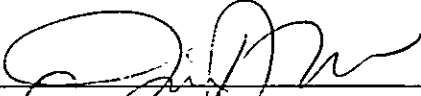


THE ATTACHED AGREEMENT HAS BEEN REVIEWED  
AND APPROVED AS TO FORM BY THE CITY  
ATTORNEY'S OFFICE AND WILL BE  
FORMALLY SIGNED UPON APPROVAL BY  
THE CITY COUNCIL

  
\_\_\_\_\_  
Glen R. Googins  
City Attorney

Dated: 3/23/16

AGREEMENT  
BETWEEN  
THE CITY OF CHULA VISTA AND  
OTAY WATER DISTRICT  
TO PROVIDE CUSTOMER WATER CONSUMPTION DATA AND  
SEWER BILLING SERVICES

**AGREEMENT TO PROVIDE CUSTOMER WATER CONSUMPTION DATA AND SEWER BILLING  
SERVICES**

This agreement ("Agreement") is made and entered into as of \_\_\_\_\_, 2016 by and between Otay Water District, a Municipal Water District organized and existing pursuant to Water Code Section 71000 *et seq.*, (hereinafter referred to as "Otay") and the City of Chula Vista, a municipal chartered corporation ("City"). Otay and the City are collectively referred to herein as the "Parties."

**WHEREAS**, the City provides sewer collection services to property located within its jurisdictional boundaries; and

**WHEREAS**, the rates for the City's sewer service fees are structured, in part, on the basis of a customer's metered water use and certain assumptions regarding the volume of water returned to the sewer system; and

**WHEREAS**, Otay provides water service to properties located within Otay's jurisdictional boundaries; and

**WHEREAS**, the City has requested that Otay provide water consumption data for all properties served by Otay within the jurisdictional boundaries of City and that Otay prepare the calculation of customers' sewer service fees (based on a formula provided by the City) in order for the City to receive the sewer service fees for its sewer customers; and

**WHEREAS**, the City has requested that Otay provide billing and collection services for all properties served by Otay within the jurisdictional boundaries of City ("City Sewer Customers") in order for the City to receive the sewer service fees for its sewer customers; and

**NOW, THEREFORE**, the Parties hereto agree as follows:

**1. Services.**

1.1. On an annual basis Otay will provide water consumption data for all properties served by Otay within the jurisdictional boundaries of the City ("Water Consumption Data File") using the mutually agreed upon standard data file format. (A sample of the data file format is attached as Exhibit 1)

1.1.1. The Water Consumption Data File will contain data for the period November through April, and will calculate the lowest two consecutive months.

1.1.2. Otay will provide the Water Consumption Data File in an accurate manner and within one month of receipt of the last City Sewer Customer's meter reading for the month of April, using reasonable, industry-standard methods and process.

- 1.2. On a monthly basis Otay will perform the services of billing and collection sewer fees for the City.
  - 1.2.1. The City will provide to Otay, no later than June 1st of each year, the rates and formulas to be used by Otay to calculate the fees to be billed to City Sewer Customers.
  - 1.2.2. Otay will calculate the fees to be charged to City Sewer Customers utilizing the fee rates and formulas provided by the City ("Sewer Fees"). Otay does not warranty the accuracy of the data or formulas provided by the City.
  - 1.2.3. Otay will include Sewer Fees in City Sewer Customer's water bills each month.
  - 1.2.4. The City shall be responsible for notifying Otay of any new customers or changes to customer profiles, such as sewer strength for commercial customers. Every two months, Otay will remit to the City billed sewer fees with the payment being due the last Monday of the month subsequent to the two months of billing (ex. Sewer fees billed in July and August will be remitted by the last Monday in September).
- 1.3. The City agrees that the water consumption data provided by Otay and the Sewer Fees are confidential and may only be used for activities related to billing for sewer services or if required by statute or government regulation. The water consumption data and Sewer Fees provided by Otay must not be used for any other purposes.
- 1.4. Otay does not warranty the accuracy of the water consumption data or the calculation of the Sewer Fee based on the formula provided by the City.

## **2. Term.**

The term of this Agreement shall be from the date first stated above, and will continue in effect until June 30, 2021. The Agreement may be extended by mutual agreement for five additional one-year terms with an amendment to the Agreement to be executed by June 30<sup>th</sup> of the preceding fiscal year.

## **3. Payment.**

- 3.1 Otay shall deduct a per-account charge ("Service Fee") from each remittance of collected Sewer Fees it makes to the City. The Service Fee will be based on the number of accounts for which Otay provides water consumption data and billing services to the City. The Service Fee represents Otay's costs to provide water consumption data to the City and to perform billing and collection services for Sewer Fees for the City. The initial Service Fee shall be \$1.05 per account per month.
- 3.2 The Service Fee shall be adjusted from a starting figure of \$1.05 per account in December 2015 dollars, each year thereafter on July 1 of each year, in accordance with

any increase or decrease in the San Diego Consumer Price Index. Any change shall be memorialized by Otay sending a letter to the City which will include an updated cost per account. Said letters shall be incorporated herein by reference and become part of this Agreement.

**4. Uncollectible Accounts.**

The City shall be solely responsible for risk of loss associated with uncollectible accounts, up to the total amount of Sewer Fees billed. Otay shall apply payments to water accounts first.

**5. Termination.**

Either party may terminate this Agreement with ninety (90) days written notice. In the event of termination of this Agreement, payment to Otay will be made for the above-referenced fees and costs for the current fiscal year to the date of termination. Notice of termination shall be provided in accordance with the provisions of Section 9 below.

**6. Indemnification.**

6.1 Each Party shall be responsible for the willful misconduct and negligent acts or omissions of its officers, directors, agents, employees, and subcontractors. Each Party shall indemnify, hold harmless, and defend the other from and against all claims, demands, and liabilities for bodily injury, property damage, or other damages caused by the willful or negligent act or omission of the indemnifying party or its officer, directors, agents, employees or subcontractors.

6.2 The City hereby indemnifies, holds harmless and defends Otay and Otay's officers, directors, agents, employees, and subcontractors from and against all claims, demands, and liabilities for bodily injury, property damage, or other damages arising out of the City's business decisions relating to, or use of, the water consumption data provided by Otay.

**7. Integration.**

This Agreement, including any and all exhibits to it, represent the entire understanding of both Parties as to those matters contained in it, and supersedes and cancels any prior oral or written understandings, promises or representations with respect to those matters covered in it. This Agreement may not be modified or altered except in writing signed by both Parties, except as provided for herein related to notice of increase of the Service Fee as provided for in Paragraph 3 above.

**8. Laws, Venue, and Attorneys' Fees.**

This Agreement shall be interpreted in accordance with the laws of the State of California. The Parties agree that if any dispute shall arise in relation to this Agreement, they will attempt to resolve such dispute informally, in good faith. If such good faith informal resolution does not resolve the issue, the Parties agree that the matter will be directed to the General Manager/City Manager of each Party for another good faith attempt at resolution. If that attempt does not resolve the issue, the Parties agree to mediation under the rules of the American Arbitration Association or any other neutral organization agreed upon before having recourse in a court of law. Any agreements resulting from mediation shall be documented in writing by all Parties. All mediation results shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless all Parties otherwise agree in writing. If mediation is not successful, and an action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.

**9. Notice.**

Termination notice, proposed amendments to this Agreement, or any other notices required herein will be delivered by United States Post Office, certified mail, and addressed to:

Otay Water District  
Kevin Koeppen  
2554 Sweetwater Springs Blvd.  
Spring Valley, CA 91978-2004  
kevin.koeppen@otaywater.gov

City of Chula Vista  
Roberto Yano  
276 Fourth Avenue  
Chula Vista, CA 91910  
ryano@chulavistaca.gov

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by regular or electronic mail addressed to the designated representative.

**10. Severability.**

In the event any one of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision(s) shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

**11. Assignment.**

In no event shall this Agreement be assigned by either Party without first obtaining the prior written consent of the other Party.

**12. Waiver.**

No covenant, term or condition of this Agreement shall be deemed to be waived by any party hereto unless such waiver is in writing and executed by the party making the waiver. No waiver of any breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition contained herein.

**13. Execution of Agreement.**

This Agreement shall not be deemed to have been accepted and shall not be binding upon either Party until duly authorized officers of both parties have executed it. This Agreement, including any and all exhibits to it, represents the entire understanding of both Parties as to those matters contained in it, and supersedes and cancels any prior oral or written

understandings, promises or representations with respect to those matters covered in it. This Agreement may not be modified or altered except in writing, signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement as of the date first written above.

**Otay Water District**

**City of Chula Vista**

Approved:

By: \_\_\_\_\_  
Mark Watton, General Manager

By: \_\_\_\_\_  
Mary Casillas-Salas, Mayor

Attest:

\_\_\_\_\_  
Susan Cruz, Board Secretary

\_\_\_\_\_  
Donna Norris, City Clerk

Approved as to form:

\_\_\_\_\_  
General Counsel  
Otay Water District

\_\_\_\_\_  
Glen R. Googins, City Attorney  
City of Chula Vista