

# LICENSE AGREEMENT

This LICENSE AGREEMENT (this "**Agreement**"), dated as of the \_\_\_\_\_, 20\_\_, is by and between City of Chula Vista, a chartered municipal corporation ("**Licensor**" of "**City**") and County of San Diego, a political subdivision of the State of California ("**Licensee**") and, together with Licensor (collectively referred to herein as the "**Parties**," or individually, a "**Party**") with reference to the following facts:

## Recitals

WHEREAS, City owns property located at 2800 Olympic Parkway, Chula Vista, CA 91915, Assessors Parcel Nos. 643-040-2600 (the "Premises"); and

WHEREAS, Licensee needs to access the Premises to construct and maintain County-owned sewer facilities and appurtenances to allow the collection and conveyance of sanitary flows from the Otay Lakes County Park to the sewer manhole ID No. 8927 located in the Chula Vista Elite Athlete Training Center (CVEATC); and

WHEREAS, the Parties desire by this Agreement to provide for Licensor to Licensee of the right to use and occupy a portion of the Licensed Area (defined below).

## Agreement

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. License

(a) **License.** Licensor hereby grants to Licensee, and Licensee hereby accepts, a license (the "**License**") to use and occupy that portion of the Premises, as more particularly described on Exhibit "A", which is attached hereto and incorporated herein, and as more particularly depicted on Exhibit "B", which is attached hereto and incorporated herein, solely for the uses set forth in this Agreement (the "Licensed Area").

(b) **Uses.** Licensee shall use the Licensed Area for the following purposes and for no other purposes except as may be agreed upon by Licensor in writing in its sole and absolute discretion:

(i) To construct and maintenance sewer facilities and appurtenances, and related construction activities, to allow the collection and conveyance of sanitary flows from the Otay Lakes County Park to the sewer manhole ID No. 8927 located in the Chula Vista Elite Athlete Training Center (CVEATC) in strict accordance with City-issued construction permit and City-approved plans.

(ii) Ingress and egress for the purposes stated in Paragraph 1(b)(i) above.

Licensee covenants and agrees to use the Licensed Area only for the above specified purpose(s) and to diligently pursue said purpose(s) throughout the Term, as defined herein. Licensee shall not use or permit any use of the Licensed Area in any manner which disturbs the use and quiet

enjoyment by City, any other City authorized parties making use of the Premises, or any adjacent property owners or tenants. In the event that Licensee fails to regularly use the Premises for said purpose, or uses the Premises for purposes not expressly authorized herein, the Licensee shall be deemed in default under this Agreement.

(c) **As-Is.** Licensee has inspected the Licensed Area and agrees to accept the Licensed Area "AS-IS," "WHERE-AS," and "WITH ALL FAULTS" on the date hereof. THE PARTIES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE LICENSED AREA, OR THE REAL PROPERTY OR PROPERTY INTERESTS.

(d) **No Additional Rights or Interests.** City's execution of this Agreement does not: (i) confer any right or interest on Licensee other than those rights or interests expressly granted to Licensee in this Agreement, as such rights or interests are limited and qualified herein; or (ii) create or impose any obligation whatsoever on City with respect to the Premises, except as expressly provided herein.

2. License Period; Access; Surrender.

(a) **License Term.**

(i) License Term. This Agreement shall become effective upon the date of the last signatory hereto, and shall continue without expiration, unless terminated earlier as provided in this Agreement.

(ii) License May Be Revoked. Notwithstanding anything to the contrary herein, this Agreement shall be revocable by City at any time during the License Period, provided that City delivers to County one-hundred and eighty 180 days' written notice of such election (the "**Termination Notice**"). The Termination Notice shall state the date of termination (which date shall not be before the expiration of the 180-day notice period) and shall be sent in accordance with this Agreement. City's right to revoke this Agreement is not subject to or contingent upon whether Licensee is in default under the terms of this Agreement.

(b) **Access.** Licensee, its employees, contractors, and agents shall at all times have access to the Licensed Area subject to the terms set forth in this Agreement; provided, however, Licensor, its employees, contractors, and agents shall also at all times have access to the Licensed Area, no consent of the Licensee being required for any such access at any time.

3. License Fee.

(a) **License Fee.** Licensee shall pay a license fee (the "**License Fee**") for the Licensed Area in the one-time amount of One Dollar (\$1.00).

4. Alterations; Repairs; Maintenance

(a) **Alterations.** Other than the construction of those improvements listed on Exhibit "C", which is attached hereto and incorporated herein, Licensee may not make any alterations,

installations, additions, or improvements in or to the Licensed Area without the prior written consent of Licensor, which consent may be withheld or conditioned in Licensor's sole and absolute discretion.

(b) **Repairs.** Licensee shall be responsible for the cost to repair any damage caused by the Licensee to the Licensed Area. If Licensee fails to make such repairs, City may cause such repairs to be completed and Licensee shall reimburse City for such costs by no later than fourteen (14) calendar days after receipt of written notice from the City. Failure to timely reimburse the City for such costs shall be a default and material breach of this Agreement. The repair obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this Agreement.

(c) **Maintenance.** Licensee will ensure that the Licensed Area is kept neat and orderly and shall dispose of all garbage, litter, trash, debris, and rubbish from or about the Licensed Area.

5. Insurance.

(a) **Licensee's Insurance Requirements.** Licensee shall, at its own cost and expense, maintain and keep in force at all times during the License Period, and for 10 years thereafter, all policies and limits of insurance coverage as outlined on Exhibit "D", which is attached hereto and incorporated herein.

(b) **Licensor Not Liable.** In no event shall Licensor be liable for any damage to or loss of personal property or equipment sustained by Licensee, whether or not it is insured, even if such loss is caused by the gross negligence of Licensor, its employees, officers, directors, or agents. Any property of any kind brought on the Leased Premises by Licensee shall be at the sole risk of Licensee and shall be promptly removed at the expiration of this Agreement.

6. Indemnity.

(a) **Indemnity, Defense, and Hold Harmless.** Licensee hereby agrees to defend, indemnify, and hold the City, its directors, elected and appointed officers, employees, and agents, harmless from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, including defense costs and legal fees and claims for damages (each a "Claim"; collectively, "Claims"), in law or equity, to property or persons, including wrongful death, arising from or connected with, or related to Licensee's use or presence on or near the Premises and any alleged act, omission, negligence, or willful misconduct of Licensee, or any employee, officer, director, agent, invitee, or contractor of Licensee, or any other person acting by or on behalf of Licensee related to Licensee's use of or presence on the Premises, excluding any Claim that results claim or demand that results from the sole negligence or willful misconduct of City or its officers, directors, agents, or employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Licensee, its employees, agents or officers.

(b) **Costs of Defense and Award.** Included in the obligations in subsection 6(a) above, is Licensee's obligation to defend, at Licensee's own cost, expense and risk, any and all suits, actions or other legal proceedings of every kind that may be brought, asserted, or instituted against the City or its directors, elected or appointed officials, officers, employees, agents or volunteers, or any of them that arise out of or are in any way connected with this Agreement. Licensee shall pay and satisfy all final non-appealable judgments, awards or decrees that may be rendered against City or its directors, elected or appointed officials, officers, employees, agents or volunteers, or any of them, for any and all legal expenses and costs incurred by any of them in connection therewith that arise out of or are in any way connected with this Agreement.

(c) **Insurance Proceeds.** Licensee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.

(d) **Declarations.** Licensee's obligations under this section shall not be limited by any prior or subsequent declaration by the Licensee.

(e) **Enforcement Costs.** Licensee agrees to pay any and all reasonable costs City incurs enforcing the indemnity and defense provisions set forth in this section.

(f) **Survival.** Licensee's obligations under this section shall survive the termination of this Agreement.

#### 7. Default/Limitation of Liability

(a) **Defaults.** If City has a good faith belief that Licensee is not complying with the terms of this Agreement, City shall give written notice of the default (with reasonable specificity) to Licensee and demand the default to be cured within thirty (30) days of the notice. If Licensee fails to cure the default within thirty (30) days of the notice, or, if more than thirty (30) days are reasonably required to cure the default and Licensee fails to give adequate assurance of due performance within ten (10) days of the notice, City may terminate this Agreement upon subsequent written notice to Licensee.

(b) **Limitation of Liability.** Licensor and Licensee agree that none of their respective directors, officers, employees, or any of their (or any of those parties') respective agents shall have any personal obligation hereunder, and that Licensor and Licensee shall not seek to assert any claim or enforce any of their rights hereunder against any of such parties.

#### 8. Miscellaneous.

(a) **Notices.** Any notice, demand, request, or other communication under this License Agreement shall be in writing and shall be addressed to the Parties at the addresses set forth below (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 8(a)). Each Party may amend its address for notices from time to time upon written notice to the other Party in accordance herewith. Communications may be delivered and shall be deemed to have been given by the delivering Party and received by the receiving Party: (i) when delivered by hand; (ii) one-day after deposit with a nationally recognized overnight courier or delivery service if sent priority overnight delivery; (iii) on the date sent by [facsimile

or] electronic mail (with confirmation of transmission) if sent during normal business hours of the recipient and if also transmitted by one of the other means permitted hereunder; or (iv) on the third day after the date mailed by certified or registered mail (in each case, return receipt requested and postage pre-paid). The rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the communication sent.

CITY OF CHULA VISTA

LICENSEE

Attn: City Manager

County of San Diego

Attn: Parks and Recreation Department  
Director

276 Fourth Avenue

5500 Overland Avenue

Chula Vista, CA 91910

San Diego, CA 92123

(b) **Defined Terms.** All capitalized terms used in this Agreement that are not otherwise defined herein are given the meanings set forth in the Lease.

(c) **No Assignment.** This Agreement and the rights, duties, obligations, and privileges hereunder may not be assigned by Licensee without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion.

(d) **No Waiver.** The failure to require the remedy of a breach/default or enforce the terms and conditions of this Agreement in one instance or several instances shall not be interpreted to be a waiver of the right to enforce the terms and conditions of this Agreement for any current or subsequent breach/default.

(e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) **Counterparts.** This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

(g) **Section Headings.** The section titles contained herein are for convenience only and do not define, limit, or construe the interpretation of any of the contents of such sections.

(h) **Severability.** If one or more provision in this Agreement is found to be invalid, illegal, or otherwise unenforceable, all other provisions will remain unaffected and shall be deemed to be in full force and effect. If any provision in this License Agreement is found to be invalid, illegal, or otherwise unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a

mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally intended by the Parties.

(i) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns, and shall not be modified except by an express written agreement signed by a duly authorized representative of both Parties.

(j) **Force Majeure.** Neither Party shall be responsible for delays in the performance of its obligations caused by events beyond the Party's reasonable control, including, but not limited to, acts of God.

(k) **Attachments and Exhibits.** All attachments and exhibits to this License Agreement are hereby made a part hereof as if fully set out herein.

(l) **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same. Upon request by City, Licensee shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

**CITY**

A Chartered Municipal Corporation

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

Name:

Title: City Manager

**LICENSEE:**

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

Name:

Title:

## **EXHIBIT A – LEGAL DESCRIPTION**

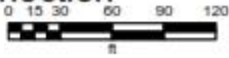
To be inserted at time of license execution



EXHIBIT B – PLAT



Proposed Otay Lakes County Park Sewer Connection



Date Printed:  
July 30, 2020

Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

## **EXHIBIT C – LIST OF APPROVED IMPROVEMENTS**

See approved Improvement Plans for the Otay Lakes County Park, City of Chula Vista Drawing Number \_\_\_\_\_, Work Order Number PC2639, on file in the City of Chula Vista Engineering Department.

## **EXHIBIT D – INSURANCE REQUIREMENTS**

To be provided by City's Risk Manager