

*Recording Requested by and When
Recorded Return to:*

City Clerk
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

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

CCV File No.: 0710-45-PC2562

**JOINT USE AGREEMENT BY AND BETWEEN THE
CITY OF CHULA VISTA AND THE CITY OF SAN DIEGO
E Street and Bay Boulevard**

This JOINT USE AGREEMENT ("Agreement") is made this ____ day of _____, 20__, by and between the CITY OF CHULA VISTA, a California municipal corporation ("CV"), and THE CITY OF SAN DIEGO, a California municipal corporation ("SD") (individually referred to as the "Party" and collectively as the "Parties") and is made with reference to the following facts:

RECITALS

A. WHEREAS, SD is engaged in the activity of conveying wastewater to the environs of the City of San Diego, State of California;

B. WHEREAS, the existing SD sewer main pipeline commonly known as the San Diego South Metro Interceptor Pipeline, owned and operated by SD, is located within an existing SD easement ("SD Easement"), a portion of which is within a new segment of E Street to be constructed within the development commonly known as Bayfront RV Park Resort ("RV Park") for which CV has condemned an easement (CV Easement), as described in the attached Exhibit A and shown on the attached Exhibits B and C;

C. WHEREAS, the new segment of E Street is a proposed public road to be located within the jurisdictional boundaries of CV, between I-5 and Bay Blvd, as described in the attached Exhibit A and shown on the attached Exhibits B and C;

D. WHEREAS, CV has filed an eminent domain action in San Diego Superior Court, entitled *City of Chula Vista v. San Diego Gas & Electric Company* et al, Superior Court Case No. 37-2019-00067033-CU-EI-CTL ("Condemnation Action"), against San Diego Gas & Electric ("SDG&E") and SD in order to condemn property rights, namely the CV Easement, to allow it to construct and maintain the new street segment of E Street, subject to SD's easement rights of record for the SD Easement;

E. WHEREAS, on or about January 16, 2020, CV took possession of the proposed CV Easement area via an Order of the Superior Court issued pursuant to Code of Civil Procedure sections 1255.410 and 1255.460 in order to allow CV to commence construction activities in furtherance of the CV's easement rights;

F. WHEREAS, the Condemnation Action was resolved through a Stipulation for Settlement and Entry of Stipulated Judgment and Order of Condemnation, and the Stipulated Judgment and Final Order of Condemnation were signed by Judge Frazier on December 31, 2020;

G. WHEREAS, Sun Communities, Inc. ("Sun Communities"), the developer of the RV Park project, wishes to develop the RV Park project as approved on September 18, 2019 pursuant to the San Diego Unified Port District Coastal Development Permit, Document No. 70332, which includes constructing the new street segment of E Street in the CV Easement;

H. WHEREAS, as a condition of the approval of the RV Park project, Sun Communities is required to construct the new street segment over the SD Easement and CV Easement. The area where the new street segment is within both the SD Easement and the CV Easement, as described on Exhibit A and depicted in Exhibits B and C, is referred to herein as "Joint Use Area";

I. WHEREAS, Sun Communities desires to construct, and CV desires to operate and maintain the new street segment of E Street, a future public transportation facility, and related improvements, including but not limited to: landscape, sewer and storm drain pipelines and appurtenances; traffic signals and signal interconnections; along with other improvements located in, upon, over, under and across the Joint Use Area;

J. WHEREAS, SD is willing to allow the construction of the new street segment over SD's Easement and will thereafter operate and maintain the San Diego South Metro Interceptor Pipeline and associated facilities and appurtenances for such purpose, under and across the to be constructed street segment;

K. WHEREAS, Sun Communities will construct the new street segment within the Joint Use Area; and

L. 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 valuable consideration, the sufficiency and receipt of which 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 interrupt the use or operation of the other Party's facilities located within that Joint Use Area. Any temporary interference by one Party with the use or operation of the other Party's facilities shall be made only with the other Party's prior written consent. SD specifically agrees, except as provided in paragraph 9 below, that during any temporary interference it will, as practical, 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. The Parties agree and covenant to work in good faith with the other Party to permit such temporary interference, and the Party whose facilities are being interfered with shall not unreasonably withhold its consent to such interference. Any and all costs, expenses or losses incurred by the Party whose facilities are interfered with shall be borne by the Party causing the interference.

2. **Future Relocation of Facilities.** In the event that future construction (including expansion), operation or maintenance of CV's facilities located within the Joint Use Area shall cause the need for relocation of some or all of SD's facilities, CV shall bear all costs, expenses and losses of or resulting from the relocation. Any relocation shall not occur without the prior written consent of SD, which consent shall not be unreasonably withheld.

3. **Effective Date.** The effective date of this Agreement shall be the date this Agreement is recorded with the San Diego County Recorder's Office.

4. **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.

5. **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 shown in Exhibit B. If such covenants are breached, each Party 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 may be entitled.

6. **Termination of Use.** In the event that SD permanently terminates the use of the Joint Use Area for the purposes set forth herein, SD shall: (i) abandon all facilities within the Joint Use Area in accordance with best practices and in a manner that does not and will not cause damage to CV's facilities within the Joint Use Area, and (ii) vacate its Easement in accordance with its easement vacation process. Upon SD's vacation of the Easement, this Agreement shall terminate and CV shall have no further obligations under this Agreement. For purposes of interpreting this Agreement, the term "permanently terminates" shall mean a willful termination of the use as evidenced by written action or document of either the governing body or official or employee possessing appropriate authority of SD.

7. **Written Consent for Construction or Placement of Structures.** No Party shall place or construct, or permit the placement or construction of, any new structures, temporary or permanent, on the Joint Use Area, without the prior written consent of the other Party. Notwithstanding the foregoing, SD acknowledges and agrees that CV shall not be required to obtain prior written consent to conduct routine maintenance or repairs of pavement, streets, curbs, gutters, sidewalks, light and sign posts, landscaping, dry utilities, wet utilities, or traffic signals on or within the Joint Use Area. Notwithstanding anything to the contrary herein, CV shall not perform or cause to be performed any construction activities involving the use of heavy vehicles, machinery or equipment (such as an excavator or crane), or install or cause to be installed any improvements (other than those improvements which are replacing or repairing existing improvements with like improvements, for example, replacing or repairing existing sidewalk, pavement, or street light) within SD's easement without the prior written consent from SD.

8. **Emergency Repairs.** Notwithstanding any contrary provision of paragraph 1 hereinabove, 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 at its sole cost to protect the installations and facilities of the other Party and to minimize such interference. If a Party determines that it will make emergency repairs in accordance with this section, that Party will make all reasonable efforts to notify the other Party prior to commencing construction activities. If the Party making emergency repairs in accordance with this section causes damage to any installation or facility of the other Party, the Party causing the damage shall: (i) immediately notify the other Party of such damage and (ii) bear all costs to repair or replace all such damaged installations and facilities.

9. **Mutual Indemnification.** SD and CV agree that, except as provided in Paragraphs 12.e, 12.f, and 12.g herein, each shall indemnify and hold the other harmless from and against liability, loss, cost, damage and expense arising from (i) any negligent act or

omission of the other Party or its employees, agents, contractors, successors or assigns or (ii) the location and existence of the other Party's above-described facilities, whether defective or otherwise, including, but not limited to, any such loss, cost, damage, liability, or expense arising from damage to or destruction of real and personal property or injury to or death of any person, shall be determined by the law in effect at the time of incident giving rise to such liability, loss, costs, damages or expense; provided, however, that 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. Liability to a third party(ies) shall be divided between SD and CV in proportion to the measure of SD and CV's respective liability. Notwithstanding the foregoing, each Party shall hold harmless the other against damage to or destruction of the indemnitor's facilities caused by an act(s) of a third party(ies).

10. **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 documents.

11. **Recording.** The Parties hereto shall cause this Agreement to be recorded in the Official Records of the San Diego County Recorder's Office.

12. **Miscellaneous Provisions.**

12. 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 direct, or in lieu thereof, when three (3) business days have elapsed following deposit in the U.S. mail, certified or 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 in the manner provided in this paragraph.

CITY OF CHULA VISTA

Development Services Department/Land Development Section
276 Fourth Avenue, Building B
Chula Vista, CA 91910
Attn: City Engineer

CITY OF SAN DIEGO

Public Utilities Director
9192 Topaz Way
San Diego, CA 92123-1119

CITY OF SAN DIEGO

Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

12.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.

12.c. **Entire Agreement.** This Agreement together with any other written documents 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.

12.d. **Recitals, Exhibits.** Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.

12.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")).

12.f. **Mutual Indemnification for Abating Violation of Standards by Other Party.** Each Party shall indemnify the other Party for all costs (including, but not limited to consulting, engineering, mitigation, clean-up, containment, disposal, and legal costs) incurred by the other Party as a result of abating a violation of Standards in any proceeding before any authority or court, and paying any fines or penalties imposed because of a violation of any Standards, which result from a Party failing to comply with the Standards.

12.g. **Mutual Hold Harmless by and between SD and CV.** SD and CV hereby assumes liability for, and shall indemnify and hold harmless the other from any suit, enforcement action, or claim resulting from or relating to (1) any alleged violation of Standards, or (2) all injuries to or death of any persons and loss of or damages to property, including without limitation, employees and property of the other, and which relate to any alleged violation of Standards which would not have arisen but for the actions, or inactions, of the other.

12.h. **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.

12.i. **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.

12.j. **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.

12.k. **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 THE
CITY OF CHULA VISTA AND THE CITY OF 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

By: _____
Maria V. Kachadoorian,
City Manager

Date: _____

Attest:

By: _____
Kerry Bigelow, City Clerk

Approved as to form:

By: _____
Glen R. Googins
City Attorney

Date: _____

CITY OF SAN DIEGO

By: _____
Shauna Lorange
Director, Public Utilities

Date: _____

By: _____
Cybele L. Thompson
Director, Real Estate Assets

Date: _____

Approved as to form:

MARA W. ELLIOTT
City Attorney

By: _____
Hilda Mendoza
Deputy City Attorney

Date: _____

List of Exhibits:

- 1) Exhibit "A" – Legal Description Joint Use Area
- 2) Exhibit "B" – Plat Depiction Joint Use Area

3) Exhibit “C” – Bayfront RV Park/City of San Diego Drawing 41522-D