Occidental a final invoice for treatment of wastewater up to the date of termination.
- 6.5. *Payment Upon Termination:* Upon termination of this Agreement by Occidental, Graton shall be entitled to receive as full payment for all services satisfactorily rendered, however, that if Occidental terminates the Agreement for cause pursuant to Paragraph 6.3, Occidental shall deduct from such amounts the amount of damage, if any, sustained by Occidental by virtue of the breach of the Agreement by Graton.

7. MUTUAL INDEMNIFICATION

- 7.1. Each party to this Agreement (the "Indemnifying Party") agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the "Indemnified Party"), and the Indemnified Party's supervisors, officers, agents, and employees, from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including the Indemnifying Party, to the extent resulting from the Indemnifying Party's breach of any material term of this Agreement, or Indemnifying Party's negligence or willful misconduct in connection with the performance of this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from Indemnified Party's breach of any material term of this Agreement, or Indemnified Party's negligence or willful misconduct in connection with the performance of this Agreement. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party's expense, subject to the Indemnifying Party's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the parties hereto or their agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8. INSURANCE

- 8.1. With respect to performance of work under this Agreement, Graton shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit A (Insurance Requirements).

9. **CONTENT ONLINE ACCESSIBILITY**

- 9.1. *Accessibility:* Occidental policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible and utilizing available existing technologies.
- 9.2. *Standards:* Should Graton and/or its consultants prepare content intended for use or publication on a Occidental managed or Occidental funded web site, this content must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), Occidental's Web Standards & Guidelines located at <https://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/> and Occidental's Web Site Accessibility Policy located at <https://sonomacounty.ca.gov/CAO/Administrative-Policies/9-3-Website-Accessibility-Policy/>.
- 9.3. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Graton shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Graton agrees to cooperate with Occidental in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 9.4. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with Occidental's Web Site Accessibility Policy shall be the responsibility of Graton. If Occidental, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Occidental managed or Occidental funded Web site does not comply with Occidental Accessibility Standards, Occidental will promptly inform Graton in writing. Upon such notice, Graton shall, without charge to Occidental, repair or replace the non-compliant materials within such period of time as specified by Occidental in writing. If the required repair or replacement is not completed within the time specified, Occidental shall have the right to do any or all of the following, without prejudice to Occidental's right to pursue any and all other remedies at law or in equity:
 - a. Cancel any delivery or task order
 - b. Terminate this Agreement pursuant to the provisions of Article 6 (Termination); and/or
 - c. In the case of custom Electronic and Information Technology (EIT) developed by Graton for Occidental, Occidental may have any necessary changes or repairs performed by itself or by another contractor. In such event, Graton shall be liable for all expenses incurred by Occidental in connection with such changes or repairs.

- 9.5. *Occidental's Rights Reserved:* Notwithstanding the foregoing, Occidental may accept deliverables that are not strictly compliant with Occidental Accessibility Standards if Occidental, in its sole and absolute discretion, determines that acceptance of such products or services is in Occidental's best interest.

10. REPRESENTATIONS OF GRATON

- 10.1. *No Suspension or Debarment:* Graton warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Graton also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 10.2. *Records Maintenance:* Graton shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Occidental for inspection at any reasonable time. Graton shall maintain such records for a period of four (4) years following completion of work hereunder.
- 10.3. *Statutory Compliance/Living Wage Ordinance:* Graton agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Graton expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 10.4. *Nondiscrimination:* Graton shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 10.5. *Ownership and Disclosure of Work Product:* All reports and other data or documents ("documents"), in whatever form or format, assembled or prepared by Graton or Graton's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Occidental. Occidental shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this

Agreement, Graton shall promptly deliver to Occidental all such documents, which have not already been provided to Occidental in such form or format as Occidental deems appropriate. Such documents shall be and will remain the property of Occidental without restriction or limitation. Graton may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Occidental.

- 10.6. *District Liability:* Occidental is a separate legal entity from Sonoma County Water Agency, operated under contract by Sonoma County Water Agency. To the extent any work under this Agreement relates to District activities, Graton shall be paid exclusively from District funds. Graton agrees that it shall make no claim for compensation for Graton's services against Sonoma County Water Agency funds and expressly waives any right to be compensated from other funds available to Sonoma County Water Agency.

12. DEMAND FOR ASSURANCE

- 12.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 12 limits Occidental's right to terminate this Agreement pursuant to Article 6 (Termination).

13. ASSIGNMENT AND DELEGATION

- 13.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

14. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS

- 14.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic

means. Notices, bills, and payments shall be addressed as specified in Paragraph 3.1.

- 14.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 14.

15. MISCELLANEOUS PROVISIONS

- 15.1. *No Bottled Water:* In accordance with Occidental Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Occidental funding shall be used to purchase single-serving, disposable water bottles for use in Occidental facilities or at Occidental-sponsored events. This restriction shall not apply when potable water is not available.
- 15.2. *No Waiver of Breach:* The waiver by Occidental of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 15.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Graton and Occidental acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Graton and Occidental acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 15.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

- 15.5. *No Third-Party Beneficiaries:* Except as provided in Article 7 (Mutual Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 15.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 15.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 15.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 15.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 15.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.
- 15.11. *Counterpart; Electronic Signatures:* The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF), or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially-available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal E-SIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

By: _____
Sonoma County Water Agency
Division Manager - Administrative
Services

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with
Occidental

Date/TW Initials: _____

Occidental County Sanitation District

**Graton Community Services District, a special
district of the State of California**

By: _____
Grant Davis
General Manager
Authorized per Occidental County
Sanitation District's Board of Directors
Action on **TBD**

By: _____

(Please print name here)

Title: _____

Date: _____

Date: _____

Exhibit A

Insurance Requirements

Graton shall maintain and require all of its subcontractors and other agents to maintain the insurance listed below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Graton shall not commence Work, nor allow its employees, subcontractors or anyone to commence Work until the required insurance has been submitted and approved by Occidental. Any requirement for insurance to be maintained after completion of the Work shall survive this Agreement.

Occidental reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Graton from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. **INSURANCE**

- 1.1. Workers Compensation and Employers Liability Insurance
 - a. Required if Graton has employees.
 - b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
 - c. Employers' Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
 - d. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Occidental.
 - e. Required Evidence of Insurance:
 - i. Subrogation waiver endorsement; and
 - ii. Certificate of Insurance
 - f. If Graton currently has no employees, Graton agrees to obtain the above-specified Workers' Compensation and Employers' Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.
- 1.2. General Liability Insurance
 - a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
 - b. Minimum Limits: \$2,000,000 per Occurrence; \$4,000,000 General Aggregate; \$4,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each project. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Graton maintains

higher limits than the specified minimum limits, Occidental requires and shall be entitled to coverage for the higher limits maintained by Graton.

- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by Occidental. Graton is responsible for any deductible or self-insured retention and shall fund it upon Occidental's written request, regardless of whether Graton has a claim against the insurance or is named as a party in any action involving Occidental.
- d. Insurance shall be continued for one (1) year after completion of the work.
- e. Sonoma County Water Agency, Occidental County Sanitation District, their officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of Graton in the performance of this Agreement. Additional insured status shall continue for (1) year after completion of the work under this Agreement.
- f. The insurance provided to Occidental *et al.* as additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- g. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- h. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Occidental.
- i. The policy shall cover inter-insured suits between the additional insureds and Graton and include a "separation of insureds" or "severability" clause which treats each insured separately.
- j. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
 - ii. Copy of the endorsement or policy language indicating that coverage is primary and non-contributory, and
 - iii. Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$2,000,000 combined single limit per accident.
- b. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- c. Insurance shall cover all owned, hired, and non-owned vehicles.
- d. The policy shall include an MCS 90 endorsement if required by the Motor Carrier Act of 1980.

- e. The policy shall include a Pollution Liability endorsement (ISO form CA 99 48 or equivalent).
- f. Occidental, its officers, agents, and employees shall be defined as insureds under the policy or shall be endorsed as additional insureds.
- g. Required Evidence of Coverage:
 - i. Copy of the endorsement or policy language indicating that Occidental is an insured;
 - ii. Copy of the MCS-90 endorsement if required;
 - iii. Copy of pollution liability endorsement; and
 - iv. Certificate of Insurance.

1.4. Pollution Liability Insurance

- a. Minimum Limits: \$2,000,000 per pollution incident; \$4,000,000 annual aggregate. If Graton maintains higher limits than the specified minimum limits, Occidental requires and shall be entitled to coverage for the higher limits maintained by Graton.
- b. The insurance shall cover:
 - i. bodily injury, sickness, disease, sustained by any person, including death;
 - ii. property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof;
 - iii. cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed including diminution of value and natural resources damages;
 - iv. defense costs, including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims; and
 - v. liability assumed by Graton under a written contract or agreement.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by Occidental. Graton is responsible for any deductible or self-insured retention and shall fund it upon Occidental's written request, regardless of whether Graton has a claim against the insurance or is named as a party in any action involving Occidental.
- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Insurance shall be continued for one (1) year after completion of the Work. If the insurance is on a Claims-Made basis, the continuation coverage may be provided by: (a) renewal of the existing policy; (b) an extended reporting period endorsement; or (c) replacement insurance with a retroactive date no later than the commencement of the work.
- f. Sonoma County Water Agency, Occidental County Sanitation District, their officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of

Graton in the performance of this Agreement. Additional insured status shall continue for (1) year after completion of the work.

- g. The insurance provided to the additional insureds shall apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by them.
- h. The policy shall cover inter-insured suits between Graton and the additional insureds and include a "separation of insureds" or "severability" clause which treats each insured separately.
- i. Required Evidence of Insurance:
 - i. Additional insured endorsement *or* policy language granting additional insured status;
 - ii. Copy of the endorsement or policy language indicating that Insurance is primary and non-contributory; and
 - iii. Certificate of Insurance including an indication of the coverage basis: occurrence or claims-made. If claims-made, the Certificate shall show the policy retroactive date.

1.5. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$2,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by Occidental.
- c. If Graton's services include: (1) programming, customization, or maintenance of software; or (2) access to individuals' private, personally identifiable information, the insurance shall cover:
 - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
 - ii. Claims against Graton arising from the negligence of Graton, Graton's employees and Graton's subcontractors.
- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

1.6. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.7. Documentation

- a. The Certificate of Insurance must include the following reference:
TBD.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Graton agrees to maintain current Evidence of Coverage on file with Occidental for the required period of insurance.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Occidental County Sanitation District, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Required Evidence of Coverage shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Graton shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.8. Policy Obligations

- a. Graton's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.9. Material Breach

- a. If Graton fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Occidental, at its sole option, may terminate this Agreement and obtain damages from Graton resulting from said breach. Alternatively, Occidental may purchase the required insurance, and without further notice to Graton, Occidental may deduct from sums due to Graton any premium costs advanced by Occidental for such insurance. These remedies shall be in addition to any other remedies available to Occidental.