

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

City of Fontana
City Clerk's Office
8353 Sierra Ave
Fontana, CA 92335

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

Assessor's Parcel Number 0246-191-30-0000

**WASTEWATER SERVICE AGREEMENT BETWEEN THE CITY OF
RIALTO, THE CITY OF FONTANA, AND ORANGEWOOD MHP ASSET
PARTNERS, L.P.**

This **WASTEWATER SERVICE AGREEMENT** ("Agreement") is made and entered into this ____ day of _____ 2023, between City of Fontana, a California municipal corporation ("Fontana"); the City of Rialto, a California municipal corporation ("City"); and Orangewood MHP Asset Partners, L.P. ("Owner") (each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, City, through its concessionaire Rialto Water Services, and sewer system operator Veolia, provides wastewater conveyance, treatment, and disposal services for wastewater ("Sewer Services") to properties within City's jurisdiction, the area adjacent to City's jurisdiction, and spheres of influence, and has adequate pipelines, facilities, and infrastructure for said Sewer Services; and

WHEREAS, Fontana has requested City to provide Sewer Services to a certain property located adjacent to the City's jurisdiction, but outside of City's existing corporate boundaries, and which is owned in fee by Owner, Assessor's Parcel Numbers 0246-191-30-0000, located at 8787 Locust Avenue, Fontana, CA (the "Property") as legally described in Exhibit "A" and shown on Exhibit "B," attached hereto and made a part hereof; and

WHEREAS, other wastewater collection systems are unavailable, and Fontana and Owner desire to connect the Property to City's wastewater collection system to obtain Sewer Services in furtherance of the general health safety and welfare; and

WHEREAS, City owns and operates wastewater collection mains and any other related and/or additional facilities used for the conveyance, treatment or disposal of

wastewater originating in City and areas located outside the corporate boundaries of City approved by City for extraterritorial wastewater service (the “Service Area”), and any extensions, expansions, or replacements of any of the above being hereinafter referred to as the “City’s Disposal System”; and

WHEREAS, City has defined and established by City Council Resolutions (including, but not limited to, Resolution No. 4746, 6119, 6209, and 7266 as they may be amended or supplemented), administrative guidelines (including, but not limited to the 2015 Standard Drawings as they may be amended or supplemented), and the City of Rialto Municipal Code (including, but not limited to, Title 12 as it may be amended or supplemented) (collectively “Sewer Regulations”) a policy and administrative guidelines to provide Sewer Services outside of City’s corporate boundaries, and has agreed to provide Sewer Services to the Property through City’s Disposal System on the terms and conditions contained herein; and

WHEREAS, California Government Code Section 56375(p) permits a city to provide new or extended services by agreement outside its jurisdictional boundaries only if the city first requests and receives approval from the Local Agency Formation Commission for San Bernardino County (“LAFCO”); and

WHEREAS, City, Fontana, and Owner desire to memorialize their arrangement for City’s provision of Sewer Services to the Property, for the benefit of Fontana and Owner through this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and subject to the terms and conditions contained herein, the Parties hereto hereby agree as follows:

ARTICLE I. CONDITION PRECEDENT

Section 1.01 Recitals Incorporated. The recitals set forth above are true and correct and are hereby incorporated into and made a part of this Agreement.

Section 1.02 Condition Precedent. The effectiveness of this Agreement is expressly conditioned upon approval by LAFCO authorizing City to provide new or extended Sewer Services to the Property. The Effective Date of this Agreement shall be the date of such approval by LAFCO.

ARTICLE II. RIGHTS AND OBLIGATIONS

Section 2.01 Delivery and Receipt of Wastewater. At all times, except as may be restricted by unforeseen emergencies, Fontana and Owner shall have the right to deliver to the City’s Disposal System normal strength domestic wastewater from the Property (“Service Area Wastewater”), and City shall have the obligation to receive all such wastewater into City’s Disposal System and to convey, treat and dispose of such wastewater.

Section 2.02 Disposal of Service Area Wastewater; Ownership and Reclamation of Effluent. The cost of constructing, expanding, extending, maintaining and operating City's Disposal System and of conveying, treating and disposing of the Service Area wastewater (including without limitation any effluent or by-product thereof) after delivery of such Service Area Wastewater to City's Disposal System shall be the responsibility solely of City, and Fontana and Owner shall have no responsibility, and shall not be liable to City or any third party, for any costs or other expenses incurred by City in connection with or related thereto, other than design and construction costs to connect the Property to City's Disposal System set forth in Section 2.05 and payment of the Wastewater User Fees set forth in Article III, provided Fontana and Owner comply with all aspects of the Sewer Regulations, incorporated herein by reference, as they relate to wastewater discharge applicable to the Property.

Section 2.03 Ownership of Service Area Wastewater. It is the intention and agreement of the Parties that City shall have total ownership and control of all Service Area Wastewater delivered to City's Disposal System. Fontana and Owner warrant that Fontana and Owner shall comply with all aspects of the Sewer Regulations.

Section 2.04 Connection Points. Fontana and Owner are authorized one (1) connection point to City's Disposal System. Such connection point shall be located at a point mutually acceptable to Fontana and City's City Engineer. Construction of laterals and connection points shall be in conformance with the specifications and details set forth in the Sewer Regulations, as may apply.

Section 2.05 Design and Construction of Connection Points. Fontana and Owner agree, at their sole expense and without reimbursement from City, to design and construct the sewer lines, laterals and connection points needed for the Property to connect to City's Disposal System. The Parties also agree the design and construction necessary to connect to City's Disposal System is subject to the appropriate City approvals, including but not limited to plan check(s), inspections, and issuance of an encroachment permit.

Section 2.06 Inspection. City shall have the right to inspect and examine sewer lines, laterals, connection points and any other facilities related to the connection to City's Disposal System upon 24 hours' notice to Fontana (if inspection is to occur within City of Fontana right-of-way) or Owner (if inspection is to occur on the Property), including during construction and operation of any portion of the Sewer System within the Service Area.

Section 2.07 Maintenance and Repairs. Maintenance, repairs, and replacement of the laterals including the connection point within the City of Fontana right-of-way or on the Property shall be the responsibility solely of Fontana or Owner, respectively. All other construction work, maintenance and repairs shall be performed under permit from, and inspected and approved by, City. Should Fontana or Owner fail to operate, maintain, repair, and replace the lateral including the connection point as needed for proper operation of City's Disposal System and in accordance with the Sewer Regulations, City

shall have the right, but not the obligation, to stop providing Sewer Services for the Property. Prior to City stopping Sewer Services for the Property, City shall provide Fontana and Owner with written notice of the failure to properly operate, maintain, repair, or replace the lateral and/or connection point, and provide Fontana and Owner with not less than thirty (30) days to cure the issue. If, after the notice period expires, Fontana or Owner have failed to cure the issue, City may stop providing Sewer Services for the Property.

ARTICLE III. WASTEWATER USER FEES

Section 3.01 Initial Special Service Availability Payment. In consideration of City's agreements contained herein, Owner shall, prior to or in conjunction with the issuance of a permit to connect the Property to City's Disposal System, pay to City a service connection fee for treatment, collections, and related fees in the amount of **\$469,774.07** in accordance with the adopted fee schedule, Resolution 6069 attached hereto as **Exhibit "C"**, approved by the Rialto City Council/Rialto Utility Authority on December 27, 2011. Any and all additional fees related to plan check(s), inspections or other matters not set forth in this Agreement shall be the responsibility of Owner.

Section 3.02 Monthly Wastewater User Fees. Prior to or in conjunction with the issuance of a permit to connect the Property to City's Disposal System, Owner shall pay to City for the provision of Sewer Services a wastewater fee calculated at a rate equal to one point three (1.3) times the rate then charged by City to properties located within the incorporated boundaries of the City of Rialto, in accordance with the rates established pursuant to Chapter 12.08.200 of the Rialto Municipal Code, as it be amended from time to time in accordance with the Sewer Regulations and California Proposition 218.

Section 3.03 Delinquent Sewer Service Fees. Owner shall pay to City delinquent fees as established in the Sewer Regulations. Any sewer charges that are unpaid by the specified due date shall be a debt in favor of City, and City may use any legal means to collect any delinquent sewer charges, including, but not limited to, placing liens on the Property or portion of the Property owned by the delinquent payer, and collecting such delinquent fees, penalties, and interest due and owing on the property tax roll.

ARTICLE IV. MONITORING OF SERVICE AREA WASTEWATER

Section 4.01 Pre-Treatment Program; Quality Specifications and Standards. Pretreatment of wastewater from the Service Area may not be required under this Agreement, provided Fontana and Owner comply with all aspects of the Sewer Regulations. City shall have the right to monitor or restrict the discharge of wastewater to City's Disposal System if City reasonably suspects or discovers Fontana or Owner has discharged prohibited substances, as described in the Sewer Regulations, into City's Collection System. City may, at its option, allow discharge to resume with Owner or Fontana's installation, and proper maintenance, of an approved pretreatment device or system.

ARTICLE V. TERM

Section 5.01 Effective Date; Term. This Agreement shall become effective as first written above in Section 1.02. The Agreement shall continue in perpetuity, or until terminated pursuant to Section 5.02.

Section 5.02 Termination.

5.02.01 For Cause. Any Party may terminate this Agreement upon a breach of the terms and provisions of this Agreement. The non-breaching Party shall provide the breaching Party thirty (30) days prior written notice, and an opportunity to cure the breach, prior to terminating the Agreement.

5.02.02 For Convenience. Fontana and Owner may mutually agree to terminate this Agreement, without cause, upon thirty (30) days' written notice to City. Fontana and Owner shall be responsible for any and all outstanding fees owned to City prior to the date of termination.

ARTICLE VI. MISCELLANEOUS

Section 6.01 Indemnification. Fontana, solely with respect to obligations placed solely upon Fontana under this Agreement, and Owner, solely with respect to obligations placed solely upon Owner under this Agreement, hereby agree to indemnify, defend, save, and hold harmless City, and its officers, agents, and employees, from and against all liability, claims, damages, losses and expense of any nature whatsoever, including but not limited to bodily injury, death, personal injury, property damages and attorney's fees, arising directly or indirectly from any acts or omissions of Fontana or Owner, respectively, or their officers, agents or employees, in connection with this Agreement.

Section 6.02 Successors and Assigns, Recordation of Agreement. This Agreement shall be recorded against the Property in the Office of the San Bernardino County Recorder. The rights, duties, benefits, burdens, and obligations contained herein are appurtenant to and shall run with the land (i.e. the Property). The terms of this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of the Parties hereto. Any change of the property's existing use requires consent of the City, Fontana, and Owner of which consent shall not be unreasonably withheld.

Section 6.03 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; emailed; sent by pre-paid First Class U.S. Mail, registered or certified, postage prepaid, return receipt requested; and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by email. Other forms of electronic transmission

such as text messages and instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

If to City: City of Rialto
150 South Palm Avenue
Rialto, CA 92376
Attn: City Manager
Tel: (909) 820-2528
Fax: (909) 820-2527
Email: aministration@rialtoca.gov

With copy to: Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240
Riverside, CA 92507-2479
Attn: Eric Vail, City Attorney
Tel: (951) 788-0100
Email: evail@bwslaw.com

If to Fontana: City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: City Manager
Tel: (909) 350-7640
Email: [REDACTED]

With copy to: Best Best & Krieger LLP
2855 E. Guasti Road, Suite 400
Ontario, CA 91761
Attn: Ruben Duran, City Attorney
Tel: (909) 989-8584
Email: ruben.duran@bbklaw

If to Owner: Orangewood MHP Asset Partners, L.P.
c/o Laguna Asset Management, Inc.
P.O. Box 2308
Laguna Hills, CA 92654
Attn: Ralph Beatty
Tel: (949) 481-0909 x150
Email: ralph@lagunaassetmanagement.com

Any Party may change its address by notifying the other Parties of the change of address in writing.

Section 6.04 Costs and Expense of Enforcement. Should litigation be necessary to enforce any term or provision of this Agreement, the prevailing Party shall be entitled to collect all litigation costs and attorney's fees incurred by the prevailing Party.

Section 6.05 Amendment. No amendment or waiver of any provisions of this Agreement or consent to any departure from its terms shall be effective unless the same shall be in writing and signed by the parties hereto.

Section 6.06 Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any provision of this Agreement will not affect the validity of the remainder hereof.

Section 6.07 Execution in Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute an original hereof.

Section 6.08 Time of Essence. Time is of the essence in the fulfillment by the parties hereto of their obligations under this Agreement.

Section 6.09 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and any legal action must be brought in a court of competent jurisdiction in San Bernardino County.

ARTICLE VII. INDEMNIFICATION OF FONTANA BY OWNER

Section 7.01 Owner's Obligations to Fontana. Notwithstanding any provision in this Agreement to the contrary, Owner shall pay all costs, and have the responsibility to make all payments to City, which costs, and payments are described in Articles II and III of this Agreement. Owner shall indemnify and hold harmless Fontana for any delinquency and failure by Owner to meet its obligations hereunder.

Section 7.02 Owner's Additional and General Indemnification of Fontana. Notwithstanding any provision in this Agreement to the contrary, Owner shall indemnify, defend and hold harmless Fontana from and against any liability resulting from any and all acts, omissions and failure of Owner to undertake and satisfactorily complete all of Owner's obligations under this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, City and Fontana have caused this Agreement to be executed the day and year first above written.

CITY:

CITY OF RIALTO,
a Municipal Corporation

By: _____
Henry Garcia, Acting City Manager

ATTEST:

By: _____
Barbara A. McGee, City Clerk

APPROVED AS TO FORM:

BURKE, WILLIAMS & SORENSEN, LLP

By: _____
Eric Vail, City Attorney

FONTANA:

City of Fontana

By: _____
, City Manager

OWNER:

Orangewood MHP Asset Partners, L.P.
c/o Laguna Asset Partners, Inc.
Its: General Partner

By: _____
Ralph Beaty, President

EXHIBIT "A"
LEGAL DESCRIPTION

S T L AND W CO S B L LOT 452 EX HGWY 17.70 AC M/L

EXHIBIT "B"

Property located at 8787 Locust Avenue, Fontana, CA

Assessor's Parcel Number 0246-191-30-0000

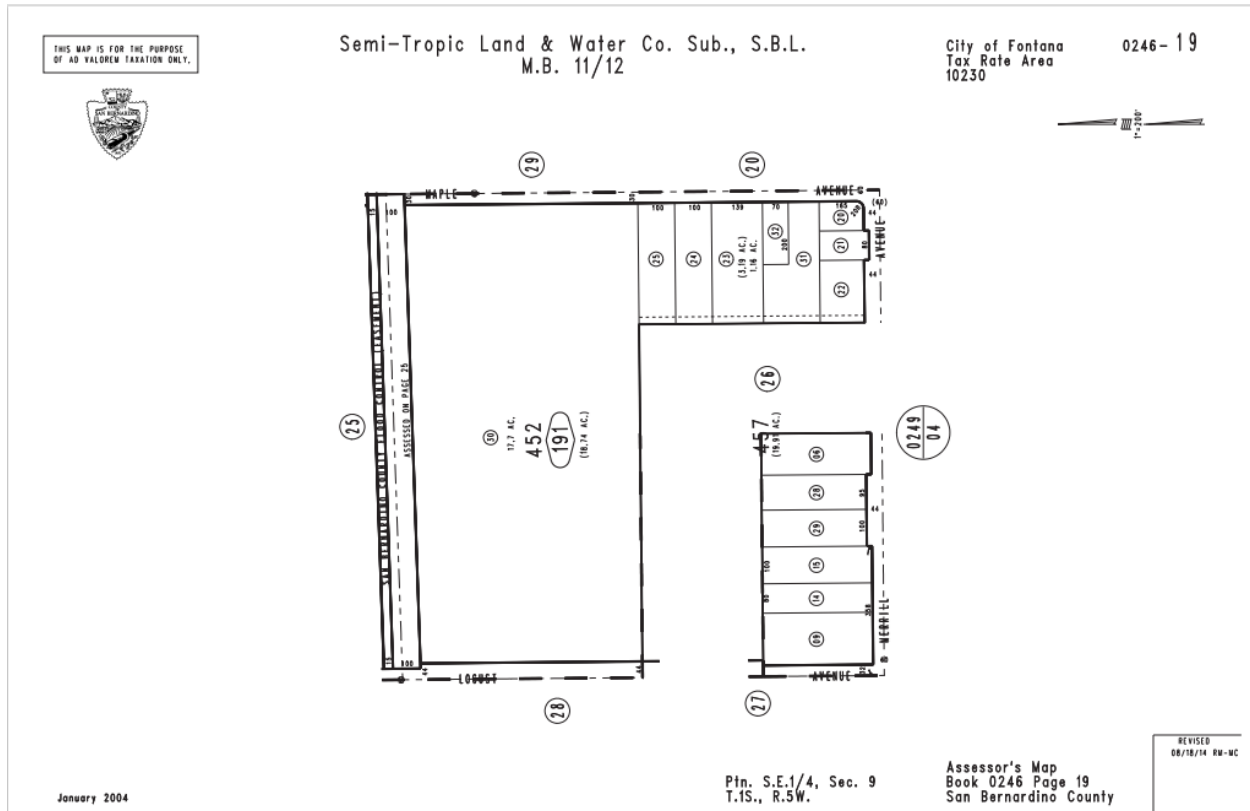




EXHIBIT “C”