

AGREEMENT BETWEEN THE CITY OF
CHULA VISTA AND THE OTAY WATER
DISTRICT FOR THE PROVISION OF
WATER SERVICE IN A PORTION OF THE CITY OF CHULA VISTA

This agreement entered into by and between the City of Chula Vista ("City"), a charter city, and Otay Water District ("Otay") a public entity established under the Municipal Water District Law of 1911 sets forth certain terms and conditions under which the Otay Water District shall be the provider of retail water services within a portion of the City of Chula Vista.

RECITALS

A. Otay is an independently governed public agency which is responsible by law and this agreement to provide water service as needed to inhabitants within its boundaries in a cost-effective and reliable manner. Otay recognizes, through this agreement that City seeks to coordinate the provision of governmental services to its inhabitants.

B. City and Otay desire a cooperative relationship so that their respective planning efforts will not conflict within the City's planning area.

C. Otay desires to have a stable planning environment so that its efforts to provide water service to its customers through regional facilities can go forward.

D. City and Otay agree that a long-term agreement is desirable to fix the responsibilities of City and Otay with respect to the provision of water services to current and future areas of City which will be served by Otay.

In consideration of which, the parties do hereby agree as follows:

1. Recitals. The recitals listed above are correct and are incorporated herein by reference.

2. Water Provider. City agrees that Otay will be the water supplier for the purpose of furnishing the City or its inhabitants with retail water service for those parts of the City which are within Otay's jurisdiction, and for such future areas currently outside Otay's jurisdiction which are annexed to the City along its eastern boundaries, except areas within Sweetwater Authority's jurisdiction. Otay shall be responsible by law and this agreement to provide water service as needed to the inhabitants of such territories in a cost-effective and reliable manner.

3. Term; Termination. The term of this agreement shall be 20 years from the date of signature by the City. This agreement may be terminated earlier only as provided

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pursuant to paragraphs 5 or 14, hereof. Upon termination or expiration of this agreement, Otay shall then have the right to continue to serve water under the powers of a municipal water district, and City shall then have the right to adopt any law or ordinance within its authority.

4. Water Rates. Otay agrees that the water rates it charges within the City shall be fair and reasonable, and shall not discriminate against customers within City, as compared to customers outside the City's jurisdiction.

5. Master Plan. Otay agrees that it shall adopt, within 2 years of the effective date of this agreement, a final Master Plan for the provision of water facilities within the City which is substantially similar to the Montgomery Watson draft Master Plan, dated April 1995, entitled, "Otay Water District Water Resources Master Plan" hereinafter the "draft Master Plan." City believes that the draft Master Plan represents a prudent and good faith effort to plan for the future water facility needs of City's inhabitants.

The final Master Plan shall be considered to be substantially similar to the draft Master Plan so long as it provides for: (1) the acquisition or development of not less than 5 Average Days of open storage capacity and not more than 5 Average Days of total filtered water storage, including terminal storage, emergency storage, operational storage, and fire storage; (2) a total, reasonably estimated cost, based on a LA-ENR index of 6500, for the Central Area of Otay (as described in the draft Master Plan and including the western parcel of the Otay Ranch Development) which shall not exceed \$55,566,000 for future filtered water storage, and \$6,132,000 for pump stations to serve the Central Area, exclusive of any financing expenses, all as described in the draft Master Plan; and (3) the development of water supplies from neighboring public water suppliers, such as the City of San Diego ("San Diego"), Helix Water District and Sweetwater Authority. For the purposes of this agreement, an "Average Day" of storage shall be as defined in the draft Master Plan, using the water generation factors, peaking factors and assumptions regarding emergency water conservation and alternative supply developments found therein.

In the event Otay does not, within 2 years, approve such a final Master Plan, notwithstanding any other provision of this agreement, the City shall have the right, following a public hearing held upon 30 days notice to Otay, at which protests may be heard, to terminate this agreement; provided that the 2-year period shall be tolled during the pendency of any suit brought against Otay challenging its adoption of a final Master Plan. Any public hearing notice to be given by City to Otay under this paragraph shall be given within 90 days of the date City receives notice from Otay that: (1) Otay has approved the final Master Plan; and (2) any suit brought against Otay challenging its adoption of a final Master Plan has been finally resolved, whichever is later.

After adoption of a final Master Plan, Otay shall use its best efforts to implement such plan. Any subsequently-enacted or amended Master Plan shall be submitted to the City for review and comment. Otay will provide specific, detailed responses to all comments made by the City.

6. Land Use Policy. Otay recognizes that City is the authority for setting land use policy within its planning area. Otay agrees that it will not set or use water rates, water permitting authority, or other aspects of water policy for the primary purpose of regulating land use within the City, except as required by State law as to matters of statewide concern.

7. Cooperation and Planning. Prior to adopting its annual Capital Improvement Program ("CIP") Otay will contact and meet with City Staff. City Staff will provide Otay with City's latest growth projections so that this information can be incorporated into Otay's CIP. Otay will reasonably plan and construct those water facilities necessary to meet anticipated demand in City. Otay will apply its best efforts consistent with San Diego County Water Authority policy to assure adequate water supply to meet City's demands.

8. Storage. Otay agrees to apply its best efforts to pursue cost effective storage and, in particular, to seek open storage in Otay Lake or similar open reservoir storage through an agreement with the City of San Diego, or other public water supplier or suppliers which is designed to implement the draft Master Plan provisions regarding cost-effective storage for the City and its inhabitants, and to avoid any need for the development of more than 5 Average Days of filtered storage. Otay agrees that filtered storage is an undesirably costly method of providing water storage for more than 5 Average Days; while up to 3 Average Days of filtered water storage is a reasonable method of providing such storage for the Central Area. In the event Otay fails to diligently pursue such an agreement, City shall have the right to terminate this agreement pursuant to paragraph 14.

9. Joint Use. Otay generally agrees with the joint use of facilities. Otay agrees to meet and confer with City regarding any joint use proposals proposed by the City on reservoir sites.

10. Public Debt. Otay agrees that it will not place debt on private property for the construction of water facilities through an assessment and/or improvement district in excess of \$.10 for every \$100 in assessed valuation within City.

11. Sewer Billing. Otay agrees to continue to provide the existing sewer billing service to the City that it has historically provided on the same terms and conditions with reasonable increases allowed so that Otay can recover its costs.

12. Reclaimed Water. Otay will buy from City, or City's designee, as much reclaimed water as the Otay Ranch area needs and is available from any City water reclamation facility or raw or reclaimed water obtained by City from San Diego. After considering incentives or rebates from others which are paid to Otay or City, and the cost of distribution paid by Otay, the cost of purchasing such water from City or City's designee shall not cause the price of reclaimed water to either the City's inhabitants or Otay's customers to increase over the price that would have been charged had Otay supplied to those inhabitants or customers, raw water purchased from and delivered to Otay by the San Diego

County Water Authority. Since this paragraph is premised upon the current pricing structure in which raw water is a substitute for reclaimed water in this county, in the event the price of reclaimed water produced by San Diego and available to City is not based upon the San Diego County Water Authority's price of raw water, City shall have the right to demand renegotiation of the provisions of this paragraph regarding the price to be paid by Otay for City's reclaimed or raw water supplies.

13. Water Facility Installations and Alterations. As to Otay's operations within the boundaries of City, Otay agrees to coordinate the actual installation and alteration of its facilities within City to the extent required by law. In addition, upon demand Otay will:

(a) repair or pay to City the reasonable cost of repairs to City property resulting from operations of Otay within City;

(b) remove and relocate without expense to City, any of Otay's facilities within City, if and when made necessary by any lawful change of grade, alignment or widening of any public street, way, alley, or place, including the construction of any subway or viaduct, unless Otay's facility is located within an easement granted to Otay prior in time to City's rights in such property. In such instances, as to any of Otay's facilities to be constructed within an easement with such prior rights, Otay shall meet with City and use its best efforts to seek agreement regarding the location and design of the facilities which will minimize the likelihood and cost of their future relocation or removal. It is the intent of the parties that Otay's facilities be located within existing or planned public rights of way whenever feasible; that the acquisition of easements for Otay's facilities occur only when strictly necessary; and that future private developments not be relieved from utility relocation costs under this paragraph. Therefore, it is further agreed that: (1) Otay shall use its best efforts to locate its facilities within existing or planned City rights of way or other public places, rather than within any easement; and (2) City shall use its best efforts to condition future private developments which necessitate the relocation or removal of Otay's facilities to bear the costs of such relocation or removal.

(c) indemnify and hold City harmless from liability for damages resulting from Otay's operations.

14. Dispute Resolution.

(a) In the event of any dispute or controversy between the parties hereto regarding the provision of water service within City's current or potential future boundaries, the parties shall make a good faith effort to resolve such controversy or dispute in the first instance through mediation. The subjects of such mediation may include any matter addressed in this agreement, or any other matter pertaining to the provision of water service, including, but not limited to implementation of state laws requiring direct access, aggregation of accounts or wheeling of water for the benefit of City inhabitants. Upon written demand by either party, a mutually agreeable mediator will be selected to assist the parties in resolving as much of

the dispute or controversy as possible. The costs of mediation shall be divided equally. Notwithstanding any other provision of this agreement, this subparagraph (a) shall not affect, nor shall it be considered in the construction or interpretation of, the scope of paragraphs 16 and 17 of this agreement.

(b) Whenever a dispute arises as to the way Otay carries out its obligations under this agreement, as to which mediation has been unsuccessful, the City shall have the right to submit the dispute to arbitration. The arbitrators shall determine whether Otay acted reasonably in carrying out its responsibilities. If the arbitrators finds that Otay has not acted reasonably, the arbitrators shall have the authority to make such an order as is necessary to require Otay to come into compliance with the agreement. If Otay fails to do so, the City shall have the right to terminate this agreement. If the arbitrators find that Otay has acted reasonably, the agreement shall remain in full force and effect.

Arbitration shall be instituted by the City notifying Otay of its choice of arbitrator. Within 15 days, Otay shall notify the City of its choice of arbitrator and the two arbitrators shall thereafter pick a third arbitrator. Any decision in arbitration must be supported by a minimum of two votes.

15. Notices. All notices shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the third business day after mailing by United States Mail, certified and registered, return receipt requested, postage prepaid, addressed as follows:

If to City:

City of Chula Vista
Attn: City Manager
276 Fourth Avenue
Chula Vista, CA 91910

If to Otay:

Otay Water District
Attn: General Manager
2554 Sweetwater Springs Boulevard
Spring Valley, CA 91977

16. Entire Agreement. This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this agreement shall be binding unless in writing and executed by the parties hereto.

17. Attorneys' Fees. In the event any action shall be instituted in connection with this agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including reasonable attorneys' fees as fixed by the arbitrator.

18. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this agreement shall become illegal, null or void as against public policy, the remaining portions of this agreement shall not be affected thereby, provided that the purpose and intent of the agreement can be reasonably carried out without the unenforceable or ineffectual portion.

19. Actions by LAFCO. Otay supports the sphere of influence amendment for the City of Chula Vista which is currently pending before LAFCO with respect to all items as to which there is no dispute between the County and the City of Chula Vista, including, but not limited to the designation of Otay as the preferred water provider to the western parcel of Otay Ranch. Otay shall withdraw any opposition to pending proposals for, and shall not oppose future plans for, annexation of territory within the current or future boundaries of Otay to the City, including, but not limited to, the annexation of all or any portion of the western parcel of the Otay Ranch.

20. Utility User Fee. City may impose a utility user fee in such amount as City determines appropriate. Any such fee may, at Otay's option, be reflected and identified on the water bills of customers as a separate line item.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date shown below.

OTAY WATER DISTRICT

Date 12/6/95

By Richard Wright

Title President

CITY OF CHULA VISTA

Date 12/5/95

By

Title Shirley Horton