

**SEWER SERVICE AGREEMENT BETWEEN THE
CITY OF CHULA VISTA AND THE COUNTY OF SAN DIEGO
FOR OTAY LAKES COUNTY PARK**

This Agreement to provide replacement sewer services (Agreement) for Otay Lakes County Park is made by and between the City of Chula Vista, a municipal corporation (City), and the County of San Diego, a political subdivision of the State of California (County). City and County are referred to individually as "Party" and collectively as "Parties."

RECITALS

A. County owns and operates an approximately 78 acre park located immediately adjacent to the City's boundaries commonly referred to as Otay Lakes County Park, 2270 Wueste Road, Chula Vista, California, as more specifically identified on Exhibit A hetero (Park); and

B. County currently provides sewer service at restrooms, a ranger station and recreational vehicle host facilities using a septic system and has plans to establish a small recreational campground at this site for a total site wastewater discharge of approximately twenty-five (25) equivalent dwelling units; and City owns and operates a sewer system with nearby main lines as depicted on the map attached hereto as Exhibit B that can provide sewer service in place of the existing septic system; and

C. City is willing and able to receive, transport, treat and dispose of sewage generated at the Park and County is willing to receive this service in place of the existing septic system subject the certain terms and conditions as are more fully set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the mutual obligations and covenants contained herein, the Parties mutually agree as follows:

ARTICLE I - SEWER SERVICE

1.1 Sewer Service. The City shall receive, transport, treat and dispose of all sewage generated by the Park and delivered to the City in accordance with this Agreement.

1.1.1 Service Area. Only the Park property identified in Exhibit A is allowed to send sewage to the City for transport, treatment and disposal.

1.1.2 Changes to Service Area. Notwithstanding Section 1.1.1, at the written request of County, the City may, at City's discretion, administratively update Exhibit A to add, delete, or exchange property included within the boundaries of the Park. Any administrative update made by City shall strictly comply with the capacity limitations outlined in section 1.1.3. Only property dedicated to and used for park purposes may be served by City pursuant to this Agreement.

1.1.3 Capacity Limitations. County may discharge up to twenty-five (25) equivalent dwelling units of wastewater generated from the Park into the City's sewer main ("County Limit"). County shall not allow flows into the City's sewer main that exceed the County Limit without obtaining City's prior written consent. The County Limit may be increased only by written agreement of the Parties.

1.1.4 Notice For Future Improvements. The County shall notify the City of the installation of any future improvements not listed in Recital B which will result in an increase in sewage generated by the Park regardless of whether such improvements will cause flows from the Park to exceed the County Limit.

1.1.5 Point of Delivery. County shall deliver sewage generated at the Park to the existing City sewer main commonly known as Salt Creek Trunk Sewer, as more particularly shown in Exhibit B. County shall allow the City access to County's facilities immediately upstream of this connection to sample or meter the flow from County.

1.1.6 Monitoring. If at any time during the term of the Agreement it is deemed necessary or desirable by City to measure all or a portion of the flow from County, the City shall make written demand on county that County install any and all meters as City deems necessary or desirable. County shall install, at its sole expense, all such meters at locations specified by the City by no later than ninety (90) days after receipt of City's demand. County shall be responsible to operate, maintain, manage, and control all flow monitoring devices installed to monitor its flows into the City's sewer main in an efficient and economical manner and to preserve them in good repair and working order, all in accordance with recognized and sound engineering practices. County shall make all flow data information available to City.

1.1.7 No Limitation on Municipal Powers. City has sole discretion to determine how to operate the City's sewer main and sewerage system. Nothing in this Agreement shall be construed as precluding or limiting City from taking any action reasonably necessary to prevent flow from County that endangers the health, safety, or welfare of the residents of the City.

1.2 County Sewer System. County is responsible for operating and maintaining any sewer lines and appurtenant facilities that connect facilities in the Park to the City's sewer main. The sewer line connecting Park facilities to the City's sewer main shall be eight-inches in diameter and be deemed a sewer lateral within the meaning of the City's Sewer Lateral Policy, Policy 570-01, dated June 3, 2014. County shall be solely responsible for all of its pipes and other sewer infrastructure in and serving the Park and maintaining a proper and working connection to the City's sewer main.

1.2.1 Design and Construction Standards. County shall be responsible to design, construct, and maintain the sewer lateral and all other sewer infrastructure to convey sewer flows from the Park to the point of connection with City's sewer main in a manner

that meets or exceeds all applicable requirements in City ordinances, resolutions, rules, standards, and policies, and any applicable laws, regulations, and standards of the State of California and United States of America. County shall install a property line clean-out or manhole to allow for regular cleaning and inspection of the sewer lateral connecting the Park to the City's main line. County will provide a copy of the design of the sewer lateral to the City for review and comment before connecting the Park to the City's sewer main. City shall not unreasonably condition or delay approval of the connection of the sewer lateral to the City's main line. The City may charge County for reasonable plan check, administration, and inspection fees in connection with the construction of the sewer lateral in addition to any other fees required by this Agreement.

1.2.2 Compliance with City, Federal and State Requirements. County shall not permit the discharge of any sewage, waste, pollutant, or excessive inflow or infiltration into the City's sewer main that is prohibited by City ordinances, resolutions, rules, standards, or policies, any laws or regulations of the United States of America or the State of California, including without limitation any regulations that may be adopted by the Environmental Protection Agency, State Water Resources Control Board, or such other agencies as may now or in the future be responsible for regulating the transport and disposal of wastewater from the Park. Inflow or infiltration is considered excessive when the flow from the Park in any 24 hour period during or after a rain event exceeds twice the typical dry weather flow. County acknowledges and agrees that it is aware of City's obligations under its Regional Wastewater Disposal Agreement and that County shall not discharge sewage into the City's sewer main in a manner that would cause City to violate the Regional Wastewater Disposal Agreement.

1.2.3 Diversion Prohibited. The diversion of any rainwater, storm water, groundwater (other than unintentional infiltration), foundation drainage, drainage from any outside surface such as streets, driveways, roofs, and yards, and any drainage from pools or ponds into the sewer system in the Park is strictly prohibited. Such diversion may result in termination of this Agreement for default under section 3.2 at the City's sole discretion.

ARTICLE II- COMPENSATION

2.1 Compensation. County shall pay the City the following as compensation for the City providing sewer service:

2.1.1 Sewer Capacity Charge. Prior to connecting to the City's sewer main, County shall pay the City the total sewer capacity fee in effect at the time of connection. County acknowledges and agrees that capacity fees are not refundable, even upon termination of this Agreement.

2.1.2 Service Charge. County shall pay the City a sewer service charge at the City's rate in effect at the time of each billing.

2.1.3 Adjustments. It is the intent of this Article that County pay the same rate for sewer service to the Park as if the Park was located within the City. The capacity fee and sewer service charge are subject to change by the City.

ARTICLE III – TERM

3.1 Term. This Agreement shall become effective upon the date of the last signatory hereto, and shall continue without expiration, unless terminated earlier pursuant to this Article.

3.2 Termination for Default. The City may terminate this Agreement for default if County fails to timely or adequately perform any obligation required by this Agreement, and does not cure such default within thirty (30) days of written notice from the City.

3.3 Termination for Convenience. County may terminate this Agreement for its convenience at any time after the effective date of this Agreement. For termination to become effective, County must provide the City with thirty (30) days advance written notice, pay any undisputed amounts due the City under Article II, and disconnect and cap the connection with the City's sewer main in a manner acceptable to the City in the City's sole discretion. Upon termination for convenience, County shall be solely responsible for providing sewer service to the Park.

ARTICLE IV - INDEMNITY

4.1 In addition to any other indemnity, defense, and hold harmless obligations of County as provided in this Agreement, County shall defend, indemnify, and hold harmless City, its officials, officers, employees, and agents ("City Parties") from all claims, liability, damages, enforcement actions, penalties, fines, and judgments (collectively, "Claims") for injury or damage to any person (including death) or property arising from or out of any act or omission of County, its Supervisors, members, agents, officers, employees, or contractors ("County Parties") arising out of or in connection with this Agreement, including those arising out of, related to, or in connection with: (a) sanitary sewer overflows from the County sewer system including, but not limited to, fines or penalties that may be assessed by the Regional Water Quality Control Board or the Federal Environmental Protection Agency; (b) disconnecting and capping the connection with the City's sewer main; (c) County's failure to obtain any required review or approval from the San Diego Local Agency Formation Commission (LAFCO); (d) any action brought to challenge City's or County's approval of this Agreement without first obtaining LAFCO approval; and (e) County's failure to perform or comply with any obligation, representation, or warranty under this Agreement.

County's obligation to defend, hold harmless, and indemnify the City shall survive the termination and expiration of this Agreement, and continue so long as a viable claim exists.

ARTICLE V - GENERAL PROVISIONS

5.1 Customer Service. County is solely responsible for responding to complaints of sewer odors, SSOs, and other sewer service issues for all of County's facilities serving the Park.

5.2 Successors and Assigns. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Agreement have been succeeded by another entity, and all rights and obligations of the Parties signatory to this Agreement shall be vested and binding on their successors in interest. Notwithstanding the foregoing, only a public agency providing recreational services at the Park may succeed to City services pursuant to this Agreement.

5.3 Notices. Any notice to be given or other document to be delivered by any Party to the other Party may be delivered in person, or may be deposited in the United States mail in the State of California, with postage prepaid, or by Federal Express or other similar overnight delivery service or by facsimile transmission and addressed to the Party for who intended:

To City:
Director, Engineering & Capital Projects
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

To County:
Director, Department of Parks & Recreation
County of San Diego
5500 Overland Avenue
San Diego, CA 92123

The Parties may from time to time change the person or address for providing notice, by providing notice of the change to the other Party in the manner provided for by this Section.

5.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate the purpose or intent of this Agreement.

5.5 Interpretation. This Agreement is entered into, and shall be construed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

5.6 Limitation on Powers. Nothing in this Agreement shall be construed as a limitation upon the powers of City as a chartered City of the State of California.

5.7 Assignment. Neither party shall assign this Agreement, in whole nor in part, without the prior written consent of the other party, which shall not be unreasonably withheld.

5.8 Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

5.9 LAFCO. County shall be solely responsible for obtaining any required review and approvals from the San Diego Local Agency Formation Commission (LAFCO) for the Parties to enter into this Agreement and for City to provide the services contemplated in this Agreement.

5.10 Approval. Whenever this Agreement requires approval, consent, acceptance, or determinations of a Party, such approval, consent, acceptance, or determination shall not be unreasonably withheld, delayed, or conditioned unless otherwise specified in this Agreement.

5.11 Force Majeure. In the event the performance of a Party is interrupted or delayed due to causes which are outside the control of the Parties and their agents, and could not be avoided by the exercise of due care, which may include, but are not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, or floods, the Party will be entitled to an extension in time of performance equivalent to the length of delay.

5.12 Incorporation of Exhibits and Recitals. All exhibits referenced in this Agreement and all recitals are incorporated herein by reference.

5.13 Third Party Beneficiaries. Nothing in this Agreement shall grant rights or benefits to anyone other than the City and County, and any alleged third party beneficiaries are hereby expressly disclaimed.

5.14 Integration. This Agreement and its exhibits contains the entire understanding between all the Parties relating to this transaction, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect. Any subsequent amendments to this Agreement must be mutually agreed upon and executed by the authorized representatives of the Parties in writing. Verbal modifications shall have no effect.

5.15 Counterparts. This Agreement may be executed in multiple counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, the Agreement is executed by the City of Chula Vista, acting by and through _____, and by the County through its authorized officer.

County of San Diego

City of Chula Vista

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

Approved as to form
and legality

Approved as to form
and legality

By: _____
Thomas L. Bosworth, Sr. Deputy
Office of County Counsel
County of San Diego

By: _____
Michael J. McDonnell, Deputy
Office of the City Attorney
City of Chula Vista