

**SEWER SERVICE AGREEMENT BETWEEN THE
SAN DIEGO COUNTY SANITATION DISTRICT AND COUNTY OF SAN
DIEGO FOR COMPASSIONATE EMERGENCY SOLUTIONS AND
PATHWAYS HOUSING PROJECT: TROY STREET CABINS**

This Agreement addressing the provision of sewer services for the Compassionate Emergency Solutions and Pathways Housing Project: Troy Street Cabins is made 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 § 4700 et seq. (“District”), and the County of San Diego, a political subdivision of the State of California (“County”). District and County are referred to individually as "Party" and collectively as "Parties."

RECITALS

A. County entered into a lease with the State of California, Department of Transportation for a roughly 2-acre area of land as shown on Attachment A hereto and commonly referred to as 2800 Sweetwater Road, Lemon Grove, CA 91945 (“Property”); and

B. The Property is a vacant undeveloped parcel of land that the County proposes to develop to contain approximately 60 sleeping cabins, and administrative structures such as communal restroom and shower facilities, a medical facility, and other structures to support individuals experiencing homelessness (“Project”); and

C. The District owns and operates an 8-inch sewer pipe with unused capacity of up to 20,000 Gallons Per Day located in Sweetwater Road immediately adjacent to the Project (hereinafter “Sewer Facility”); and

D. The Project is located within the City of Lemon Grove, outside the jurisdictional boundaries of the District, so that the approval of the San Diego Local Agency Formation Commission (“SDLAFCO”) is required for the District to provide sewer services to the Project; and

E. The District is willing to seek SDLAFCO approval and take other action to serve the Project provided County reimburses District for any District costs incurred in providing service for the Project and provides other assurances as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the mutual obligations and covenants contained herein, the Parties mutually agree as follows:

ARTICLE I - SEWER SERVICE

1.1 Sewer Service. The District shall receive, transport, treat and dispose of all sewage generated by the Project and delivered to the District in accordance with this Agreement.

1.1.1 Service Area. Only the Project property identified in Exhibit A is allowed to send sewage to the District for transport, treatment and disposal.

1.1.2 Capacity Limitations. County may discharge up to 4,800 gallons per day of wastewater generated from the Project into the District's Sewer Facilities ("County Limit"). County shall not allow flows into the District's Sewer Facilities that exceed the County Limit without obtaining District's prior written consent. The County Limit may be increased only by written agreement of the Parties which may be effected by an addendum to this Agreement approved by the Director, Department of Public Works, or designee ("District Director") on behalf of the Sanitation District, and the Director, Department of General Services, or designee on behalf of County.

1.1.3 Notice For Future Improvements. County shall only connect those facilities as detailed in Exhibit B hereto to the District's Sewer Facilities. The County shall obtain the prior written approval of the District Director for the installation of any future improvements not listed in Exhibit B that may reasonably result in an increase in sewage generated by the Project regardless of whether such improvements will cause flows from the Project to exceed the County Limit. Exhibit B may be amended by the District Director to reflect any agreed changes.

1.1.4 Point of Delivery. County shall deliver sewage generated at the Project to the District's Sewer Facilities commonly known and referred to as the Sweetwater Street Trunk Sewer Line, as shown in Exhibit A. County shall allow the District access to County's facilities immediately upstream of this connection to sample or meter the flow from County.

1.1.5 Monitoring. If at any time during the term of the Agreement it is deemed necessary or desirable by District to measure all or a portion of the flow from County, the District shall make written demand on County that County install any and all meters as District deems necessary or desirable. County shall install, at its sole expense, all such meters at locations specified by the District by no later than ninety (90) days after receipt of District's demand. County shall be responsible to operate, maintain, manage, and control all flow monitoring devices installed to monitor its flows into the District's sewer main in an efficient and economical manner and to preserve them in good repair and working order, all in accordance with recognized and sound engineering practices. County shall make all flow data information available to District.

1.1.6 Property will not adversely impact sewer service to other customers or result in a significant loss of revenue to the District.

1.1.7 District will be provided with an Access Easement or Right of Entry to enter onto County Property to address any problem with the sewer lines that may impact the quality or capacity yield.

1.1.8 County will provide field-marked drawings to the District, immediately upon the completion of work to connect the Property to the District's facilities, showing the physical location of all sewer mains, laterals, wye stations, manholes and other facilities as they are actually installed.

1.1.9 County will provide a report detailing all on-site tanks to be retained and all pumping and collection facilities to remain active, their location on the Project site and all other components associated with the sewer connection. The report shall include inspection of all existing facilities to be retained and shall detail the condition and water tightness of said components and all necessary repairs and/or upgrading needed to ensure water-tightness.

1.1.10 County shall allow the District, its employees, and/or agents reasonable access to the Project in order to inspect and dye test the facilities and waste plumbing connections, to ensure that the sewer shall only accept domestic, sanitary wastewater flows without any contaminated waste streams or extraneous water flows.

1.1.11 The following General Prohibitions shall be a condition of County's connection of the Property to and use of District facilities:

- A) No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb the public sewer or appurtenances thereof without first obtaining a permit.
- B) No user shall introduce or cause to be introduced into the sewer the following pollutants, substances, or wastewater:
 - 1) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw shavings, metal, glass, rags, feathers, tar, plastics, wood, ground or un-ground garbage, whole blood, manure, hair, flashings, entrails, paper dishes, cups, milk containers or similar items.
 - 2) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or potentially not pass through the system.
 - 3) Pollutants which result in the presence of toxic gasses, vapors, or fumes within the sewer in a quantity that may cause acute worker health and safety problems.
 - 4) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient

to create a public nuisance or a hazard to life, or to prevent the entry into the sewers for maintenance or repair.

1.2 District Sewer System. County is responsible for operating and maintaining any sewer lines and appurtenant facilities that connect facilities in the Project to the District's Sewer Facilities. The sewer line connecting Project facilities to the District's Sewer Facilities shall be sized appropriately per the design standards with a maximum of up to eight inches in diameter and be deemed a sewer lateral. County shall be solely responsible for the sewer lateral and saddle junction or other point of connection of the lateral to the District's Sewer Facilities and other sewer infrastructure in and serving the Project and maintaining a proper and working connection to the District's Sewer Facilities.

1.2.1 Design and Construction Standards. County shall be responsible to design, construct, and maintain the sewer lateral and all other sewer infrastructure to convey sewer flows from the Project to the point of connection with District's Sewer Facilities in a manner that meets or exceeds all applicable requirements in District's ordinances, resolutions, rules, standards, and policies, and any applicable laws, regulations, and standards of the State of California and United States of America. County shall install a property line clean-out or manhole to allow for regular cleaning and inspection of the sewer lateral connecting the Project to the District's Sewer Facilities. County will provide a copy of the design of the sewer lateral to the District for review and comment before connecting the Project to the District's Sewer Facilities. District shall not unreasonably condition or delay approval of the connection of the sewer lateral to the District's Sewer Facilities. The District may charge County for plan check, administration, and inspection costs in connection with the construction of the sewer lateral in addition to any other fees required by this Agreement.

1.2.2 Compliance with District, Federal and State Requirements. County shall not permit the discharge of any sewage, waste, pollutant, or excessive inflow or infiltration into the District's Sewer Facilities that is prohibited by District ordinances, resolutions, rules, standards, or policies, any laws or regulations of the United States of America or the State of California, including without limitation any regulations that may be adopted by the Environmental Protection Agency, State Water Resources Control Board, or such other agencies as may now or in the future be responsible for regulating the transport and disposal of wastewater from the Project. Inflow or infiltration is considered excessive when the flow from the Project in any 24-hour period during or after a rain event exceeds twice the typical dry weather flow. County acknowledges and agrees that it is aware of District's obligations under its Regional Wastewater Disposal Agreement and that County shall not discharge sewage into the District's sewer main in a manner that would cause District to violate the Regional Wastewater Disposal Agreement.

1.2.3 Diversion Prohibited. The diversion of any rainwater, storm water, groundwater (other than unintentional infiltration), foundation drainage, drainage from any outside surface such as streets, driveways, roofs, and yards, and any drainage from pools or ponds into the sewer system in the Project is strictly prohibited. Such diversion

may result in termination of this Agreement for default under section 3.2 at the District's sole discretion.

1.2.4 SDLAFCO Approval. District agrees to take reasonable action to obtain any required SDLAFCO approval for the provision of sewer service to the Project. The Director, Department of Public Works, or designee acting on behalf of the District shall have authority to take such action as is reasonably necessary to obtain SDLAFCO approval for the provision of sewer service to support the Project, or to take action to allow for the provision of service should SDLAFCO approval not be required. This includes, without limitation, the provision of a Resolution of Application or such other documentation as SDLAFCO may require to approve a change of organization, out of agency service agreement, or such other action as may be necessary to provide service to the Project. Provision of service under this Agreement is contingent on receipt of any required SDLAFCO approval. County shall be responsible for reimbursing District all costs incurred to obtain any required approval in accordance with Section 2.2, below.

1.2.5 Abandonment or Removal of Sewer Facilities. Upon cessation of Project use, County shall cause the sewer lateral and project saddle or other point of connection to be abandoned or removed at County's sole expense to the satisfaction of the District.

ARTICLE II- COMPENSATION

2.1 Compensation. County shall pay the District the following as compensation for the District providing sewer service:

2.1.1 Sewer Capacity Charge. Prior to connecting to the District's Sewer Facilities, County shall pay the District the total sewer capacity fee in effect at the time of connection. County agrees to provide District with all information necessary, as determined by District, to establish the County's capacity fee under the Agreement. County acknowledges and agrees that capacity fees are not refundable, even upon termination of this Agreement.

2.1.2 Service Charge. County shall pay the District a sewer service charge at the District's rate in effect at the time of each billing.

2.1.3 Annexation Fee. County shall pay any fees otherwise due per District ordinances, including any annexation fees for the annexation of territory to the District.

2.1.4 Adjustments. It is the intent of this Article that County pay the same rate for sewer service as any other project subject to District charges. The capacity, sewer service charge, and other charges imposed by District are subject to change by the District. County shall pay the charges in the amount due at the time of payment.

2.2 Reimbursement. County shall reimburse District for any expenses incurred by District to obtain any required approvals, complete any necessary inspections, or provide any other support

or service necessary for County to connect the Project to and continue to discharge effluent into the District's Sewer Facilities. Without limitation, these costs may include the cost to retain consultants to complete research, prepare necessary documentation, and provide other support necessary for the District to obtain approval from SDLAFCO or any other regulatory authority or agency with jurisdiction over the Project sewer service. County shall provide reimbursement to District within 30 days of the receipt of a bill from District without setoff or deduction of any kind. Alternatively, District may require County to establish a deposit account to be managed by District or County, as determined in the District's discretion, in an amount reasonably determined by District to cover anticipated expenses. In the event the deposit account falls below the minimum amount determined by District, County shall promptly deposit additional sums into the account.

ARTICLE III – TERM

3.1 Term. This Agreement shall become effective upon the date of the last signatory hereto, and shall continue without expiration, unless terminated earlier pursuant to this Article.

3.2 Termination for Default. The District may terminate this Agreement for default if County fails to timely or adequately perform any obligation required by this Agreement, and does not cure such default within thirty (30) days of written notice from the District. County must pay any undisputed amounts due the District under Article II, and disconnect and cap the connection with the District's sewer main in a manner acceptable to the District in the District's sole discretion pursuant to Section 1.2.5 above. Upon termination for default, County shall be solely responsible for providing sewer service to the Project.

3.3 Termination for Convenience. County may terminate this Agreement for its convenience at any time after the effective date of this Agreement. For termination to become effective, County must provide the District with thirty (30) days advance written notice, pay any undisputed amounts due the District under Article II, and disconnect and cap the connection with the District's sewer main in a manner acceptable to the District in the District's sole discretion pursuant to Section 1.2.5 above. Upon termination for convenience, County shall be solely responsible for providing sewer service to the Project.

ARTICLE IV - INDEMNITY

4.1 In addition to any other indemnity, defense, and hold harmless obligations of County as provided in this Agreement, County shall defend, indemnify, and hold harmless District, its officials, officers, employees, and agents ("District Parties") from all claims, liability, damages, enforcement actions, penalties, fines, and judgments (collectively, "Claims") for injury or damage to any person (including death) or property arising from or out of any act or omission of County, its Supervisors, members, agents, officers, employees, or contractors ("County Parties") arising out of or in connection with this Agreement, including without limitation those arising out of, related to, or in connection with: (a) sanitary sewer overflows caused by or originated from County's sewer facilities including, but not limited to, fines or penalties that may be assessed by the Regional Water Quality Control Board or the Federal Environmental Protection Agency, or a citizen's enforcement action; (b) disconnecting and capping the connection with the

District's sewer main; (c) failure to obtain any required review or approval from the San Diego Local Agency Formation Commission (LAFCO); (d) any action brought to challenge District's or County's approval of this Agreement under any theory, including without limitation, alleged failure to comply with the California Environmental Quality Act; and (e) County's failure to perform or comply with any obligation, representation, or warranty under this Agreement.

County's obligation to defend, hold harmless, and indemnify the District shall survive the termination and expiration of this Agreement, and continue so long as a viable claim exists.

ARTICLE V - GENERAL PROVISIONS

5.1 Customer Service. County is solely responsible for responding to complaints of sewer odors, SSOs, and other sewer service issues for all of County's facilities serving the Project.

5.2 Successors and Assigns. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Agreement have been succeeded by another entity, and all rights and obligations of the Parties signatory to this Agreement shall be vested and binding on their successors in interest. Notwithstanding the foregoing, only a public agency providing services at the Project may succeed to County services pursuant to this Agreement.

5.3 Notices. Any notice to be given or other document to be delivered by any Party to the other Party may be delivered in person, or may be deposited in the United States mail in the State of California, with postage prepaid, or by Federal Express or other similar overnight delivery service or by facsimile transmission and addressed to the Party for who intended:

To District:
Director, Department of Public Works
San Diego County Sanitation District
5510 Overland Avenue
San Diego, CA 92123

To County:
Director, Department of General Services
County of San Diego
5560 Overland Avenue
San Diego, CA 92123

The Parties may from time to time change the person or address for providing notice, by providing notice of the change to the other Party in the manner provided for by this Section.

5.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate the purpose or intent of this Agreement.

5.5 Interpretation. This Agreement is entered into, and shall be construed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

5.6 Assignment. Neither party shall assign this Agreement, in whole nor in part, without the prior written consent of the other party, which shall not be unreasonably withheld.

5.7 Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

5.8 Approval. Whenever this Agreement requires approval, consent, acceptance, or determinations of a Party, such approval, consent, acceptance, or determination shall not be unreasonably withheld, delayed, or conditioned unless otherwise specified in this Agreement.

5.9 Force Majeure. In the event the performance of a Party is interrupted or 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 may include, but are not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, or floods, the Party will be entitled to an extension in time of performance equivalent to the length of delay.

5.10 Incorporation of Exhibits and Recitals. All exhibits referenced in this Agreement and all recitals are incorporated herein by reference.

5.11 Third Party Beneficiaries. Nothing in this Agreement shall grant rights or benefits to anyone other than the City and County, and any alleged third-party beneficiaries are hereby expressly disclaimed.

5.12 Integration. This Agreement and its exhibits contain the entire understanding between all the Parties relating to this transaction, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect. Any subsequent amendments to this Agreement must be mutually agreed upon and executed by the authorized representatives of the Parties in writing. Verbal modifications shall have no effect.

5.13 Counterparts and Electronic Signature. This Agreement may be executed in multiple counterparts or electronically using a method that provides reasonable assurance as to the identity of the person signing, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, the Agreement is executed by the District, acting by and through _____, and by the County through its authorized officer.

County of San Diego

San Diego County Sanitation District

By: _____
Name: _____

By: _____
Name: _____

ATTACHMENT C

Date: _____

Approved as to form
and legality

By: _____
_____, Sr. Deputy
Office of County Counsel
County of San Diego

Date: _____

Approved as to form
and legality

By: _____
Thomas L. Bosworth, Sr. Deputy
Office of the County Counsel