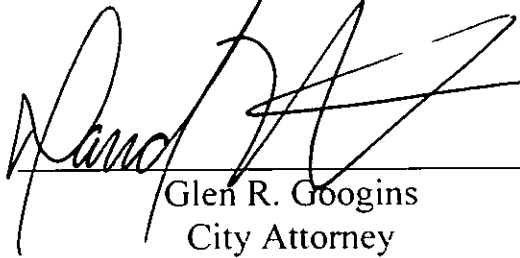


THE ATTACHED AGREEMENT HAS BEEN REVIEWED  
AND APPROVED AS TO FORM BY THE CITY  
ATTORNEY'S OFFICE AND WILL BE  
FORMALLY SIGNED UPON APPROVAL BY  
THE CITY COUNCIL



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Glen R. Googins  
City Attorney

Dated: 5/25/16

SEWAGE TRANSPORTATION AGREEMENT  
BETWEEN  
SAN DIEGO COUNTY SANITATION,  
THE COUNTY OF SAN DIEGO, AND  
THE CITY OF CHULA VISTA  
FOR THE SALT CREEK SEWER INTERCEPTOR



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# SEWAGE TRANSPORTATION AGREEMENT FOR SALT CREEK INTERCEPTOR SEWER

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City of Chula Vista, San Diego  
County Sanitation District,  
and the County of San Diego

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May 2016

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**THIS SEWAGE TRANSPORTATION AGREEMENT FOR THE SALT CREEK SEWER INTERCEPTOR** is made and entered into by and between the San Diego County Sanitation District, an independent sewer district formed and operating under the County Sanitation District Act, Health & Safety Code section 4700, *et seq.* (“District”), the County of San Diego, a political subdivision of the State of California (“County”), and the City of Chula Vista, a municipal corporation (“City”).

#### RECITALS

- A. City owns, operates and maintains the Salt Creek Sewer Interceptor System (“City System”) for the purpose of collecting and transporting sewage from properties located in the Otay Basin to the City of San Diego’s Metropolitan Sewerage System (hereinafter “Metro System”) for treatment and disposal. Within the City System is a primary trunk sewer known as the Salt Creek Interceptor (hereinafter referred to as the “Interceptor Sewer”) which is an approximate 13.25 mile segment located within the Otay Basin that runs from the intersection of Proctor Valley Road and Hunte Parkway in the City of Chula Vista, to a point of connection with the Metro System located near the junction of Main Street and Interstate 5.
- B. In October 1993, the City and County jointly adopted the Otay Ranch General Development Plan/Subregional Plan (“GDP/SRP”) which provided for the development of Otay Ranch as a series of village and planning areas. Otay Ranch Villages 13 and 14, and Planning Areas 16, 17, and 19 (“Villages”) as identified in the GDP/SRP are located in portions of the unincorporated County to the east of City boundaries.
- C. The District is empowered by Health and Safety Code Section 4843 to enter into this agreement with the City to provide for the transportation of sewage from the Villages to the Metro System using the City System. Subsequent to execution of this agreement, the District will seek to annex (via LAFCO) the Villages into the District’s territory.
- D. The City and District are parties to the “Regional Wastewater Disposal Agreement between the City of San Diego and the Participating Agencies in the Metropolitan Sewerage System” filed on May 18, 1998, as Document No. 00-18517 with the City Clerk of the City of San Diego (hereinafter “Regional Wastewater Disposal Agreement”). In accordance with the Regional Wastewater Disposal Agreement, the City and District have the right to discharge wastewater up to established limits into the Metro System, hereinafter referred to as “Metro Capacity Rights”. The City and District are agreed in that: 1) all sewage originating in the City or from territory within the City’s sphere of influence which is ultimately discharged into the Metro System through the City System shall be charged against the City’s Metro Capacity Rights and that 2) all sewage discharged into the Interceptor Sewer from territory served by the District shall be charged against District’s Metro Capacity Rights.
- E. The primary purposes of this agreement are to: 1) establish the rights, privileges and duties of the parties concerning the use of the Salt Creek Interceptor by the District; 2) allow for the construction and maintenance of connections to the Interceptor Sewer by District; 3) specify the area within the District to be served by the Interceptor Sewer; 4)

set standards regarding waste characteristics; 5) establish lease, fees and charges and the methods for determining them; and 6) establish discharge capacity limitations consistent with the Regional Wastewater Disposal Agreement for each agency.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations of the parties as herein expressed, City, County and District agree as follows:

### ARTICLE 1 - DEFINITIONS

The singular of each defined term includes the plural. For the purposes of this agreement, the following definitions apply:

Authorized Agency means a municipality, district, or agency which has been authorized by City to discharge sewage into the City Sewerage System pursuant to sewage transportation agreement(s) with the City.

City Sewerage System means City's wastewater collection system, which consists of pipelines and pump stations that collect wastewater within the Otay Basin and convey it to the Metropolitan Sewerage System for treatment and disposal via the City's Interceptor Sewer.

City Sewerage System Facility means each element of the City Sewerage System used or useful for the transportation of sewage, including but not limited to: transmission lines; force mains; trunk sewers; interceptors; and pump stations.

Available Capacity means the transportation capacity in the City Sewerage System made available to District to serve the District Tributary in accordance with Article 3 of this agreement.

Best Management Practices means an engineered structure, management activity, or a combination thereof, that eliminates or reduces an adverse environmental effect of a pollutant.

Capital Improvement Project (herein referred to as "CIP") means those items and activities required by sound engineering and best management practices, including but not limited to acquisition, planning, design, financing, and construction, for any one or more of the following purposes: 1) to alter, change or modify the hydraulic capacity of any part or whole of the City Sewerage System; 2) to improve the function and performance of any part or whole of any portion of the City Sewerage System; 3) to add new facilities to the City Sewerage System for the purpose of altering, changing, or modifying the hydraulic capacity, or improving the function and performance of the system; or 4) to perform a major repair or major replacement of any existing City Sewerage System facilities.

Capital Improvement Project Cost means costs associated with a Capital Improvement Project.

Capacity Limitations means the amount of sewage allowed under this agreement to discharge into those portions of the City Sewerage System, up to the limits set forth in Article 3 of this

agreement. These limitations are separate and distinct from Metro Capacity Rights as referenced in the Regional Wastewater Disposal Agreement.

County means the County of San Diego, a political subdivision of the State of California.

Design Capacity means the maximum flow which can be conveyed through a pipe segment when the ratio of depth of the flow to the diameter of the pipe segment ( $d/D$ ) equals 75% for pipe segment 18 inches or greater, or 50 % for pipe segment 15 inches or smaller. In the case of a pump station, design capacity means the maximum flow that can be pumped using the main pumps, excluding the backup pumping capacity.

District's Tributary means District areas where wastewater flows are conveyed to the City Sewerage System, and measured using either flow meters or house-count areas. The authorized District's Tributary further described in Article 2 and Exhibit A is conveyed to the Metropolitan Sewerage System for treatment and disposal via the City's Interceptor Sewer.

Fiscal Year means the period from July 1 through June 30.

Flow means the amount of wastewater produced by customers, and including inflow and infiltration, which is discharged into the City Sewerage System by District. Flow may be expressed in million gallons per day (MGD).

Infiltration means water other than wastewater produced by customers that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections or manhole structures (excluding the manhole cover). Infiltration does not include, and is distinguished from, Inflow.

Inflow means water other than wastewater produced by customers that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, Infiltration.

Interceptor Sewer means that portion of the City Sewage System, commonly referred to as the Salt Creek Interceptor, that consists of an approximate 13.25 mile segment located within the Otay Basin that runs from the intersection of Proctor Valley Road and Hunte Parkway in the City of Chula Vista, to a point of connection with the Metro System located near the junction of Main Street and Interstate 5.

LAFCO means the San Diego Local Agency Formation Commission.

Metropolitan Sewerage System (previously defined as the Metro System) means those City of San Diego facilities and contract rights to facilities which are described in the Regional Wastewater Disposal Agreement, as may be amended.

Operation and Maintenance (herein referred to as “O&M”) means those items and activities required by sound engineering and best management practices to maintain the hydraulic capacity, function, and performance of the City Sewerage System or Metro System.

Operation and Maintenance Costs means the costs of operation and maintenance including, but not limited to, annual costs associated with administration, operation, maintenance, replacement (non-CIP), annual premiums, claims payments and claims administration, and overhead.

Otay Ranch Village Sewer System (sometimes referred to herein as the ORVSS) means the District’s wastewater collection system to be built and owned by District for the purposes of collecting wastewater within the Villages, as more particularly detailed in Exhibit A, that conveys or may convey sewage to the Metropolitan Sewerage System for treatment and disposal via the City’s Interceptor Sewer.

Parties means City, District, and County.

Regional Wastewater Disposal Agreement means the “Regional Wastewater Disposal Agreement between San Diego and the Participating Agencies in the Metropolitan Sewerage System,” Document No. OO-18417, filed May 18, 1998, with the Clerk for the City of San Diego as may be amended.

Sewage means wastewater and its commonly constituent substances.

Sewage Transportation Service means the transportation of sewage from the point of discharge into the City Sewerage System to the Metropolitan Sewerage System.

Transportation Charge means the amount paid to the City for transportation of District’s flow in the City Sewerage System. This charge includes Operation and Maintenance costs but does not include Capital Improvement Project costs.

Unit Transportation Rate means the amount per unit distance (mile) of length of gravity sewer charged for sewage transportation service.

Villages means the unincorporated areas including Otay Ranch Villages 13 and 14, and Planning Areas 16, 17, and 19 as shown on Exhibit A hereto.

## ARTICLE 2 - OWNERSHIP AND OPERATION OF THE CITY SEWERAGE SYSTEM

2.1 Right to Use. This agreement provides District with a contractual right to use the Interceptor Sewer included within the City Sewerage System. All decisions with respect to the planning, design, construction, operation and maintenance of the City Sewerage System shall rest with the City. If District’s contractual right to use the Interceptor Sewer is adversely impacted by the planning, design, construction, operation and maintenance of any part of City Sewerage System, District shall have the right to review and comment on these issues prior to any modifications to the subject portions of the City Sewerage System.

However, District shall only have a contractual right to use the Interceptor Sewer as set forth in this agreement.

2.1.1 Mapped Service Area. The District Tributary area mapped on Exhibit A shall be the only District area served by connections to the Interceptor Sewer. In no event shall District allow areas not depicted on Exhibit A to be served using the Interceptor Sewer. Subject to the limitations hereinafter set forth, the District may request expansion of the area served. Expansion of the area served (District's Tributary) may be accommodated by the City as long as there is sufficient capacity and the additional flow will not impair the usefulness, as reasonably determined by the City, of the Interceptor Sewer. Expansion of the District's Tributary would require amendment of this agreement, as well as production of amended Exhibits.

- a. Area to be Served. Only those areas within the District's Tributary as shown on Exhibit A, as amended from time to time, and located within the District or annexed to the District by LAFCO action, shall be eligible to be served by City's Interceptor Sewer. Notwithstanding the foregoing, the City may temporarily serve areas outside District boundaries but within the District's sphere of influence or for other purposes within the scope of California Government Code section 56133 as the same may be amended from time to time. Temporary service shall be subject to the prior written approval of the City's Engineer, which approval shall specify the area and duration of the temporary service.

2.1.2 Change in Ownership. Subject to the terms of this agreement, and in conformance with all applicable laws, City may transfer ownership of all or part of the City Sewerage System at any time. City shall not transfer or agree to transfer any part of the Interceptor Sewer transporting sewage from the District Tributary without reserving District's rights granted by this agreement. In the event of a transfer, City's successor(s) in interest shall be bound by the terms of this agreement.

2.1.3 Assignment of Rights. Subject to the terms of this agreement, District may transfer or assign its rights and obligations under this agreement. Any such transfer must first, however, be approved in writing by City's Engineer. District may not transfer its rights if City determines, after consultation with District, that the proposed transfer will adversely impact City's ability to operate the City Sewerage System or violate or potentially violate the Regional Wastewater Disposal Agreement.

2.2 Duties of City. City shall operate and maintain the Interceptor Sewer in an efficient and economical manner, and maintain it in good repair and working order, all in accordance with recognized sound engineering and best management practices. City shall comply with all applicable laws, rules and regulations.

2.3 Duties of District. District shall maintain connections and discharge sewer flows into the Interceptor Sewer in accordance with this agreement, the Regional Wastewater Disposal Agreement, City ordinances, resolutions, rules and regulations, and all applicable State and

federal laws, rules, and regulations. Continued District connection and use of the Interceptor Sewer shall be subject to the following:

- 2.3.1 Connections. District, at its sole expense, shall construct, install, maintain, repair, replace and reconstruct all connections and appurtenances to the Interceptor Sewer installed or constructed by District under the terms of this agreement. The location, installation, construction, repair (except emergency repairs, which following the resolution of the emergency, shall be made to conform to City standards), replacement and reconstruction of each and every such connection and appurtenance shall be in accordance with City design standards, Standard Specifications and San Diego County Regional Standard Drawings. City shall not unreasonably condition or delay any necessary permits, access, and easements for the construction, maintenance, and operation of improvements within the City necessary for conveyance of sewer flows from the Villages to connections to the City Sewerage System.
- 2.3.2 Traps and Dissipaters. After consultation with City, District may be required to install “filters” such as screens, debris traps or energy dissipaters at or near sites connecting to the Interceptor Sewer. When required, City shall request the installation in writing and allow a minimum of 120 days for installation after the initial request is made. Installation of filters including planning, design, construction, operation and maintenance will be the sole responsibility of the District.
- 2.3.3 Odor Control. If City determines that flow from District is causing unreasonably high concentrations of hydrogen sulfide gas in the Interceptor Sewer, or is a source of unreasonably noxious odors, District shall take reasonable steps within the District sewer system to eliminate such concerns, such as pre-treating the flow with chemicals to reduce the formation of hydrogen sulfide.
- 2.3.4 Pump Station Operation. The District shall design and operate pump stations within the ORVSS so as not to impact the City sewerage system from excessive pumped flow rates or turbulent hydraulic conditions. To the extent that City determines that the flow rates are excessive or create turbulent hydraulic conditions, the District shall make such changes necessary to reduce the impact to a level acceptable to the City.
- 2.3.5 Limitations on Type and Condition of Sewage. District shall not discharge or allow to be discharged, any sewage or wastes into the Interceptor Sewer which do not meet the standards established by City ordinances, resolutions, rules and regulations and the Regional Wastewater Disposal Agreement. District shall also comply with all applicable statutes, rules and regulations of all agencies of the United States of America, including the Environmental Protection Agency, the State of California, any agencies of the State of California, and the City of San Diego having jurisdiction over the collection, transmission, treatment and disposal of sewage and other wastes in the Interceptor Sewer. District shall regulate and prohibit the discharge into any sewer line connected to and served by the Interceptor Sewer of sewage and wastes which do not meet the quality and standards established by City.



- a. Excessive Inflow or Infiltration. District shall not allow, to the extent practicable, excessive inflow and infiltration to be discharged into the Interceptor Sewer from any District sewer system or facilities. For purposes of this Section, “excessive” means any amount that causes District to exceed the capacity limitations set forth in Article 3.
- b. Compliance with Laws. District shall not allow, to the extent practicable, the discharge of any waste, pollutant, inflow, or infiltration into the Interceptor Sewer that is prohibited by ordinances, resolutions, rules, or regulations of the United States of America, including the Environmental Protection Agency, the State of California, City, City of San Diego, or other local agency having jurisdiction over the collection, transportation, treatment and disposal of sewage and other wastes in the Interceptor Sewer. District shall not discharge sewage into the Interceptor Sewer in a manner that would violate the Regional Wastewater Disposal Agreement.
- c. Enforcement Actions. If a regulatory agency with appropriate jurisdiction imposes any penalty or takes other enforcement action related to the transportation of sewage or other matter in or from the Interceptor Sewer, City shall determine, in active consultation with impacted parties, whether City, District, or any other authorized agency caused or contributed to such penalty or enforcement action. Based on this determination, City shall allocate the penalty or other relief, including the cost of defense, to the party or parties responsible. Each responsible party, whether City, District, or another authorized agency, shall pay its share of the penalty or other relief, and any costs of defense as reasonably determined by City in active consultation with impacted parties. If City cannot make an allocation based on responsibility, the cost of the penalty or other relief shall be shared by City, District, and any other authorized agency involved based proportionately on their respective average daily flow into the Interceptor Sewer. In no event shall City allocate costs attributable to City or another authorized agency to District.

2.4 Funding Obligations. Nothing in this Section or in this agreement shall obligate City to make any payment for the acquisition, construction, maintenance or operation of the City Sewerage System, and in particular the Interceptor Sewer, from monies derived from taxes or from any income and revenue of City other than monies in, or sewer revenues which go into, the operating fund for the City Sewerage System, and from construction funds derived from the sale of sewer revenue bonds or other sources of sewer funding for the City Sewerage System as are duly authorized. Nothing in this Section, however, or in this agreement shall prevent City, in its discretion, from using tax revenues or any other available revenues or funds of City for any purpose for which City is empowered to expend monies under this agreement.

2.5 Financial Statements. City shall keep appropriate records and accounts of all costs and expenses relating to the collection and conveyance of sewage and the acquisition, planning,

design, construction, administration, monitoring, and operation and maintenance of the Interceptor Sewer.

2.5.1 Right to Audit. Upon written request, said records and accounts shall be subject to reasonable inspection by any duly authorized representative of District, at District's sole expense. District may audit these records for a three fiscal year period previous to its request, at its sole expense.

2.5.2 CAFR. City shall make its Comprehensive Annual Financial Report as it relates to the Interceptor Sewer available to District.

### ARTICLE 3 - CAPACITY LIMITATIONS

3.1 District's Tributary Limit. The District's Tributary, subject to annexation pursuant to section 2.1.1, consists of the Villages. Pursuant to terms of this agreement District may discharge up to 870,000 gallons per day of wastewater generated within the Villages ("District's Tributary Limit"). The basis of this capacity limitation is an official study ("Study") conducted by the District and in a manner satisfactory to the City, which verified that adequate capacity is available in the City Sewerage System to convey up to 870,000 gallons per day of wastewater generated within the Villages. District shall not allow flows into the Interceptor Sewer that exceed the District's Tributary Limit.

3.2 Increase in District's Tributary Limit. The Study determined that discharges from the Villages of between 870,000 gallons per day and 1,000,000 gallons per day may result in impacts to one sewer reach of the City's Sewerage System totaling 407 feet in length (the "Reach"), depicted in Exhibit B. Provided that the District, at its sole cost and expense and at a time reasonably determined by the City, improves or causes the improvement of the Reach in a manner that supplies the needed capacity, the City shall grant the District the right to discharge additional flows into the Interceptor Sewer in excess of 870,000 and up to 1,000,000 gallons per day ("Increased Tributary Limit"). At no time, however, shall the District allow the flows into the City Sewerage System to exceed the Increased Tributary Limit.

3.3 Metered Flow. District's Tributary flows will be metered prior to entering the Interceptor Sewer. Said meters and installation shall be of the American Digital System (ADS) type and installed at such locations and in a manner approved by City's Engineer.

3.4 Requests for Additional Discharge Capacity In Excess of 1,000,000 Gallons Per Day. If at any time, average annual flows from District's Tributary exceed the cumulative capacity limit in Section 3.1 or as increased by Section 3.2, above, District shall request an amendment to this agreement. The decision of whether to allocate additional discharge capacity to District shall be at the sole discretion of City. District agrees to submit a written request to City to obtain the additional capacity needed in accordance with the procedures set forth in this agreement. In the event discharge capacity is requested for areas outside the District's Tributary as identified on Exhibit A to this agreement, District shall seek to amend this Sewage Transportation Agreement and associated exhibits.

- 3.5 Transfers of Discharge Capacity. Without advance notification and written approval from the City's Engineer, which approval shall not be unreasonably withheld, District shall not buy, sell or exchange all or part of its discharge capacity in the City Sewerage System. No sewerage capacity may be transferred if City determines, after consultation with District, that said transfer will adversely impact City's ability to operate the City Sewerage System, Interceptor Sewer or comply with the Regional Wastewater Disposal Agreement. As a ministerial matter, City's Engineer shall adjust District's cost responsibilities for O&M per Article 6 and make such other changes in the administration of this agreement as are necessary to reflect the transfer.

#### ARTICLE 4 - MONITORING

- 4.1 Flow Monitoring Devices. If at any time during the term of this agreement it is deemed necessary or desirable by City to measure all or a portion of the flow from District's Tributary, the City shall make written demand on District that District install any and all such meters as City deems necessary or desirable. Within 365 days after receipt of such demand, District shall at its sole expense, install such meters at the locations specified by City. Said meters and installation shall respectively be of the American Digital System (ADS) type and installed at such locations and in a manner approved by City's Engineer. At its own discretion and upon written approval by the City's Engineer, District may install meters in lines maintained by the City or the District to measure all or a portion of the sewage discharged into the Interceptor Sewer from District connections to the Interceptor Sewer.
- 4.2 Equipment Maintenance and Reporting. District shall operate, maintain, manage and control the flow monitoring device(s) installed to monitor its flows into the Interceptor Sewer in an efficient and economical manner and preserve them in good repair and working order, all in accordance with recognized and sound engineering practices. District shall ensure that flow data information obtained from such meters is available to the City through direct computerized flow monitoring such as the Intelli-Serve Website for ADS meters. From time to time the City may, at its own discretion, conduct capacity measurements to determine actual peak and average daily flows through direct computerized flow monitoring. The results of these measurements may be used to verify, or to cause District or District's agents to restore, the accuracy of the meters installed by District.

#### ARTICLE 5 – EXCEEDING CAPACITY

- 5.1 Limitations on Capacity. During the term of this agreement, District shall have the right to discharge sewage into the Interceptor Sewer in an amount not to exceed its contract capacity set forth in Section 3.1, or as increased in accordance with this agreement. City is not obligated to receive from District, nor is District privileged to discharge into the Interceptor Sewer, any amounts in excess of District's contract capacity permitted under this agreement.
- 5.2 Good-Faith Contract Capacity Discussions. The parties recognize that appropriate capacity and long term planning are essential for the proper provision of sewage transportation service. The parties further recognize that it is very difficult to forecast and measure the

resulting damage to City and the City Sewerage System if District exceeds its contract capacity. Therefore, if City notifies District that it has exceeded its contract capacity (measured in gallons per day on average over a 24-hour period), at any time during five or more days (from midnight to midnight) in any consecutive 90-day period, District shall develop and submit a plan of action and an implementation schedule to City for its approval and acceptance. At a minimum, the plan shall describe how District proposes to stay within its contract capacity or how District proposes to increase its contract capacity in the Interceptor Sewer. District's proposals may include, but are not limited to, increasing available capacity through participation in City Sewerage System capital improvement projects, purchasing or transferring capacity from City or an authorized agency, taking other measures such as the replacement of District system components experiencing infiltration and inflow and/or construction of peak flow retention structures or re-use facilities to reduce District's flow into the Interceptor Sewer.

5.2.1 City Review. In the event that District fails to submit the aforementioned plan of action and implementation schedule within six (6) months of the date District is notified by City, or if City reasonably determines that the submitted plan and schedule are insufficient or untimely to adequately address the matter, City shall independently develop a plan to address increase capacity on behalf of the District. City shall provide a copy of the plan, which shall include: (1) the type and location of any capital improvement projects necessary; (2) the projected costs of such capital improvement projects; and (3) the allocation of such costs to District ("Notice of Determination").

- a. District shall have six (6) months from the date of the Notice of Determination to either: (1) comment on or challenge all or part of the Notice of Determination; (2) agree to the Notice of Determination; or (3) commit, in writing, to obtain new sewage transportation services outside of the City Sewerage System. If District objects to City's determination, District shall have the burden to commence and diligently pursue the formal dispute resolution procedures of Article 12 of this agreement. If District fails to initiate dispute resolution within ninety (90) days after the expiration of the time to respond to the Notice of Determination, City's determination shall become final and binding on District, and District agrees to pay the capital improvement project costs and transportation charge, if any, set forth therein.
- b. If District and City agree on the capital improvement projects necessary to support increased contract capacity, City and District shall enter into an agreement specifying the terms and conditions pursuant to which the capital improvement projects shall be undertaken. The agreement shall provide that District shall reimburse City for its proportionate share of any capital improvement project costs accruing to District to support increased contract capacity.

5.3 No Limitation of Municipal Powers. City has sole discretion to determine how to operate the City Sewerage System in a safe, efficient and environmentally sound manner to avoid

any risk to the health, safety and welfare of the public. Therefore, nothing in this agreement shall be construed as precluding or limiting City from taking any action reasonably necessary to prevent flow from District that endangers the health, safety, or welfare of the residents of the City.

5.4 Diversion of Flow. Nothing in this Agreement shall preclude District from diverting all or part of its flow from the City Sewerage System. However, prior to such diversion, District shall notify City in writing at least six (6) months in advance and enter into an agreement with City that, at a minimum, will require District to pay its proportionate share of outstanding capital improvement project costs, if payment of such outstanding costs upon diversion of flow is not already addressed by separate agreement. District will also be responsible for all transportation charges owed by District up to the time of diversion.

5.4.1 No Refunds. In no event shall District's diversion of all or part of its flow from the City Sewerage System entitle District to any refund of previously remitted payments for capital improvement project costs, or forgiveness of amounts owed, if any, to City for existing or increased contract capacity. District shall, however, retain such purchased contract capacity and may transfer such capacity rights to another authorized agency, subject to City's approval. District's contract capacity may be reduced or eliminated by future capital improvement projects as follows, unless District reserves capacity in accordance with Section 5.4.2:

- a. If a capital improvement project replaces a facility in which District has contract capacity, District's contract capacity is extinguished, unless District pays its fair share of capital improvement project costs.
- b. If a capital improvement project rehabilitates a facility in which District has contract capacity, District's contract capacity is reduced in proportion to the extent District fails to pay for its proportionate share of the use of the facility.

5.4.2 Reserving Future Capacity. If District diverts all or part of its flow from the City Sewerage System, District may retain its purchased contract capacity by paying its proportionate share of future capital improvement projects in accordance with Article 8. City may decline to reserve contract capacity only if City reasonably determines that reserving contract capacity will have a material adverse effect on the operation, maintenance, or useful life of the facility or the City Sewerage System.

5.4.3 Re-Introduction of Flow. If District intends to re-introduce flow previously diverted pursuant to Section 5.4, other than on an emergency basis, District shall notify City in writing at least six (6) months in advance of re-introducing the flow into the City Sewerage System.

## ARTICLE 6 - TRANSPORTATION CHARGES

6.1 Operation and Maintenance. The Interceptor Sewer shall be maintained by City in good repair and working order in accordance with sound engineering practices. Keeping the Interceptor Sewer in good working order requires routine cleaning and inspection; minor

repairs, replacements and reconstruction; as well as unanticipated minor emergency work. These kinds of City activities are considered O&M, and the cost of these activities, as well as associated administrative and overhead costs shall be included in the Transportation Charge.

Capital improvement charges, as described in Article 8, are separate and distinct from transportation charges.

- 6.2 Transportation Charges. Transportation charges are used to allocate a portion of the O&M for the Interceptor Sewer to District. The transportation charge shall be equal to the unit transportation rate charged by the City of San Diego to those signatories of the Regional Wastewater Disposal Agreement. At such times that the City of San Diego adjusts the unit transportation rate, the rate under this agreement shall be adjusted automatically, with no amendment to this agreement or action of the parties hereto, such that it remains equal to that rate charged by the City of San Diego.

The transportation charge effective July 1, 2016 through June 30, 2017, imposed by the City of San Diego on participating agencies is \$7.09 per mg-mile. This rate is adjusted each fiscal year by the City of San Diego. If the City of San Diego fails to increase the rate, City may increase the rate as reasonably necessary to ensure full cost recovery for the operation of the Interceptor Sewer.

- 6.3 Billing. City shall bill District on an annual basis for transportation charges. Billing will be based on cumulative sewage flows from District Tributary as measured by ADS flow meter readings for the prior fiscal year - July 1 through June 30. Billing will also be based on City's determination of total length of City sewer utilized by the District and calculate annual transportation charges based on mg-mile of City sewer utilized by the District. Payment shall be made by District to City within thirty (30) days of receipt of the billing and shall be considered delinquent fifteen (15) days thereafter. Late payments shall accrue interest at a rate of ten (10) percent per annum.

- 6.5 Payment Disputes. No payment shall be withheld by District because of a dispute as to its amount. Disputed payment shall be made with a notation as to the portion in dispute. Payment disputes shall be resolved pursuant to the dispute resolution procedure set forth in this agreement. Any amount determined to have been improperly allocated to District resulting in an overpayment shall be adjusted by City as a credit to the next invoice following such determination. In the event that the improper allocation to District resulted in an underpayment, such amount shall be adjusted by City as a debit to the next invoice following such determination.

- 6.6 Metro Sewer Service Fee. District shall be responsible for paying Metro's Sewer Service Fee directly to Metro.

6.6.1 In order to determine the amount of the Metro Sewer Service Fee, the District shall install or have installed, at its sole cost and expense, a flow meter or meters and a sampling station at the point of connection with the City Sewerage System to assist in

the correct distribution of the sewer service fees by Metro. If Metro does not assume responsibility for the maintenance and operation of the meter/testing station, costs associated with the maintenance and operation of said stations shall be the responsibility of the District. Flow monitoring shall be continuous. Flow strength testing shall be performed in accordance with City of San Diego’s testing intervals.

**ARTICLE 7 — FEES ASSOCIATED WITH DEVELOPMENT**

7.1 Payment Prior to Permit Issuance. As a condition of permit issuance, County shall require developer to pay sewer related City Development Impact Fees and other payments, whether required by contract, ordinance or law, associated with development within the Villages (“Fees”). County shall not issue any building permits for development within the Villages until it receives written confirmation, which confirmation shall not be unreasonably withheld, from the City that City has received all Fees, including, but not limited to the following:

7.1.1 Salt Creek DIF. City Ordinance No. 2617 establishes impact fees to be paid by developers that connect to the Interceptor Sewer. Development Impact Fees charged and remitted shall be those in effect at the time of building permit issuance. Current DIF (2015) fees by land use category are as follows:

<b>SALT CREEK INTERCEPTOR IMPACT FEES</b>	
<b>Land Use</b>	<b>Fees</b>
Single Family Residential	\$1,330/unit
Multi-Family Residential	\$997.50/unit
Commercial (including restaurant)	\$13,300/acre
Community Purpose/Fire Station	\$13,300/acre
Schools	\$5,320/acre
Park	\$2,660/acre

a. DIF Update. City agrees to update the DIF in a timely manner to include Village(s) that are proposed for development, but in no event later than 6 months after approval of a tentative map for the Village(s). County shall give City notice of the approval of a tentative map. Costs incurred by the City in updating the DIF shall be paid by the City and incorporated into the new DIF fee.

7.1.2 Capacity Fee. City requires developers to pay a Sewer Capacity Charge for development. The amount of the Capacity Fee due to the City from developers shall be equal to the difference between the Sewer Capacity Charge identified in City's MASTER FEE SCHEDULE – FEE Bullet Chapter 12-100, Sewer Fees Construction & Development, as it is amended from time to time, and the Treatment Component of Chula Vista Capacity Fee. Fees shall be those in effect at the time the building permit is issued.

7.1.3 Notice. In the event that City proposes any changes in fees, other than automatic fee increases and adjustments, City shall notice all related Council hearings and actions in accordance with law and regulation.

## ARTICLE 8 - CAPITAL IMPROVEMENT PROJECTS

- 8.1 Capital Improvement Projects. Capital Improvement Projects as defined in this agreement, include major repairs, major replacements or reconstruction, and other non-routine activities to improve or modify hydraulic performance of the Interceptor Sewer. Activities associated with capital improvement projects are separate and distinct from those associated with the O&M activities of Article 6. City and District are obligated to pay for capital improvement projects for the Interceptor Sewer that are needed to maintain existing capacity requirements or to provide new capacity under the terms below; provided, however, that the decision whether or not to construct a capital improvement project shall be at the sole discretion of City.
- 8.2 Capital Improvement Charges to Maintain Existing Capacity. City will charge District for its proportionate share of CIP cost based on the District's percentage of flow in the particular "reach" of City sewer pipe being improved. The proportionate flow percentage of each agency utilizing City sewer segments shall be calculated by the City. Upon request by the District, the City shall inform the District of the methods used to calculate District's proportionate flow percentage.
- 8.3 Capital Improvement Charges for Increased Capacity. The costs associated with any improvements for additional capacity will only be charged to that agency requiring the additional capacity.
- 8.4 Annual Adjustments to Flow Percentages. The City shall annually adjust and recalculate as appropriate, the proportionate flow percentage of each agency utilizing City sewer segments. Future CIP charges applied to the District shall be based on the annually adjusted/updated flow percentages.
- 8.5 Billing. City shall bill District on an annual basis for capital improvement charges. Payment shall be made by District to City within thirty (30) days of receipt of the billing and shall be considered delinquent fifteen (15) days thereafter. Late payments shall accrue interest at a rate of ten (10) percent per annum.

## ARTICLE 9 — CHARGE AGAINST CAPACITY RIGHTS IN METRO SYSTEM



9.1 Allocation of Capacity. All sewage discharged into the Interceptor Sewer through District's connections, with the exception of any discharges conveyed from City customers by District pursuant to transportation agreements with City, and thereafter discharged into the Metro System, and all Infiltration and Inflow allocable to District, shall be charged against District's capacity rights in and to the Metro System as such rights have been determined pursuant to the Regional Wastewater Disposal Agreement.

9.1.1 Meters. The District shall arrange with the City of San Diego for the installation of meters at the District connections to the Interceptor Sewer to monitor and measure the District Flow that will be ultimately conveyed to the Metro System and charged against District's capacity rights therein.

#### ARTICLE 10 – DURATION OF AGREEMENT

10.1 Effective Date. This agreement shall become effective immediately upon execution by City and District.

10.2 Term of Agreement. Subject to the rights and obligations set forth in Section 11.1 below, this agreement shall commence on July 1, 2016 and expire fifteen (15) years thereafter on June 30, 2031 or upon the earlier expiration or termination of the Regional Wastewater Disposal Agreement. Any outstanding obligation of District to pay its proportionate share of capital improvement project costs and such other costs addressed by Article 8 shall survive termination of this agreement.

10.3 Extension of Agreement. Subject to City's determination that there is sufficient capacity in the Interceptor Sewer and that extension will not impair the usefulness of the Interceptor Sewer and upon one (1) year's written notice from District, this agreement is subject to extension as a new lease of facilities for the remaining term of the Regional Wastewater Disposal Agreement in 15-year intervals or such shorter term as may be necessary for the last extension to remain within the termination date of the Regional Wastewater Disposal Agreement.

10.4 Contract Termination. If in the future, District is able to obtain alternate sewage transportation services, District may divert some or all of its flow from the Interceptor Sewer pursuant to this agreement. This agreement shall terminate if for any reason District's committed capacity in the Interceptor Sewer is entirely extinguished; however, in the event that District Terminates this agreement, District shall still be responsible for the costs of any Capital Improvement Project or portion thereof constructed based on District's need for capacity.

10.5 Abandonment. City may cease operation and maintenance of all or part of the Interceptor Sewer upon delivery of notice to District ten (10) years in advance of said abandonment. Upon notice by City to abandon the Interceptor Sewer, the parties shall meet and confer over the nature and conditions of such abandonment. In the event the parties cannot reach agreement, the matter shall be resolved pursuant to the dispute resolution procedure set forth

in this agreement. In the event of abandonment, City shall retain ownership of all Interceptor Sewer assets free from any claim of District.

10.6 Restoration Following Expiration or Termination. Should the agreement not be extended or District's contract capacity in the Interceptor Sewer be entirely terminated, District shall have up to three (3) years or such shorter period as is necessary to comply with Health & Safety Code section 5060, from the expiration of the lease right or termination to provide for removal of all connections and appurtenances to the Interceptor Sewer to the satisfaction of City and provide for alternative transportation of sewer flows. In no event shall the three (3) year period be applied in a manner that would result in a total lease term in excess of fifteen (15) years. If, for example, the lease terminates at the end of the fifteen (15) year term and a new lease is not issued, District would be required to immediately remove all connections and appurtenances.

#### ARTICLE 11 - INTERRUPTION OF SERVICE

11.1 Interruption of District Service. In the event of an interruption of Interceptor Sewer service to District as a result of disaster, operation of State or federal law, discontinuance or interruption of service to the City of the Metro System, or any other cause beyond the reasonable control of City, City shall bear no liability, and District shall defend, indemnify and hold City harmless from any claims and liabilities made for any injury to or damage to any person or property or for the death of any person or persons arising from or out of such interruption of service to District or for any other damages or costs incurred by City as a result of such interruption of District service. This section only applies to claims originating from District's customers or District's service area.

#### ARTICLE 12 - DISPUTE RESOLUTION

12.1 Application. This Article shall govern all disputes arising out of this agreement.

12.2 Mediation. Upon delivery of a written request for mediation to the other party involved, any dispute concerning this agreement may be submitted to a mutually acceptable mediator. The decision of the mediator shall not be final or binding unless otherwise agreed to in writing by the parties.

12.2.1 Condition Precedent to Litigation. Mediation shall be required before either party may proceed to litigation or any other method of dispute resolution. If a mediation session has not been held within ninety (90) days after written request for mediation has been received by either party, the party requesting mediation may proceed to litigation unless the period for mediation has been extended by mutual written agreement between the parties.

a. Costs. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

12.2.3 Evidence. All mediation proceedings, results and documentation, shall be non-binding and inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Code Sections 1115 through 1128), unless such admission is otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

12.3 Performance Required During Dispute. Nothing in this Article shall relieve either City or District from its obligation to perform all of their obligations under this agreement. City and District shall be required to comply with this agreement, including the performance of all disputed activity and disputed payments, pending the resolution of any dispute under this agreement.

## ARTICLE 13 – INDEMNITY

13.1 District Indemnity. District shall defend and save and hold free and harmless the City, its directors, agents, officers and employees from any claim, liabilities, costs, penalties or fines for injury to or damage to any person or property, regulatory or other enforcement actions, or for death of any person arising from or out of any act or omission of District, its Board members, agents, officers, employees or contractors, arising from or out of any defects in the installation, construction, operation, maintenance, repair, replacement or reconstruction of any sewer connections or appurtenances to the Interceptor Sewer, including without limitation any sewer flow meters, or as a result of any sewer discharges into the Interceptor Sewer that violate this agreement but specifically excluding, without limitation, any claims resulting from a force majeure event addressed in Section 14.1.

13.2 City Indemnity. City shall defend and save and hold free and harmless the District and County, their Board members, agents, officers and employees from any claim, liabilities, costs, penalties or fines (collectively “claims”) for injury to or damage to any person or property, regulatory or other enforcement actions, or for death of any person arising from or out of any act or omission of City, its council members, agents, officers, employees or contractors, arising from or out of any defects in the installation, construction, operation, maintenance, repair, replacement or reconstruction of the Interceptor Sewer or City Sewer System but specifically excluding, without limitation, any claims resulting from interruptions of service addressed by Article 11 or force majeure event addressed in Section 14.1.

## ARTICLE 14 – GENERAL PROVISIONS

14.1 Force Majeure. In the event performance under this agreement is 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 includes but is not limited to war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather, or inability to obtain materials, labor or equipment, both parties will be entitled to an extension in time of performance equivalent to the length of delay.

14.2 Governing Law. This agreement is intended to be construed pursuant to the laws of the State of California. In addition, parties agree that this agreement has been entered into in San Diego County and concerns subject matter located in San Diego County.

14.3 Notices. All notices required to be given under this agreement must be in writing and either served personally or mailed by certified mail, return receipt requested to:

San Diego County Sanitation District  
c/o Director of Public Works  
5500 Overland Avenue, Suite 315  
San Diego, CA 92123

County of San Diego  
c/o Director of Public Works  
5500 Overland Avenue, Suite 315  
San Diego, CA 92123

City of Chula Vista  
c/o Director of Public Works  
276 Fourth Avenue  
Chula Vista, CA 91910

14.4 Waiver of Breach. No failure of any party to insist upon strict performance by the other of any covenant, agreement, term or condition of this agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this agreement, but each and every covenant, condition, agreement and term of the agreement shall continue in full force and effect without respect to any other then existing or subsequent breach.

14.5 Exhibits. This agreement references and incorporates herein Exhibits A and B as listed below. These exhibits are “colored.”

Exhibit A	Agency Tributaries & Trunk Lines
Exhibit B	Potential Future Impacts to Salt Creek Interceptor Sewer

14.6 Amendment of Agreement. Changes to unit transportation rates, proportionate percentages of flow and associated capital improvement charges, and modifications to Exhibits are ministerial. Amendments effecting the use and operation of the City Sewerage System and Interceptor Sewer, whether ministerial or discretionary, may only be made by a mutual agreement in writing between City and District stating the parties’ intent to amend or supplement the agreement.

14.7 Drafting of Agreement. It is acknowledged that City, County and District, with the assistance of competent counsel, have participated in the negotiation of this agreement and that any ambiguity should not be construed for or against any party.

- 14.7.1 Understanding of Intent and Effect of Agreement. The parties expressly declare and represent that they have read the agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The parties further expressly declare and represent that they fully understand the content and effect of this agreement and they approve and accept the terms and conditions contained herein, and that this agreement is executed freely and voluntarily.
- 14.8 Integration Clause. Parties represent, warrant and agree that no promise or agreement not expressed herein has been made to them, that this agreement contains the entire agreement between the parties, that this agreement supersedes any and all prior agreements or understandings between the parties, and that the terms of this agreement are contractual and not a mere recital; that in executing this agreement, neither party is relying on any statement or representation made by the other party, or the other party's representatives concerning the subject matter, basis or effect of this agreement other than as set forth herein; and that each party is relying solely on its own judgment and knowledge.
- 14.9 Third Party Beneficiaries. This agreement does not confer any rights on any person who is not a party to this agreement, and any third party beneficiaries are hereby expressly disclaimed.
- 14.10 Successors in Interest. This agreement shall be binding upon and shall inure to the benefit of the parties, and each of its respective successors, assigns, trustees or receivers.
- 14.11 Severability. Should any provision of this agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this agreement, but, rather, the agreement shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the parties shall be construed and enforced accordingly, except to the extent that enforcement of this agreement without the invalidated provision would materially and adversely frustrate either or both parties' essential objectives set forth in this agreement.
- 14.12 Headings. All Section headings are for convenience only and shall not affect the interpretation of this agreement.
- 14.13 Signature Authority. Each party represents and warrants that its respective obligations herein are legal and binding obligations of such party, that each party is fully authorized to enter into this agreement, and that the person signing this agreement hereinafter for each party has been duly authorized to sign this agreement on behalf of said party.
- 14.14 Restrictions on Veto of Transfers and Acquisitions of Capacity. District understands and specifically recognizes that with respect to transfer and acquisition of capacity in the Interceptor Sewer or the creation of additional capacity in the Interceptor Sewer for any other authorized agency, District does not have the right to veto or prevent the transfer of capacity by and among other agencies, or to veto or prevent the creation or acquisition of capacity for another authorized agency or agencies. District recognizes that by signing this agreement District has expressly pre-approved such actions. The sole right of District

to object to any of the foregoing shall be through expression of its opinion to City and, where applicable, through exercise of its rights under the dispute resolution provisions of this agreement.

14.15 Other Agreements. Nothing in this agreement limits or restricts the right of the parties to make separate agreements with other agencies without the need to amend this agreement, provided that such agreements are consistent with this agreement. This agreement is not intended to nor shall it in any way supersede or modify the terms and conditions of the Regional Wastewater Disposal Agreement or any amendments thereto or any other transportation agreements between the parties and any amendments thereto.

14.16 Counterparts. This agreement may be executed in counterparts. The counterparts so executed shall constitute one agreement notwithstanding that the signatures of all parties do not appear on the same page.

14.17 Limited County Responsibilities. The parties recognize that the County is not a sewer service provider and that the County is a party to this agreement for the limited purpose of ensuring developers of the Villages are, as a condition of project approval, required to pay fees to City for the provision of sewer service and for no other reason. City and District shall not hold County responsible for any loss, claim or cause of action associated with the operation, maintenance or loss of use of the City Sewerage System or Interceptor Sewer.

IN WITNESS WHEREOF, this agreement is executed by the City, County and District.

SAN DIEGO COUNTY SANITATION DISTRICT

CITY OF CHULA VISTA

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form and Legality  
Office of County Counsel, County of San Diego

Approved as to Form and Legality  
City Attorney

By: \_\_\_\_\_

By: \_\_\_\_\_

COUNTY OF SAN DIEGO

By: \_\_\_\_\_

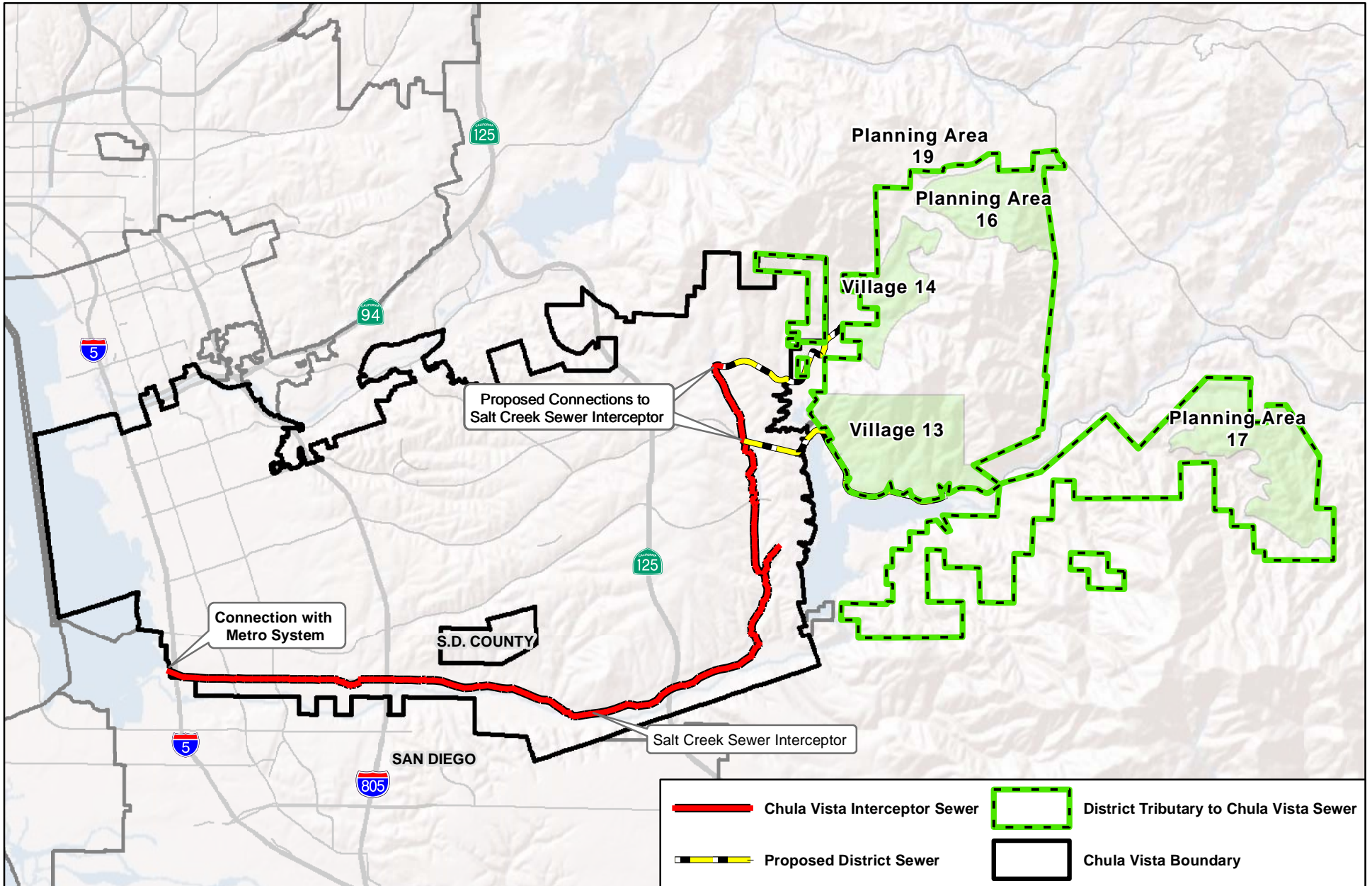
Name: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form and Legality  
Office of County Counsel, County of San Diego

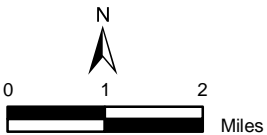
By: \_\_\_\_\_

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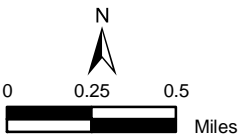
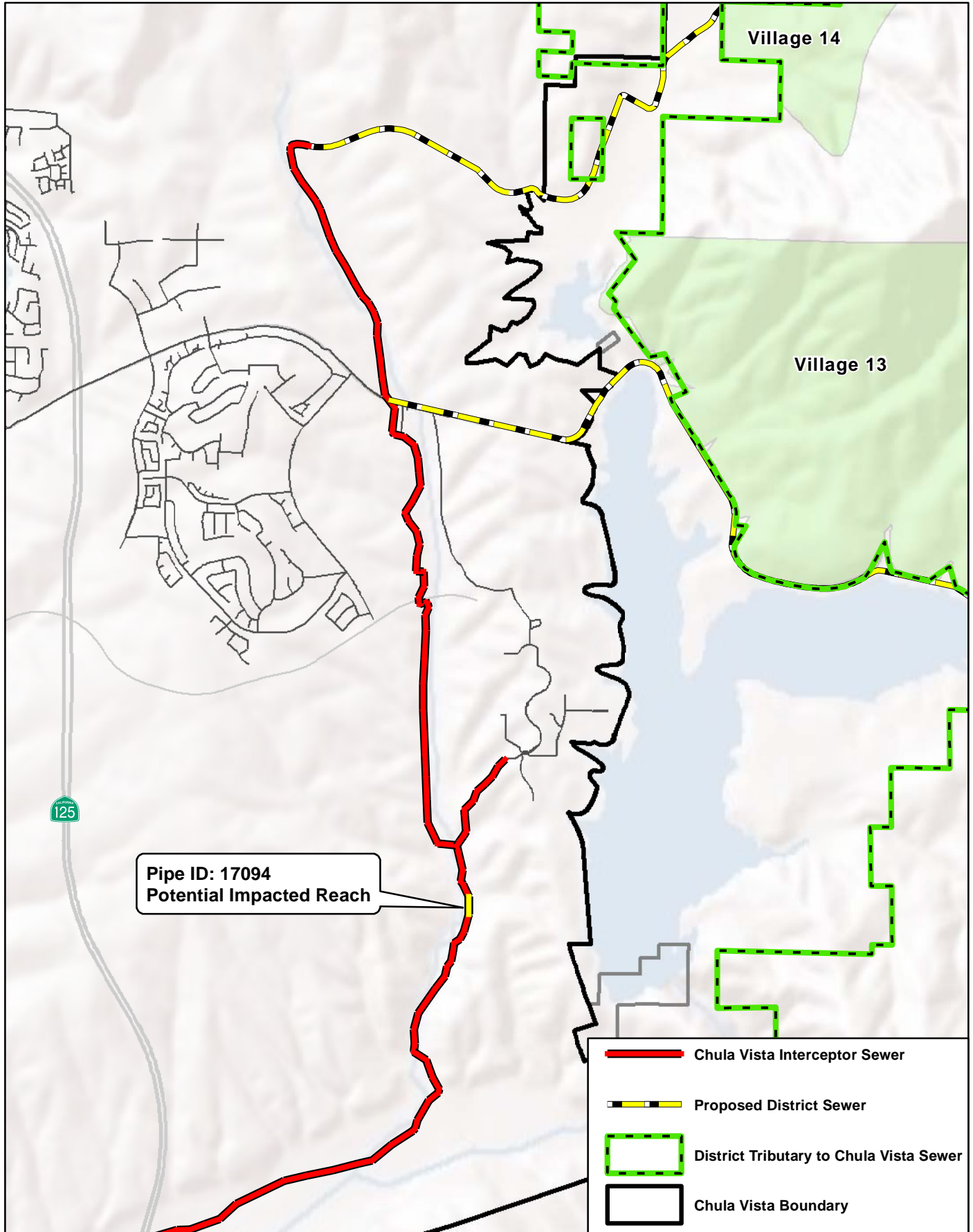
**Sewage Transportation Agreement for Salt Creek Interceptor Sewer  
Interagency Connections  
San Diego County Sanitation District & City of Chula Vista**

EXHIBIT A





2/23/2016 TH SD Z:\Projects\IS\SanDiegoCounty\100001472\_AsNeeded\ChulaVista\_Villages\_Capacities.mxd



### Salt Creek Interceptor Sewer Potential Capacity Restrictions

EXHIBIT B