

Recording Requested by and When
Recorded Return to:

City Clerk
City of Chula Vista 276 Fourth Avenue
Chula Vista, CA 92910

*No transfer tax is due as this is a
conveyance to a public agency of less than a
fee interest for which no cash consideration
has been paid or received.*

Above Space for Recorder's Use Only

JOINT USE AGREEMENT BY AND BETWEEN THE CITY OF CHULA VISTA AND
THE CITY OF SAN DIEGO

This JOINT USE AGREEMENT ("Agreement") is made this _____ day
of _____, 2014, by and between the CITY OF CHULA VISTA, a municipal corporation
("CV"), and THE CITY OF SAN DIEGO, a municipal corporation ("SD") (known together as
the "Parties") and is made with reference to the following facts:

RECITALS

- A. WHEREAS, SD is engaged in the activity of conveying water to the environs of City of San Diego, State of California;
- B. WHEREAS, certain water conveyance facilities owned by SD are located within CV, and on occasion, development within CV may be in conflict with SD's water transportation facilities ("SD Water Facilities");
- C. WHEREAS, the existing Otay 2nd Pipeline (Otay Pipeline), owned and operated by SD, crosses areas existing and to be constructed as public streets in the areas described in Exhibit "A" and shown on Exhibit "B" for Village 2 (V2) which exhibits are incorporated herein by this reference. The areas described on Exhibits A & B are hereinafter referred to as "Existing Joint Use Area";
- D. WHEREAS, as a condition of approval of Chula Vista Tract 06-05, CV required the project to execute a Joint Use Agreement with SD for the three road crossings over the existing Otay Pipeline. This agreement will satisfy that requirement;
- E. WHEREAS, Baldwin & Sons, LLC. (Baldwin), a developer of certain real property within CV, commonly known as Otay Ranch Village 2 (V2), amended the V2 development plan ("Plan Amendment") on November 4, 2014;
- F. WHEREAS, certain features of the Plan Amendment are in conflict with the Otay Pipeline;

G. WHEREAS, as a condition of the approval of Baldwin's Plan Amendment and tentative map, Baldwin agreed to relocate the Otay Pipeline into an area described in Exhibit "C" and shown on Exhibit "D" for V2 which exhibits are incorporated herein by this reference. The areas described on Exhibits C & D are hereinafter referred to as "Future Joint Use Area";

H. WHEREAS, SD is willing to allow the relocation of the Otay Pipeline into the Future Joint Use Area and will thereafter operate and maintain the pipeline and associated facilities for such purpose located in, under and across that certain right-of-way previously dedicated to CV as Olympic Parkway and La Media Road on property located in San Diego County, California;

G. WHEREAS, CV desires to construct, operate and maintain a future regional public transportation facility and related improvements, including but not limited to a bus guideway, landscape, sewer and storm drain pipelines and appurtenances, traffic signals and signal interconnections, irrigation lines and irrigation control devices along with existing facilities and other improvements located in, upon, over, under and across the Olympic Parkway and La Media Road rights-of-way;

H. WHEREAS, Baldwin will perform the actual relocation of the Otay Pipeline which will result in the placement of the Otay Pipeline within the Future Joint Use Area and the abandonment of the Otay Pipeline from the Existing Joint Use Area;

I. WHEREAS, upon completion of the Otay Pipeline relocation, the Otay Pipeline shall be abandoned, San Diego's existing easement in which the Otay Pipeline is currently located shall be vacated by SD, and any related joint use areas agreements associated with the relocated portions of the Otay Pipeline shall be terminated.

J. WHEREAS, CV and SD desire to set forth their respective rights and obligations in the event of actual or potential present or future conflicts in the construction, operation or maintenance of their respective facilities within the Joint Use Area;

NOW, THEREFORE, for mutual consideration, the sufficiency and receipt thereof is hereby acknowledged, the Parties hereby agree as follows:

1. **Non-Interruption of Use or Operation of Facilities.** Each party agrees and covenants not to permanently interrupt the use or operation of the other party's facilities located within that Joint Use Area.
 - a. Temporary Interference. Any temporary interference by one Party with the use or operation of the other Party's facilities shall be made only with other Party's written consent. SD specifically agrees, except as provided in Section 1(f) below, that during any temporary interference it will neither cause any lane of CV's roadways to be closed for the entire length of such roads nor cause the flow of traffic to be reduced to less than two lanes on such roads.

- b. Good Faith. All Parties agree and covenant to work in good faith with the other Parties to permit such temporary interference, and the Party whose facilities are being interfered with shall not unreasonably withhold its consent to such interference.
 - c. Notice of Temporary Interference.
 - i. *Chula Vista Notice.* Chula Vista shall contact City Engineer.
 - ii. *San Diego Notice.* San Diego shall contact Deputy Director of Water Utilities Department.
 - d. Coordination. Both Parties shall coordinate planned outages or interruptions for public events and construction work such that only one project is being constructed or conducted at any one time.
 - e. Standard of Care. All work performed by either party or its representatives shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations and in compliance with the most recent edition of the Standard Specifications for Public Works Construction and San Diego Regional Supplement (Greenbook), and all repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension. Each party shall bear its own costs, expenses, and losses.
 - f. Emergency Repairs. Notwithstanding any contrary provision in this Section 1, in the event of damage caused by an act of God, War, or other casualty, or damage caused under circumstances where it would be impractical or impossible for one Party to notify the other Party of the necessity for temporary interference with the other party's facilities, the party creating the temporary interference may, without notice, enter upon the Joint Use Area and make emergency repairs to restore its service. The Party creating the temporary interference shall, however, take reasonable and prudent measures to protect the installations of the other party and minimize such interference, and as soon as practically possible, notify the other party of such emergency repairs. If permanent repairs are required after such emergency repairs have been made, reasonable notice shall be given to the other Party. In the event of any emergency situation, each Party will make all reasonable efforts to notify the other prior to such construction activities.
2. **Neither Party First in Place.** Neither SD nor CV shall be deemed the "Party First in Place" or prior in time with superior in title with respect to the Joint Use Area.
3. **Utility Access.** Except in the event that emergency access is necessary, which shall be treated in a manner consistent with paragraph 1(f), above, prior to any access of facilities within the Joint Use Area, the accessing party shall provide the other party with 48 hours notice.
- a. Conflict in timing. In the event that such access is not required by an emergency and such access is in conflict with work being or to be performed by one of the parties, the

party requiring access shall and the party then performing work shall use their best efforts to arrange a mutually convenient time for such access.

4. **Future Relocation of Facilities.** In the event that future construction (including expansion), operation or maintenance of SD's or CV's facilities shall cause the need for relocation of some or all of the other's facilities, such Party requiring relocation of the other's facilities shall make every reasonable effort to accommodate the other Party and avoid forcing such Party to relocate its facilities. If avoiding relocation is unavoidable or infeasible, the Party causing the relocation shall bear all costs, expenses and losses resulting from the relocation. Relocation shall not occur without the prior written consent of the Party whose facilities are being relocated, which consent shall not be withheld unreasonably.
5. **Construction or Placement of Facilities.** No Party shall place, construct, or permit the placement or construction of, any structure (excluding Street, curb, gutter, sidewalks, or light and sign posts) temporary or permanent, or any facility, on or in the Joint Use Area, without the prior written consent of the other Party.
6. **Effective Date.** The effective date of this Agreement shall be the later of the date Chula Vista and San Diego approve this Agreement.
7. **Agreement Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the representatives, agents, successors, assigns and interests of the Parties as to any or all of the Joint Use Area, until released by the mutual consent of the Parties.
8. **Agreement Runs with the Land.** The covenants and terms contained in this Agreement shall create equitable servitudes on the property described in **Exhibit "A" and Exhibit "C"** and as shown in **Exhibit "B" and Exhibit "D"**. If such covenants are breached, both Parties shall have the right to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach to which either Party or any other beneficiaries of this Agreement and the covenants may be entitled.
9. **Vacation of Interests by San Diego.** In the event that SD permanently terminates the use of the any Joint Use Area for the purposes set forth herein, SD shall agree to vacation of its easement pursuant to San Diego City Council Policy 600-15 and California Streets and Highways Code sections 8300 through 8363 at no cost to CV.
10. **Mutual Indemnification.** Each Party ("Indemnitor") shall defend, indemnify, protect and hold harmless the other Party, its elected and appointed officers, agents and employees (collectively "Indemnitees") from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of the Indemnitor, its officials, officers, employees, agents, and contractors, arising out of or in connection with the existence, location, condition or performance of any of Indemnitor's own facilities placed within the Joint Use Area. Costs shall include, but not be limited to consulting, engineering, mitigation, clean-up, containment, disposal, and legal costs incurred by the Indemnitee as a

result of abating a violations of local, state, or federal standards (“Standards”) in any proceeding before any authority or court, and paying any fines or penalties imposed because of a violation of any Standards resulting from Indemnitor’s failure to comply with such Standards. The right to indemnity shall be determined by the law in effect at the time of the incident causing such liability, loss, cost, damage or expense. Notwithstanding the foregoing, a party shall hold harmless the other against damage to or destruction of its own facilities caused by an act(s) of a third party(ies).

- a. Costs of Defense and Award. Included in the obligations in Section 11 is the Indemnitor’s obligation to defend, at Indemnitor’s own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against the Indemnitees, subject to any limitations in Section 11. Indemnitor shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnitees for any and all related legal expenses and costs incurred by each of them, subject to the limitations in Section 11.
 - b. Extent of Liability and Indemnification Obligations. Liability and indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation of benefits payable by or for the other under any Worker’s Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. In addition, the obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Indemnitees.
 - c. Proportional Liability. Liability to a third party(ies) shall be divided between SD and CV in proportion to the measure of SD and CV’s liability.
 - d. Enforcement Costs. The Parties agrees to pay any and all costs the other Party incurs enforcing the indemnity and defense provisions set forth in Section 11.
 - e. Survival. Obligations under Section 11 shall survive the termination of this Agreement.
11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be original and all of which shall constitute one and the same document.
12. **Recording.** The Parties hereto shall cause this Agreement to be recorded in the Official Records of the San Diego County Recorder’s Office.
13. **Miscellaneous Provisions.**
- a. Notices. Unless otherwise provided in this Agreement or by law, any and all notices required or permitted by this Agreement or by law to be served on or delivered to either party shall be in writing and shall be deemed duly served, delivered, and received when personally delivered to the party to whom it is directed, or in lieu thereof, when three (3) business days have elapsed following deposit in the U.S. mail, certified or registered mail, return receipt requested, first-class postage prepaid, addressed to the address

indicated in this Agreement. A party may change such address for the purpose of this paragraph by giving written notice of such change to the other party.

CITY OF CHULA VISTA
Department of Public Works/Engineering Division
276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Engineer

CITY OF SAN DIEGO WATER DEPARTMENT
1222 First Avenue, 4th Floor
San Diego, CA 92101
Attn: Deputy Director of Water Utilities Department

- b. Captions. Captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of its terms.
- c. Entire Agreement. This Agreement, together with any other written document referred to herein, embody the entire Agreement and understanding between the Parties regarding the subject matter hereof and any and all prior or contemporaneous oral or written representations, agreements, understandings, and/or statements shall be of no force and effect. This Agreement is not intended to supersede or amend any other agreement between the Parties unless expressly noted.
- d. Recitals; Exhibits. Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.
- e. Compliance with Laws. Each party agrees to comply with all applicable laws, ordinances, governmental regulations or agreements, regarding the habitat, protected species, water quality, solid wastes, hazardous wastes, hazardous materials, toxic substances, and any and all other forms of pollution or nuisance control (herein collectively referred to as “Standards”).
- f. Administrative Claims. 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, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.
- g. Authority of Signatories. Each signatory and Party hereto hereby warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable said signatory to enter into this Agreement.

- h. Modification. This Agreement may not be modified, terminated, or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the Parties hereto, their successors, or assigns and duly recorded in the Office of the San Diego County Recorder.
- i. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition shall be valid and be enforced to the fullest extent permitted by law.
- j. Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a Party or its attorney prepared and/or drafted this Agreement. It shall be conclusively presumed that both Parties participated equally in the preparation and/or drafting this Agreement.

[NEXT PAGE IS SIGNATURE PAGE]

SIGNATURE PAGE TO
JOINT USE AGREEMENT BY AND BETWEEN
CITIES OF CHULA VISTA AND SAN DIEGO

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed
the day and year first hereinabove set forth.

CITY OF CHULA VISTA

CITY OF SAN DIEGO

Gary Halbert, City Manager or Authorized
Designee

By: _____
Halla Razak,
Public Utilities Director

Attest:

Donna Norris, City Clerk

Approved as to form:

Approved as to form:

Glen R. Googins
City Attorney

Jan Goldsmith
City Attorney

By: _____

Deputy City Attorney

EXHIBIT "A"

Village 2 EXISTING AREAS LEGAL DESCRIPTION

EXHIBIT "B"

Village 2 EXISTING AREAS DEPICTION

EXHIBIT "C"

VILLAGE 2 FUTURE AREA DESCRIPTION

EXHIBIT "D"

VILLAGE 2 FUTURE AREA DEPICTION