

**LEASES
AND
CONTRACTS**

WASTEWATER DISPOSAL AGREEMENT BETWEEN THE CITY OF
DEL MAR AND THE 22ND DISTRICT AGRICULTURAL
ASSOCIATION.

THIS AGREEMENT ("Agreement") is made as of December 1, 2008 by and between THE CITY OF DEL MAR, a municipal corporation, ("City") and THE 22ND DISTRICT AGRICULTURAL ASSOCIATION, ("22nd DAA") (collectively, "the Parties") for the conveyance and disposal of Wastewater through the City's sewer facilities ("System") and is made with reference to the following facts:

- A. The System is designed to collect and deliver Wastewater from the City of Del Mar to the sewer system owned and operated by the City of San Diego ("San Diego").
- B. The 22nd DAA owns, operates and maintains a sewer system on 22nd DAA property that delivers Wastewater to the System;
- C. The City and San Diego are parties to agreements ("Metro Agreement" and "Transportation Agreement") that limit the amount, type, and composition of Wastewater delivered to the San Diego sewer system;
- D. The 22nd DAA is preparing a new Master Plan that will govern the future development of 22nd DAA property.
- E. Future development undertaken pursuant to the Master Plan is expected to increase the amount of Wastewater delivered by the 22nd DAA to the System.
- F. The parties desire and intend to ensure the most efficient use of the System capacity and to plan for the additional capacity required by the 22nd DAA.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

I. Definitions

A. 22nd DAA: The 22nd District Agricultural Association, is a State entity (Food & Agr. Code, §§ 3873 and 3953,) and located on real property ("22nd DAA property") situated, in part, within the city limits of the City of Del Mar. For purposes of this Agreement, the 22nd DAA includes all its tenants, vendors, operators, contractors, independent owners conducting operations or events on 22nd DAA property and any other person or entity

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using all or any part of 22nd DAA property that is within the city limits of the City of Del Mar.

B. Allotment Limit: Written limits, described in the Metro Agreement and Transportation Agreement, on the amount, type, and composition of the Wastewater that the City may deliver to the San Diego Sewer System.

C. Average Daily Flow (ADF): The number of gallons of Wastewater per day ("gpd"), calculated by dividing total Flow on a fiscal year basis by 365 days.

D. Biological Oxygen Demand (BOD): The measure of the biologically decomposable material in Wastewater, as determined by the procedures specified in the Published Standards.

E. Capacity Limit: The amount of Wastewater in terms of ADF, Peak Flow and Peak Daily Flow the 22nd DAA may discharge into the System.

F. Chemical Oxygen Demand (COD): The measure of the chemically decomposable material in Wastewater, as determined by the procedures specified in the most current edition of "Standard Methods for the Examination for Water and Wastewater," or any successor publication which establishes the industry standard ("Published Standards").

G. Commodity Rate: This charge represents the "unit costs" of collecting, treating, and disposing of wastewater.

H. Fixed Monthly Charge: This fee recovers costs associated with providing "fixed costs" of service such as sewage lift stations, odor control stations, large diameter interceptor lines, etc. Fixed costs occur whether or not any wastewater flows into the sewer system.

I. Flow: the amount of Wastewater discharged by the 22nd DAA into the System during any stated term.

J. Metro Agreement: Regional Wastewater Disposal Agreement, San Diego Document No. 00-18417, filed May 18, 1998 with the San Diego City Clerk, as it may be amended from time to time during the term of this Agreement.

K. Peak Flow: The Flow expressed in gallons per minute (gpm) or cubic feet per second (cfs).

L. Peak Daily Flow: Flow expressed in gallons per day (gpd) over any continuous 24 hour period.

M. State Order: State Water Resources Control Board WASTEWATER DISCHARGE REQUIREMENTS ORDER # 2006-0003-DWQ, as it may be amended or modified by the State Water Resources Control Board.

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N. Strength: The measurement of TSS, BOD and COD within the Flow.

O. Total Suspended Solids (TSS): The measure of the suspended solids in Wastewater required to be removed during treatment process, as determined by the procedures specified in the Published Standards.

P. Transportation Agreement: Penasquitos Sewer District Sewage Disposal Agreement Document Number 746449 recorded Feb 25, 1974, as amended or renewed, and including any successor Transportation Agreement.

Q. Wastewater: Sewage, storm water, groundwater, surface runoff, or other waste materials, whether liquid, solid or gaseous, discharged or released into the System.

Section 2. Term

This Agreement shall terminate on December 1, 2028, unless (a) earlier terminated or (b) extended in accordance with the provisions of this Agreement.

Section 3. Administration, Maintenance and Operation

City shall operate, maintain, manage and control the System in an efficient and economical manner and maintain and preserve in accordance with standard engineering practices and all applicable laws, rules, and regulations.

Section 4. Limitation on Type and Condition of Wastewater.

The 22nd DAA expressly agrees to the following limitations on the Capacity Limit and Strength of any Wastewater discharged or released into the System:

- A. The 22nd DAA shall not discharge any Wastewater into the System which fails to meet then applicable standards established by federal, state and local laws, rules and regulations, the Published Standards and or that exceeds the Capacity Limit.
- B. As required by all applicable federal, state and local laws, rules, regulations and standards, the 22nd DAA shall not discharge, or allow to be discharged from its property, surface runoff, fats oils and grease, storm water, industrial waste or other pollutants into the System.
- C. Only wastewater deposited on those portions of 22nd DAA property that are situated within the city limits of the City of Del Mar shall be discharged into the System.

Section 5. Reports, Planning and Permits

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- A. The 22nd DAA shall promptly provide the City with operational notices regarding discharges, spill events or other emergencies that have the potential for impacting the City or the City's ability to operate the System. The System Operational examples include flammable liquids accidentally pumped through the System, significant pumped solids creating a chance that the City's gravity sewer mains would become clogged, or floating particles creating operational problems with the City's sewer lift station. Surface spills examples include those spills not captured which have the potential to impact the water quality of the San Dieguito River or the Pacific Ocean.
- B. In the event of a sewage spill or violation of the Waste Discharge Requirements for Collection Systems established by the State Order that occurs on 22nd DAA property, the 22nd DAA shall promptly provide the City with copies of any reports or other documents submitted in compliance with the State Order.
- C. The 22nd DAA's sewer will be tested in accordance with the method and testing conducted by the City of San Diego or other independent laboratory selected by the City of Del Mar to perform the testing referenced herein. Testing will occur at the delivery point of the 22nd DAA sewer forcemain, and the City of Del Mar will use its best efforts to inform the Chief of Operations for the 22nd DAA when City of San Diego representatives, or any independent laboratory, has arrived for purposes of conducting testing. The City will provide the 22nd DAA with the results of such tests within ten (10) days of receiving the results. The City of Del Mar shall have no obligation to dispute test results for or on behalf of the 22nd DAA.

Section 6. Capacity Limit

The 22nd DAA's Peak Flow shall not exceed any of the following levels:

- A. Flow of 630 gallons per minute (gpm) as averaged over a 15 minute time frame.
- B. Peak Daily Flow of 792,000 gallons per day (gpd).
- C. Average Daily Flow of 156,000 gpd.

Notwithstanding the foregoing, the City shall not be obligated to receive flows into System that will endanger the public health, safety or welfare.

Section 7. Payment and Monitoring Provisions

- A. **Payment for Operation and Maintenance**

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The 22nd DAA shall pay its share of the System's operation and maintenance costs based on sewer rates adopted by the City from time to time.

B. Penalties and Remedies for Exceeding Capacity

Flows in excess of the Capacity Limit established herein may result in sewage overflows and/or violations of the Metro Agreement or Transportation Agreement. There are three components of capacity: Peak Flow, Peak Daily Flow, and Average Daily Flow.

i. Peak Flow exceedance creates an unacceptable flow within the City's sewage main and overburdens the City's pump station creating an unacceptable risk of a sewage overflow. If 22nd DAA exceeds Peak Flow at any time during this Agreement, the City may, but is not required to, install a flow restrictor on the 22nd DAA force main.

ii. For each day the 22nd DAA violates the Peak Daily Flow ("violation day"), the monthly sewage bill will be adjusted and each violation day will be billed at 150% of the adopted Commodity Rate. Also, 22nd DAA shall be responsible for payment of any pass-through fees or charges imposed on City by the City of San Diego. Furthermore, if exceeding Peak Daily Flow causes the City to have a sewer overflow or spill event, the 22nd DAA will be responsible for all related costs and any fines imposed.

1. Example: Basis for calculation: Peak Daily Flow is 792,000 gallons or 1,058.8 Hundred Cubic Feet (HCF) per Section 6. B. Current Fiscal Year 2009 Sewer Commodity Rate per City Ordinance Section 22.04.020 A.2 is \$4.65 per HCF. Assume the flow for a day is at maximum all day at the allowed pump rate of 630 gpm delivering 907,200 gallons (1,212.83 HCF) versus allowed Peak Daily Flow. Commodity Charge for this day would be billed at \$8,459.49 (1,212.83 HCF x 1.50 X \$4.65) versus normal Commodity Rate of \$5,639.66 (1,212.8 HCF x \$4.65). On the basis of this example, a penalty of \$2,819.83 would be charged to the 22nd DAA.

iii. The 22nd DAA will be billed at 150% of the normal sewer commodity rate for the total amount of sewage in a fiscal year in which Average Daily Flow was exceeded, multiplied by 365 days. Also, 22nd DAA shall be charged for any pass-through fees or charges imposed on City by the City of San Diego. Furthermore, if exceeding the Capacity Limit causes the City to have a sewer overflow or spill event, the 22nd DAA will be responsible for all related costs and any fines imposed.

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1. Basis for calculation: The Commodity Rate is billed for the current Fiscal Year 2009 Sewer per City Ordinance Section 22.04.020 A.2 as \$4.65 per HCF. The 150% charge for exceeding the Average Daily Flow would be calculated less the prior billed commodity rate (100% Commodity Rate) during the course of the year. Therefore, the portion of the Average Daily Flow that exceeds the contractual Average Daily Flow will be billed for the year at 50% of the Commodity rate as a penalty for exceeding the contractual amount in addition to the normal billing rate.

Example of calculation is as follows: Average Daily Flow 156,000 gpd or 208.56 Hundred Cubic Feet (HCF) per Section 6. C. Assume the calculated Average Daily Flow is 10% higher than allowed or 171,600 gpd (229.4 HCF). Therefore, the exceedance of 20.84 HCF (229.4 – 208.56) would have a penalty rate applied. On the basis of this example, an annual penalty of \$17,685.35 (20.84 HCF x 365 x 50% of \$4.65 = \$17,685.35) would be charged to the 22nd DAA.

C. Monitoring Flow

The City will install devices to monitor the amount of Wastewater discharged into the System at locations selected by the City. Data from the City's flow device will be made available to the 22nd DAA upon request. Furthermore, the City will calibrate the flow meter annually and provide the calibration report to the 22nd DAA on or before July 1 of each year.

Section 8. Manner of Giving Notice

Notice required or permitted hereunder shall be sufficiently given if in writing and if either served personally upon or mailed by registered or certified mail to:

City Clerk of the City of Del Mar
1050 Camino Del Mar
Del Mar, California 92014

22nd District Agricultural Association
Attention: General Manager and Deputy General Manager
2260 Jimmy Durante Bl.
Del Mar, California 92014

or such other person and address as either party shall advise the other in writing.

Section 9. Additional Capacity

The parties shall work together to achieve efficiencies in their respective systems to accommodate anticipated increased requirements from the 22nd DAA within the Allotment Limit.

The 22nd DAA shall submit annually by May 1, its expected sewage flow projections for the next 10 fiscal years projecting Peak Flow, Peak Daily Flow and Average Daily Flow. Any planned or anticipated increases to the Capacity Limits stated in Section 6 shall be noted and negotiations shall forthwith commence to determine the best method to provide additional capacity for the forecasted flows.

Section 10. Option to Extend.

Provided that the 22nd DAA has not defaulted under or is not presently in default of this Agreement, it may extend this Agreement for a period of ten (10) years upon the same terms and conditions as are herein set forth. 22nd DAA shall provide written notice to the City of its option to extend this Agreement on or before December 1, 2027. No additional capacity shall be granted as a result of an extension of this Agreement pursuant to this Section 10.

Section 11. War and Other Contingencies.

If the City is prevented from operating the System during the term of this Agreement, by reason of war, declaration of a state or national emergency, the imposition of restrictions upon the procurement of essential materials, strike via major or any other cause beyond the control of the City, then the fulfillment of the terms of this Agreement, and the obligations of the parties hereunder, shall be deferred until such time as it is possible for City to operate the System without said causes of interference. However, if such period of inoperability continues for more than [30 days], this Agreement may be terminated without penalty by either party.

Section 12. Termination

- A. City's Right to Terminate for Default. Should the 22nd DAA be in default of any covenant or condition hereof, City may immediately terminate this AGREEMENT for cause if the 22nd DAA fails to cure the default within thirty (30) calendar days of receiving written notice of the default.
- B. Termination without Cause. Without limiting the respective rights of the parties in the event of default by any party under this Agreement, either party may terminate this Agreement without cause, by giving one hundred eighty (180) calendar days written notice to the other party. Notice of such termination shall be effective upon receipt of the written notice. Any property belonging to the 22nd DAA remaining in City facilities or on City property thirty (30) days after

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the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

Section 13. Choice of Law and Venue

This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the County of San Diego, California or the federal district court having jurisdiction.

Section 14. Attorney's Fees

In the event of any action or proceeding at law or in equity between City and the 22nd DAA to enforce any provision of this Agreement or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney fees shall be included in and as a part of such judgment.

Section 15. Mutual Indemnity

Except as to otherwise provided herein, the City shall defend, indemnify and hold the 22nd DAA, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City, its officers, employees, contractors, vendors or agents.

Except as otherwise provided herein, the 22nd DAA shall defend, indemnify and hold City, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the 22nd DAA, its officers, employees, contractors, vendors or agents.

Section 16. Severability

If any section, subsection, sentence, clause, phrase, or word of this agreement, or the application thereof, to either party, or to any other person or circumstance is for any reason held invalid, it shall be deemed severable and the validity of the remainder of the agreement or the application of such provision to the other party, or to any other persons or circumstances shall not be affected thereby. Each party hereby declares that it would have entered into this agreement and

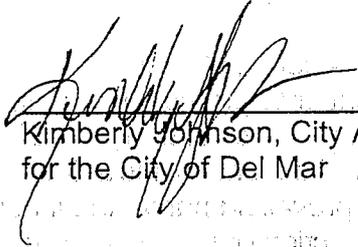
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each section, subsection, sentence, clause, phrase, and word thereof irrespective of the fact that one or more section, subsection, sentence, clause, phrase, or word, or the application thereof to either party or any other person or circumstance be held invalid.

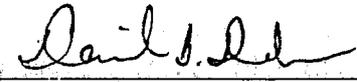
The parties have executed this Agreement as of the date first written above.

APPROVED AS TO FORM:

City of Del Mar:

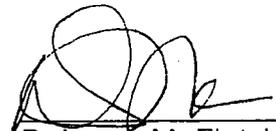


Kimberly Johnson, City Attorney
for the City of Del Mar

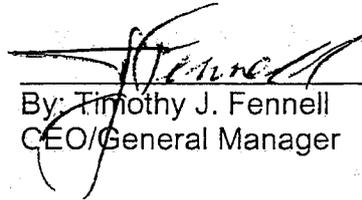


By: David Druker, Mayor

22nd District Agricultural Association:



Deborah M. Fletcher
Deputy Attorney General
Counsel for the
22nd District Agricultural Association



By: Timothy J. Fennell
CEO/General Manager

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