



May 7, 2020

Board of Directors
Ventura Regional Sanitation District
Ventura, California

APPROVE AND ADOPT THE PROPOSED ORDINANCE SETTING SEWER SERVICE CHARGES FOR THE MALIBU BAY CLUB PROPERTY– FIRST READING OF ORDINANCE NO. VRSD-115

RECOMMENDATIONS:

- A. Conduct the first reading, by title only, of proposed Ordinance No. VRSD-115 adopting sewer service charges for the next five years(FY2021 through FY2025) for the rate payers/property owners at the Malibu Bay Club residential development;
- B. Schedule a Public Hearing and Board action on July 02, 2020, to conduct the second reading, by title only, and consider adoption of Ordinance No. VRSD-115; and
- C. Direct staff to initiate Proposition 218 rate procedures by notifying the Malibu Bay Club rate payers/property owners of the proposed change in their sewer service charges.

FISCAL IMPACT

Pursuant to California Constitutional and statutory authority and provisions, the District may recover the reasonable cost of sanitary sewer services provided to property owners through a proportional fee. Over the next five years the proposed sewer service charges will provide adequate revenues to cover the ordinary cost of providing operation and maintenance services for the Malibu Bay Club Onsite Wastewater Treatment System (“System”) located at 41000 Pacific Coast Highway, Malibu, CA.

The table below summarizes the proposed sewer service charge for the next five years. Please note that in FY2021, approximately \$150,000 of System expenses are being covered by existing reserves.

Period	Base	Base	Total Annual Assessed Amount	Total Annual Actual Expenses	Annual Surplus/ (Deficit)
	Annual % Increase [a]	Monthly Service Charge per Residential Unit			
FY 2021	NA	\$22.67	36,994.56	186,939.50	49,893.88
FY 2022	3.00%	\$118.02 [b]	192,604.40	192,547.69	49,950.59
FY 2023	3.00%	\$121.56	198,382.53	198,324.12	50,009.00
FY 2024	3.00%	\$125.20	204,334.00	204,273.84	50,069.17
FY 2025	3.00%	\$128.96	210,464.02	210,402.05	50,131.14

[a] CPI increase of 3.00% per year has been estimated for FY22-FY25.

[b] FY22-FY25 Base Monthly Charge is derived from the previous year's "Total Annual Actual Expenses"; increased by CPI annually.

BACKGROUND

The District owns and operates the System, which is located at a residential development commonly known as the Malibu Bay Club. The initial construction of constructing the System is still being recovered under an established assessment district, which is collected on the County of Ventura tax roll for the 136 parcels in the Malibu Bay Club development. The costs associated with the ongoing System operation, upgrades, maintenance, monitoring and reporting are funded by a sewer service charge which is also collected on the tax roll. Reserves for capital expenditures and foreseeable System repair and/or replacement may also be funded by this sewer service charge.

The District last conducted a Prop. 218 public hearing in 2015 to establish sewer service rates to be collected for ongoing System operation, upgrades, maintenance, monitoring, reporting, repayment of General Fund advances to Malibu Bay Club and reserve funding. This hearing resulted in your Board's adoption of Ordinance No. VRSD-114 which established a 5-year rate plan for Malibu Bay Club property owners/rate payers.

Additionally, an Agreement between the District and Malibu Bay Club homeowners association ("MBC") became effective on July 2, 2015, the same day Ordinance No. VRSD-114 was approved and authorized by your Board. The Agreement itself does not have an end date, but the \$42.90 Temporary Supplemental Charge referenced in both Ordinance No. VRSD-114 and this Agreement to fund repayment of \$300,000 of District General Fund advances to Malibu Bay Club and to create a \$50,000 Reserve Fund ends on June 30, 2020.

During the past five fiscal years when the Temporary Supplemental Charge was imposed and collected, the District's \$300,000 agreed upon General Fund advance has been repaid, and a reserve balance of approximately \$200,000 has been accumulated. Given the age, condition and location of the System, District wastewater operations staff believe that the current reserve balance is prudent and necessary. However, since the current reserve balance is greater than the \$50,000 figure set forth in the 2015 Agreement, the proposed sewer service rate for the first year (FY 2020-21) of the next five fiscal years will be reduced to bring the Reserve Fund balance into alignment with the Agreement terms. MBC officials also claim to have access to financial resources and their own reserves to help fund System repair and replacement if the need should arise.

PROPOSED RATES

Over the next five fiscal years the proposed Base Sewer Service Charge (“Charge”) in Ordinance No. VRSD-115, will provide for the necessary revenues to cover the ordinary cost of providing System operation and maintenance to implement programs and improvements necessary to comply with increasingly stringent water quality regulatory requirements.

Based on the actual operational and maintenance expenses for the System over the last five years and the anticipated expenses for the next fiscal year the Charge per residential unit will decrease by \$97.37 from \$120.04 to \$22.67 per month, effective July 2, 2020.

The District anticipates System expenses in the next fiscal year to be similar to the prior year with only a few adjustments. The Charge calculation is derived by dividing the budgeted System costs by the number of residential units served as the residential units are generally similar in size and permitted use (single family residential).

In order to comply with Proposition 218 and related Government Code section mandates for specific noticing and public hearing requirements before property related fees may be assessed and collected, District staff requests that your Board:

- a) conduct the first reading, by title only, of proposed Ordinance No. VRSD-115 adopting sewer service charges for the next five years: FY2021 through FY2025;
- b) schedule a Public Hearing and Board action on July 02, 2020, to conduct the second reading, by title only, and consider adoption of Ordinance No. VRSD-115; and
- c) direct staff to initiate Proposition 218 rate procedures by notifying the Malibu Bay Club property owners of the proposed change in sewer service charges.

This letter has been reviewed by VRSD legal counsel as to form.

If you should have any questions or need additional information, please contact me at (805) 658-4646 or via email at TinaRivera@vrzd.com.



ALVERTINA RIVERA, DIRECTOR OF FINANCE

APPROVED FOR AGENDA:



Chris Theisen, General Manager

Attachment: 1. Ordinance No. VRSD-115
2. VRSD Contract No. 15-016, Compromise and Settlement Agreement between VRSD and MBC

VENTURA REGIONAL SANITATION DISTRICT

ORDINANCE NO. VRSD-115

**AN ORDINANCE OF THE VENTURA REGIONAL SANITATION DISTRICT
REGULATING THE USE OF THE MALIBU BAY CLUB ONSITE WASTEWATER
TREATMENT SYSTEM AND ADOPTING SEWER SERVICE FEES AND CHARGES**

RECITALS

WHEREAS, Ventura Regional Sanitation District (“VRSD” or “District”) is a county sanitation district created pursuant to California Health & Safety Code §4700 et seq.; and

WHEREAS, VRSD owns and operates an advanced onsite wastewater treatment system or facility (“OWTS”) and public sewer serving the public health and safety needs of residential development commonly known as the Malibu Bay Club which is located at 41000 Pacific Coast Highway in the unincorporated area of the County of Ventura (“System”); and

WHEREAS, Malibu Bay Club (“Club”), is also the name for a California non-profit mutual benefit corporation which provides for the management and maintenance of certain commonly owned property and improvements (i.e., sea wall and sewage collection system) which are part of the Malibu Bay Club residential development as well as acting as the homeowners association for thirty (30) single-family residences located at the Malibu Bay Club development; and

WHEREAS, the Malibu Bay Owners Association (“MBOA”) is the homeowners association for approximately 100 condominium owners at the Malibu Bay Club residential development; and

WHEREAS, District and Club, who is representing the interests of its constituent homeowners, and MBOA agree that their interests benefit from transparency and regular communications regarding the regulatory compliance, financial health and operational viability of the System; and

WHEREAS, California Health & Safety Code §5471 provides that VRSD may prescribe and collect fees and charges in connection with the System pursuant to an ordinance adopted by a two-thirds (2/3) vote of the governing body.

FINDINGS

The District Board of Directors hereby finds and determines as follows:

A. The District maintains budgets, operation plans, capital improvement programs and financial and operational reports related to the System (collectively referred to as the “Administrative Record”) which have been made available to the public, both prior to and

subsequent to their public review at noticed public meetings; and

B. The District periodically undertakes evaluation and study of its operational and financial needs for the future, including, but not limited to: assessments of the System users, the demands on the System, the capacity and treatment requirements of the System to provide necessary public health and safety service to the users, and the total cost of the existing and future operations and facilities in the System. These evaluations were utilized during the development of the District's Fiscal Year 2020-2021 Budget; and

C. The District's Budget provides for the operation of the System in a manner that meets legally mandated sewage treatment standards, thereby improving effluent water quality, consistent with the goals and policies of the State of California, Board of Directors and the public. The Board further finds that adjustments in Sewer Service Charges are necessary to provide adequate revenues to operate and maintain the System in legal compliance with applicable standards, to finance the improvements and programs necessary to implement the mandated treatment standards, to rehabilitate, repair, maintain and refurbish existing facilities, and to retire any advances made from District's General Fund and/or debt incurred to finance System expenses. The Board of Directors also finds that such Sewer Service Charges are established in a manner that is reasonably related to, and does not exceed, the costs of providing these essential public health and safety sewer services; and

D. The revenues derived under the provisions of this Ordinance will be used for the reconstruction, maintenance, repair and operation of the sewage collection, wastewater treatment or OWTS and disposal facilities of the District; to pay for the expenses of System administration; and, to fund prudent and necessary reserves to address future capital improvements or repairs to the System given its age and location; and

E. The owners or occupants of the properties (both Club and MBOA), upon which all fees and charges established by this Ordinance are levied, discharge wastewater to the District's collection, treatment and disposal facilities; and

F. The Sewer Service Charges established and levied by this Ordinance are designed to allow the District to recover the reasonable costs to provide essential public health and safety sewer services to users of residential units (both condominium and single-family residence) served by the System; and

G. The Sewer Service Charges established by this Ordinance are not imposed as a condition of approval of a development project, as defined in California Government Code §66001 and do not exceed the estimated reasonable cost to provide the essential public health and safety sewer service for which the fee is levied, as required by law; and

H. All fees and charges established herein have been approved by the District's Board of Directors at a properly noticed public hearing, all in accordance with applicable provisions of law and the California Constitution, including California Constitution Article XIII D and the Proposition 218 Omnibus Implementation Act (California Government Code §53750, et seq.); and

I. The adoption of this Ordinance is statutorily exempt under the California Environmental Quality Act pursuant to the provisions of Public Resources Code §21080(b)(8) and California Code of Regulations §15273(a); and

J. The District Board has considered the entire Administrative Record, including, but not limited to, all documents referenced in this Ordinance and other documents in the record, and all written and oral testimony received by the District Board, as well as the recommendations of District staff and the District's engineering consultants; and

K. Each and all of the findings and determinations contained herein are based on the competent and the substantial evidence, both oral and written, contained in the entire Administrative Record. These findings and determinations constitute the independent findings and determinations of the District Board in all respects and are fully supported by the substantial evidence in the record as a whole. The Administrative Record shall be maintained in the District's official files in the District's offices; and

L. Any finding made by the District Board shall be deemed made, regardless of where it appears in this document. All of the language included in this document constitutes findings by the District Board, whether or not any particular sentence or clause includes a statement to that effect. The District Board intends that these findings be considered as an integrated whole and, whether or not any part of these findings fail to cross reference or incorporate by reference any other part of these findings, that any finding required or committed to be made by this District Board with respect to any particular subject matter of the proposed project, shall be deemed to be made if it appears in any portion of these findings.

SEWER SERVICE CHARGES AND SYSTEM REGULATIONS

NOW, THEREFORE, the Ventura Regional Sanitation District Board of Directors ordains as follows:

ARTICLE I - DEFINITIONS

Section 1. Board. "Board" shall mean the Board of Directors of the District.

Section 2. Condominium. A "Condominium" is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential building on such real property. A Condominium may include, in addition, a separate interest in other portions of such real property.

Section 3. Contractor. "Contractor" shall mean any individual, firm, partnership, association, or corporation currently licensed by the State of California to perform the type of work required by Permit.

Section 4. District. "District" shall mean the Ventura Regional Sanitation District of Ventura County, California, and the terms District and VRSD may be used interchangeably.

Section 5. Permit. "Permit" shall mean any written authorization required pursuant to this Ordinance or any other Rules or Regulations of the District for the installation or connection of any sewage works.

Section 6. Person. "Person" shall mean any human being, individual, trust, firm, company, partnership, association, private, municipal or public corporation, and all political

subdivisions, governmental agencies and subsidiaries thereof.

Section 7. Public Sewer. “Public Sewer” shall mean a sewer main lying within a public right-of-way/easement under the jurisdiction of the District.

Section 8. Residential Unit. “Residential Unit” or “RU” shall mean a unit of measurement for each single-family residence, townhome or condominium unit. The District has determined that the quantity and quality of sewage originating from each unit falls within a range that justifies a uniform Sewer Service Charge per RU. In the event the District, after a public hearing, determines that any RU generates sewage which causes extraordinary expenses, a Special Case Charge may be imposed as provided below at Section 23.

Section 9. Rules and Regulations. “Rules and Regulations” shall mean specific rules and/or regulations adopted by the Board to establish specific guidance and limitations on how a portion of the District’s operating procedures are to be handled. Said Rules and Regulations shall not conflict with this or any other ordinance of the District.

Section 10. Sewage. “Sewage” shall mean the wastewater derived from ordinary living processes, free from commercial, institutional or industrial wastes, and of such character as to permit disposal, without special treatment, into the System.

Section 11. Sewer. “Sewer” shall mean any pipe or conduit for the transportation of Sewage within the System.

Section 12. Sewer Service Charge. “Sewer Service Charge” shall mean the monthly charge the District imposes upon the owners of Residential Units using the System and established by the District to recover the sum of the total System operation, maintenance and replacement costs, general administration costs, capital costs, debt obligations, refunding of advances from VRSD’s General Fund, and District expenditures deemed necessary to conduct the lawful business of the District.

Section 13. Side Sewer. “Side Sewer” shall mean the lateral sewer line beginning at any Building and terminating at the Public Sewer.

Section 14. System. “System” shall mean VRSD’s Malibu Bay Club Onsite Wastewater Treatment Facility, Public Sewer, and all ancillary facilities for the collection, transportation, storage, pumping, treatment, reclamation and disposal of Sewage at the Malibu Bay Club, subject to the provisions of Section 34 below.

Section 15. System Manager. “System Manager” shall mean the District Director of Operations or his/her appointed representative, who shall administer and enforce all provisions of this Ordinance.

ARTICLE II - PUBLIC SEWER USE

Section 16. Waste Disposal. It shall be unlawful for any person to place, deposit, or permit the deposit in an unsanitary manner upon public or private property within the Malibu Bay Club residential development any Sewage or other wastewater in violation of any law or regulation.

Section 17. Discharge of Waste. It shall be unlawful to discharge into any drainage conduit, stream or watercourse any Sewage or other polluted waters.

Section 18. Types of Wastes Prohibited. No person shall knowingly discharge or deposit or allow the discharge or deposit into the System any of the following: storm, surface or ground waters; or solids or fluids which create nuisances, such as nuisance odors; or solids or fluids which are a menace to public health; or hazardous waste solids as defined in the California Health and Safety Code; or fluids, including but not limited to, grease, oil, cleaning agents or root control agents, which are detrimental to the functioning of said sewers or to the treatment processes and/or disposal facilities of the System. Rules and Regulations to implement this prohibition may be set by resolution of the District in a format known as the Rules and Regulations for the System. Said Rules and Regulations may set limitations on certain wastes and discharges into the System and provide for permits, wastewater monitoring and self-reporting. No person shall discharge or cause to be discharged to the System, either directly or indirectly, any waste that creates a stoppage, plugging, breakage, reduction in sewer capacity or any other damage to the System. Any excessive sewer or sewerage maintenance expense, or any other expense attributable thereto, shall be charged to the offending person by the District.

Section 19. Permits and Fees. No public or private sewer or sewerage facility shall be installed, altered, or repaired within the Malibu Bay Club residential development until a Permit has been obtained from the District (and other regulatory agencies, if required) and appropriate fees paid in accordance with the District’s ordinances, Rules and Regulations.

Section 20. Construction Requirements. The requirements of the District and this Ordinance shall govern the construction of any Side Sewer. Specific requirements may be set by resolution of the District in a format known as the Rules and Regulations for the System.

Section 21. Persons Authorized. Sewer construction within the Malibu Bay Club shall be performed by authorized Contractors, currently licensed by the State of California or by the District. All terms and conditions of the District Permit shall be binding on the Contractor. The requirements of this section shall also apply to any Side Sewer installed concurrently with Public Sewer construction.

ARTICLE III - SEWER SERVICE CHARGES

Section 22. Sewer Service Charges. A Sewer Service Charge for each Residential Unit shall be paid to the District by the person owning any Residential Unit (RU) served by the System. Sewer Service Charges shall be adjusted for each Fiscal Year (“FY”). Each Fiscal Year commences July 1 and expires the following June 30th, with the exception of FY 2021 which begins on July 2, 2020 and expires June 30, 2021. The Sewer Service Charge for each Fiscal Year shall be as follows:

1	2
Fiscal Year	Monthly Service Charge per Residential Unit (Footnote (a))
FY 2021	\$22.67 (b)
FY 2022	\$118.02 with CPI Adjustment
FY 2023	Previous FY charge + CPI Adjustment
FY 2024	Previous FY charge + CPI Adjustment
FY 2025	Previous FY charge + CPI Adjustment

(a) Effective July 2, 2020, and on July 1st of each fiscal year through fiscal year 2025, the

Monthly Sewer Service Charge shall be adjusted in the same percentage proportion that the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for Urban Wage Earners and Clerical Workers, Los Angeles-Riverside-Orange County (“CPI”) shall have increased or decreased the preceding January to December. In no case shall the District implement a CPI adjustment that contributes to the collection of charges that exceed the cost of providing the service.

- (b) Monthly Service Charge for FY 2021 is reduced due to the one-time use of \$150,000 in the reserve balance.

Section 23. Special Case Charges. In the event any person owning any Residential Unit served by the System causes District to incur extraordinary maintenance or operational expenses, then that person shall pay District Special Case Charges to be determined for each individual case based on the District’s then published labor rate and reasonable and actual collection and treatment costs incurred by District.

Section 24. Findings Concerning Sewer Service Charges. The Board of Directors makes the following findings in connection with adoption of this Ordinance:

- a. The fees and charges set forth in this Ordinance do not exceed the estimated reasonable cost of providing the essential public health and safety sewerage services for which the fees and charges are imposed.
- b. Revenues derived from the fees and charges are not used for purposes other than the provision of sewerage services.
- c. The fees and charges are used for the administration, operation, maintenance, and repair and reconstruction of the System.

Section 25. Collection of Fees and Charges and Penalties for Nonpayment of Direct Fees and Charges. Pursuant to California Health and Safety Code §5473, et seq., the District hereby elects to have the Sewer Service Charges established pursuant to this Ordinance collected on the Assessor’s tax roll for the County of Ventura. Other fees and charges established pursuant to this Ordinance may be collected by any method allowed by law. If fees and charges are collected by direct billing, all fees and charges made or assessed under the provisions of this Ordinance are due and payable fifteen (15) days from the mailing date of the billing document and shall become delinquent fifteen (15) days thereafter. Delinquent amounts shall be subject to a penalty of ten (10%) percent.

- a. **Direct Collection Charge Application.** The charges described herein shall be applied to accounts with direct billing only. The usual charge applied by the Auditor-Controller/Tax Collector’s office shall be applied to unpaid property tax bills, where the fees and charges have been placed on the tax rolls for collection. The extraordinary charges described herein shall not be applied to unpaid property tax bills.
- b. **Ongoing Direct Collection Charges.** Balances of all accounts plus any initial collection charge, which remains unpaid at the end of the next regular billing period, shall incur additional ongoing collection charges of one and one-half percent (1.5%) per month on the unpaid balance until paid. Continued nonpayment will result in the unpaid amounts, plus any collection costs to the District, being added to the tax rolls for collection during the next tax year.

ARTICLE IV - PERMITS AND FEES

Section 26. Permit. Prior to construction, repair, or maintenance of a Side Sewer, or any connection with a Public Sewer, the owner of the RU served shall obtain a written Permit, and pay all fees and charges in accordance with the provisions of the District's ordinances and Rules and Regulations.

Section 27. Permit Required. No unauthorized person shall uncover, connect with, or open into, use, alter, or disturb any part of the System, without first obtaining a Permit from the District. Evidence of a Permit shall be posted at the work site or otherwise made available upon demand of any District authorized representative.

Section 28. Application for Permit. Any person legally entitled to apply for and receive a Permit may make application to the District. The location, ownership, occupancy and use of the premises and a description of the proposed nature of the work to be performed shall be provided by the applicant. Specifications, plans, drawings and other information shall be supplied to the System Manager as deemed necessary.

Section 29. Permit Compliance. Approval of the application for a Permit is evidenced by the issuance of a Permit. Thereafter, no change shall be made in the location of the sewer, the grade, materials or other details described in the Permit or as shown on the approved plans and specifications, unless prior written permission is obtained from the District, the System Manager, or other authorized representatives. Until the connections covered by the issued Permit have been installed and approved in accordance with District ordinances and Rules and Regulations, no residence, building or facility to be served by said connections shall be allowed to discharge Sewage to the Public Sewer.

Section 30. Time Limit, Permits. If the work granted by the Permit is not commenced within six (6) months from date of issuance, or is discontinued for a period of ninety (90) days after partial completion, the Permit shall be void. No further work shall be undertaken until a new Permit has been secured by proper application. The work shall be completed within the calendar days for completion as specified by the new Permit.

Section 31. Agreement. The signature of the applicant on an application for a Permit shall constitute an agreement to comply with all provisions, terms and requirements of this Ordinance. The signature shall constitute an agreement to comply with the approved plans and specifications and any further corrections or modifications as may be required by the District. Such agreements shall be binding upon the applicant and may be modified by the District after the receipt and consideration of a written request for modification submitted by the applicant. Installation and connection of any sewer or other work, for which a Permit is required, shall be at the expense of the owner.

Section 32. Residential Unit Owner to Indemnify District. The owner of an RU located within the Malibu Bay Club residential development shall indemnify the District from any liability, loss, claim, violation or damage directly or indirectly caused by the installation and connection of any sewer or other work by the residential unit owner or residential unit owner's contractor.

Section 33. Liability. The owner of any RU within the Malibu Bay Club residential development shall be solely liable to the District for any defects or failure during performance of the residential unit owner or residential unit owner's contractor work relating to the RU or any failure, which may develop therein. The District, its officers, agents and employees shall not be

answerable for any liability, death or injury to persons, or property damage due to, or arising out of, the performance of this work by the residential unit owner or residential unit owner's contractor . The residential unit owner or residential unit owner's contractor shall indemnify and hold harmless the District, its officers, agents and employees from all liabilities imposed by law, including all costs, expenses, fees and interest incurred in seeking to enforce this provision.

Section 34. Owner's Responsibility. The owner of a RU shall be responsible for maintaining the Side Sewer for that respective RU. The owner shall be responsible for the installment, maintenance and operation of backflow preventors and clean-outs. The District shall not be liable should owner fail to install or maintain a backflow prevention device.

ARTICLE V - ENFORCEMENT

Section 35. Violation. Any person found to be in violation of any provision of this or other ordinances of the District shall be served with written notice by the System Manager or other authorized representative. Such written notice shall state the nature of the violation and provide a reasonable time limit for correction thereof. The notice may set forth a compliance schedule with specific actions the user shall take in order to correct the violation. In addition, the notice may require inspections or sampling and may impose other requirements deemed necessary. The notice may also contain a statement that additional enforcement action may be pursued if corrective actions are not accomplished as scheduled. Within the time period stated in the notice, all violations shall permanently cease. All persons shall be strictly liable for the acts of their agents and employees performed under the provisions of this or any other ordinance or Rules and Regulations of the District. Upon notification by the System Manager of any defect arising in any sewer, or notification of any violation of this Ordinance, the person or persons in charge of said work shall immediately effect corrections.

Section 36. Termination of Service. To fully effect its powers, the District may terminate wastewater service to any residential unit from which wastes or wastewater have been discharged, are being discharged, or are threatened to be discharged in violation of any provision of this Ordinance or other District ordinance, rule or regulation, or because of delinquency in the payment of any charge or fee lawfully imposed by the District, or because of a violation of any other requirement of law. Prior to termination of service, however, the District shall notify, in writing the Owner, and tenant if any, that service is intended to be so terminated. The notice shall state the date of proposed termination of service and the reasons therefore. Except in the case of emergency or threat to public health or safety, such date of termination shall not be less than 30 days subsequent to the giving of notice as herein required. If the District proceeds with the disconnection of the service to said property, said property shall not be reconnected to the District system until the violation is corrected by the user; and a deposit is made to the District in an amount sufficient to pay all costs incurred directly and indirectly in the disconnection of service to the property and an estimated amount sufficient to pay all costs of reconnection. (The District shall refund any unused monies in the deposit after payment of all said costs.)

Notwithstanding the foregoing, any unauthorized connection with, opening into or discharge to the District's sewerage system or appurtenances may be abated by the District without notice if such unauthorized connection, opening or discharge poses an imminent threat of damage to the District's sewerage system or of injury to the public health, safety and welfare.

Section 37. Means of Enforcement. The District declares the foregoing procedures are established as a means of enforcing the provisions of this and any other ordinance or Rules and Regulations of the District, and not as a penalty.

Section 38. Misdemeanor. In accordance with the Health & Safety Code of the State of California, the violation of any ordinance or Rules and Regulations of the District by any person is a misdemeanor punishable by fine not to exceed One Thousand Dollars (\$1,000), imprisonment not to exceed thirty (30) days, or both. Each connection or occupancy in violation of the ordinance or Rules and Regulations of the District shall be deemed a separate violation. Each and every day, or part of a day, in violation of the ordinance or the Rules and Regulations, shall be deemed a separate offense hereunder and shall be punishable as such.

Section 39. Correction of Violations; Liability for Violation. In order to enforce the provisions of this Ordinance or any other District ordinance, rule or regulation, the District may correct any violation thereof. Any person violating any of the provisions of this Ordinance or any other District ordinance, rule or regulation, or any permit imposed pursuant thereto, shall become liable to the District for expenses, losses or damages occasioned by the District by reason of such violation, unless waived by the District for good cause. For the purposes of this provision, “expenses, losses or damages” shall include, but not be limited to, reasonable attorney’s fees incurred by the District for negotiations, consultations, litigation or otherwise, and shall include reimbursement to the District for the costs to it of the hours expended by the employees of the District by reason of such violation and all other costs and expenses so occasioned. Said expenses, losses or damages shall be considered costs to correct the violation and, pursuant to Health and Safety Code Section 6523.3, the District shall have, in addition to any other remedies provided for herein or by law, such remedies for the collection of said costs as it has for the collection of sewer service charges.

The District System is regulated by the State and Federal Governments. Such regulations require the District to report violations of those agency’s regulations which are discovered by the District in the course of its monitoring, inspection or other activities. Any fines or penalties imposed by another governmental agency on the District for a condition of noncompliance caused by any residential unit owner or other wastewater discharger shall be considered damages to the District for which the person or persons causing the noncompliance shall be liable to the District. In addition, any person who negligently allows or intentionally discharges or causes the discharge of prohibited sewage liquid waste or non-domestic wastes to the public sewer and such discharge causes damage to District facilities or causes detrimental effects on District treatment processes shall be liable to the District for all damages occasioned thereby.

Section 40. Protection from Damage. No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which constitutes a part of the System. Any person in violation of this provision shall be subject to the penalties and charges provided by law.

Section 41. Power and Authority of Inspectors. The District may employ a qualified person or persons to inspect the installation, connection, maintenance and use of all Side Sewers and all facilities in connection with the System. The inspectors or any other duly authorized employee of the District shall carry evidence, which establishes his/her position as such. Upon the exhibition of proper credentials and identification, he/she shall be permitted to enter into buildings and private property at the Malibu Bay Club for the purposes of inspection, observation, measurement, sampling, testing, or otherwise performing the necessary duties pursuant to the enforcement of the provisions of this or any other ordinance or Rules and Regulations of the District.

ARTICLE VI - MISCELLANEOUS PROVISIONS

Section 42. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance, or the application thereof to any person, is held to be invalid or unconstitutional, there shall be a presumption of validity or constitutionality to the remaining portions. The Board hereby declares that it would have passed this Ordinance or any section, subsection, sentence, clause or phrase herein, notwithstanding the invalidity or unconstitutionality of any other part of the Ordinance.

Section 43. Effective Date/Repeal of Prior Ordinances. This Ordinance shall become effective July 2, 2020. Upon its effective date, this Ordinance shall repeal and replace Ventura Regional Sanitation District Ordinance No. VRSD-114.

PASSED, APPROVED AND ADOPTED by the Ventura Regional Sanitation District Board of Directors on July 2, 2020, by the following votes:

AYES:

NOES:

ABSENT:

VENTURA REGIONAL SANITATION DISTRICT

By _____
BERT PERELLO, Chairman
Board of Directors

ATTEST:

Juliet Rodriguez
Clerk of the Board

VRSD CONTRACT NO. 15-016

**COMPROMISE AND SETTLEMENT AGREEMENT
BETWEEN
VENTURA REGIONAL SANITATION DISTRICT
AND
MALIBU BAY CLUB**

THIS AGREEMENT is made and entered into this 4th day of June 2015 by and between VENTURA REGIONAL SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq., ("District") and MALIBU BAY CLUB, a California non-profit mutual benefit corporation, ("Club").

RECITALS

A. Club provides for the management and maintenance of certain commonly owned property and improvements, which are a part of a planned residential development located at 41000 Pacific Coast Highway, Malibu, in an unincorporated area of the south coast of Ventura County. The development and the property it occupies are commonly known as the "Malibu Bay Club".

B. District owns, maintains and operates an onsite wastewater treatment system ("System") which collects, treats, and discharges residential wastewater generated from residential units located at the Malibu Bay Club.

C. The System was constructed and has been operated following a September 16, 2003, Onsite Wastewater Treatment System Service Agreement ("Original Agreement") between, District and Club, VRSD Contract No. 03-040. Disputes between the District and the Club have arisen out of activities associated with the implementation of the Original Agreement. These disputes relate to District's proposed adoption of Ordinance No. 114 to set future sanitation charges, District's attempts to collect certain System operational expenses incurred by District's over the last seven years which exceeded the revenue generated, the parties respective obligations to pay for potential expenses to fund a solution to the construction of a portion of the System within a Ventura County public access easement, and the adequacy of communications between the parties. The parties desire to settle these issues by this Agreement and to commit to cooperation in pursuing future infrastructure improvements.

D. On May 7, 2015, District conducted a public hearing to consider the adoption of a proposed District Ordinance which would have increased Sewer Service Charges imposed by District on the residential units served by the System. The Club had expressed opposition to the adoption of that proposed Ordinance. The District did not adopt the proposed Ordinance because the residential unit owners at Malibu Bay Club submitted a majority protest. Subsequently, the District, in consideration of the prospect of the making of this Agreement, issued a new notice of a public hearing scheduled for July 2, 2015 regarding a new proposed Ordinance ("Ordinance

No. 114") which would increase Sewer Service Charges. A copy of this notice is attached as Exhibit A of this Agreement. Ordinance No. 114, including the proposed Sewer Service Charges, and the terms of this Agreement, have been recommended for approval by representatives of District and Club in an effort to develop a comprehensive resolution of the above-referenced disputes.

E. The members of the Club are also the 136 residential unit owners served by the System. The Club is not a residential unit owner, and cannot bind the residential owners individually to this Agreement, but has agreed to recommend and encourage its members to refrain from protesting the proposed new ordinance based on the terms and consideration provided by this Agreement. The Club owns and controls the common areas in which the System is located, subject to terms of the Easement Agreement described below.

AGREEMENT

IT IS AGREED by the parties as follows:

1. Recitals.

The parties agree that the above Recitals are accurate and that the terms of this Agreement and the proposed new Ordinance No. 114 increasing Sewer Service Charges for the System would benefit the residents and owners of the residential units at the Malibu Bay Club and provide adequate, fair and substantial consideration to both District and Club.

2. Term.

This Agreement shall become effective upon the adoption of the proposed Ordinance No. 114, which is scheduled to be heard on July 2, 2015. If Ordinance No. 114 fails because of court action brought by an owner or other source, District will be released, at its option, from any unfilled obligations under this Agreement.

3. New Service Charges to Repay a Discounted Portion of Outstanding Advances from District General Fund

District has sought to collect from the Malibu Bay Club residential unit owners \$400,000, which represent the amount of an accounts receivable on District's books for System expenses that District contends were incurred during prior years when the sewer service charges collected were not sufficient to cover System expenses. District contends that it advanced monies from its General Fund to fund these expenses in order to continue operation of the System. These advanced funds have been identified by the District as an accumulated advance of monies to be repaid by service charges. District contends it is entitled to recoup its actual costs of service through these sewer service charges. Club has disputed the owners' obligation to repay those advanced general fund monies. In order to compromise this dispute, the parties agree, subject to District Board of Director's final approval of Ordinance No. 114, set for hearing on July 2, 2015, that District shall write-off, and the Club shall support, a reduction of \$100,000

from the accumulated general fund advance. Accordingly, District shall collect service charges in the amount that provides for the repayment of \$300,000 in general fund advances. Furthermore, the parties agree that Ordinance No. 114 shall create a Temporary Supplemental Service Charge. The proposed Temporary Supplemental Service Charge shall operate to repay the remaining \$300,000 of advanced General Funds and develop a \$50,000 Reserve Fund to be used for unanticipated and not budgeted System expenses. Ordinance No. 114 shall provide that this Reserve Fund shall be accounted for separately and that monies in this account shall be set aside for unanticipated expenses and that this account shall also serve as a rate stabilization fund where revenues which exceed expenses in a given year will be accumulated for subsequent funding for System related purposes by District Board of Directors action. Residential Owners shall be given reasonable prior notice of board meetings at which the use of said reserve funds will be considered. The Temporary Supplemental Service Charge is calculated to be \$42.90 per month per unit for five years with the allocation of \$36.77 per month to repay the advances from the General Fund and \$6.13 per month to build the Reserve. This Temporary Supplemental Charge shall cease after five years.

4. Payment relating to the Easement Agreement and the County's Access Easement

On September 2, 2004, District and Club entered into an Easement Agreement whereby Club granted to District a non-exclusive right of way easement over common areas located at the Malibu Bay Club for the purpose of constructing, operating, repairing, maintaining, replacing and taking access to the System ("Easement Agreement"). Subsequent to the making of the Easement Agreement, the County of Ventura has asserted rights under a pre-existing public access easement ("County access easement") which is located along the westerly six feet of the Malibu Bay Club and has never been used by the public.

The County of Ventura has asserted that a portion of the System has been constructed on a portion of the County access easement at the western terminus of Starfish Lane without proper permission., County served a September 8, 2009 Notice of Violation requiring that the encroaching equipment be relocated. District has developed plans to relocate which identify the equipment to be relocated ("Subject Equipment"). MBC has been negotiating an arrangement with County, California State Parks and the California Coastal Commission by which the County access easement would be abandoned by County, relocation of the Subject Equipment would not be required and improvements would be constructed to facilitate nearby agreed upon improved public access in lieu of the County access easement. There has been a dispute between Club and District regarding their respective obligations to fund this relocation or the in lieu measures if permitted by the governmental agencies.

District will actively support Club's proposals to the County of Ventura, the California State Parks Department, and California Coastal Commission to resolve the County land use enforcement action arising due to the location of the Subject Equipment in the County access easement. District will use its own general funds first to pay up to \$75,000 for County approved construction work necessary to either relocate the Subject Equipment from the easement or facilitate alternative public access. District shall pay such amounts as invoices for such work are received and approved by Club. Club shall pay any additional amounts to relocate the Subject Equipment or for any construction of alternate public access, including amounts

required to comply with governmental requirements regarding the above-referenced Club's proposals. Each party will be and is responsible for its own internal expenses, such as legal, staff and professional fees. Club hereby fully releases District from any and all claims arising from or related to relocating the Subject Equipment from the easement or from any obligation to contribute to any expenses incurred for alternative public access if agreed to by the necessary parties.

5. Financing Collection System Construction

District and Club recognize that there is a need to replace or refurbish the aging Malibu Bay Club Wastewater collection system of pipelines, manholes, holding tanks and leach lines which were part of the earlier sanitation system, but not replaced when the current System was constructed. District and Club shall, immediately upon the adoption of Ordinance No. 114, commence cooperative efforts, in good faith, to develop a plan for the financing and construction of a new wastewater collection system. Among other things, the parties will develop an inventory of the collection system's components, the ages of the components, a list of when and where they need to be replaced or otherwise repaired, and determine whether the replaced collection system shall continue to be owned and financed as a private facility or as a public facility. The parties will work in good faith to develop a timely plan to do so.

It is understood that the best method of financing the construction of a new collection system may utilize tax exempt financing. District and Club shall cooperate in the planning for an appropriate financing mechanism for this collection system project. District will actively use its skill, influence and experience to attempt to obtain favorable financing and terms and provide its recommendations for appropriate repair and replacement, District and Club shall also investigate the possibility of obtaining reduced interest rates and extending the number of years on the current financing for the System in an effort to bring down costs for residential owners.

6. Future Communications and Cooperation.

District and Club both recognize that their interests and those of the individual residential owners benefit from transparency and regular communications concerning the System. They share common goals. The parties accordingly commit to enhanced communications, including regular meetings at least every six months, to discuss System issues, deviations from budget, unexpected events and matters of mutual concern. The District will prepare an annual report on operations, financial performance and other matters to be sent to the owners using names and addresses provided by the Club. The Club's board of directors is elected by the Club's membership to represent its members and will appoint representatives to engage in communications. The District will likewise delegate members of its management and/or its board for that purpose.

7. Compromise Agreement and Mutual Release

(a) Nature and Effect of Agreement. This Agreement consists of a compromise and settlement by each party of that party's claims arising out of the specific issues and matters described in this Agreement.

(b) Mutual Compromise Agreement. Each party, in consideration of the promises and concessions made by the other, hereby compromises and settles any and all past, present, or future claims, demands, obligations, or causes of action, whether based on tort, contract, or other theories of recovery, that the party now has or may hereafter have against the other party and the other party's predecessors and successors in interest, and assigns, arising from the specific issues described above.

(c) Mutual General Release. Each of the parties, on behalf of itself, and assigns, hereby fully releases and discharges the other party and that party's assigns, from all rights, claims, and actions that each party now has against the other party arising from the issues described above as of the date of this Agreement.

7. Attorneys' Fees. Each party to this Agreement shall bear, and shall not charge to the other, attorneys' fees and costs arising from that party's own counsel in connection with the making of this Agreement, and the matters referred to herein.

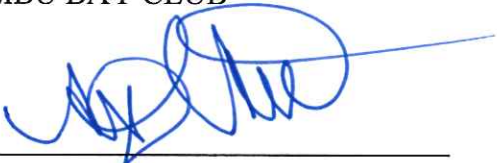
8. Governing Law. This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California. Any Superior Court action arising in this case shall be filed and heard in the Ventura County Superior Court.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

VENTURA REGIONAL SANITATION DISTRICT


By  _____
RICK NEAL, Chairman

MALIBU BAY CLUB

By  _____
Siegmund Gutman, President

APPROVED AS TO FORM:

ARNOLD LaROCHELLE MATHEWS VANCONAS & ZIRBEL LLP

By:  _____
Mark Zirbel
Legal Counsel for DISTRICT

By:  _____
Gary Wilstein, Director

ATTEST:

By  _____
Josie Guzman, CMC, Clerk of the Board