

## **TEMPORARY SEWER CONNECTION AND USE AGREEMENT**

This Temporary Sewer Connection and Use Agreement (the “Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2022 (the “Effective Date”) by and between the South Placer Municipal Utility District (the “District”), a California Municipal Utility District and the City of Rocklin, a municipal corporation (the “City”). The District and City may sometimes be referred to individually as “Party” or together as “Parties” throughout this Agreement.

### **RECITALS**

WHEREAS, on or about February 11, 2014, the District and the City entered into that certain Agreement with the City of Rocklin for the Construction of the Atherton Sewer Trunk Line Upgrade Project (the “Atherton Trunk Line Agreement”) to serve future development within the Northeast Rocklin Annexation Area of the City, which includes Whitney Ranch and the Highway 65 commercial corridor; and

WHEREAS, the Atherton Trunk Line Agreement requires the City to begin project construction upon the issuance of building permits utilizing 1,900 Equivalent Dwelling Units (EDU) of sewer line capacity (the “Construction Threshold”); and

WHEREAS, the City has confirmed that the Construction Threshold has been reached, thus necessitating the construction of the Project under the terms and conditions set forth in the Atherton Trunk Line Agreement; and

WHEREAS, the City intends to construct sewer infrastructure as part of the City’s Northwest Rocklin Sewer Annexation Construction Project (the “Project”); and

WHEREAS, the City intends to remove and replace the sewer line per the approved Northwest Rocklin Sewer Annexation Construction Project improvement plans and to reinstate the sewer laterals and existing flow from existing District customers through their constructed improvements to avoid the need for a continuous 24/7 sewer bypass for the duration of the Project; and

WHEREAS, the District acknowledges the complexity of extended temporary sewer bypass operations for existing sewer replacement work; and

WHEREAS the District recognizes the value of avoiding extended sewer bypass operations because of the increased risk of mechanical failure of bypass pumps potentially causing a sanitary sewer overflow (“SSO”); and

WHEREAS, during this period of construction, sewer flows from existing customers of the District will be routed through the new sewer line owned and operated by the City, until such time as such improvements may be accepted by the District via a Bill of Sale.

## **AGREEMENT**

**NOW, THEREFORE** in consideration of the mutual covenants, conditions and promises herein contained, it is hereby agreed by and between the District and City as follows:

1. The District and the City hereby reaffirm and ratify the Atherton Trunk Line Agreement, and all terms and conditions set forth therein, which continue to remain in full force and effect.
2. The City shall be responsible for maintaining sewer service through the portion of the sewer system it is constructing as denoted in the attached Exhibit A (“Private Sewer Line”) until such time as the District, through duly authorized action of the Board of Directors, accepts a bill of sale for the sewer improvements.
3. The City shall be solely responsible for the maintenance of sewer service on the Private Sewer Line, which includes, but is not limited to, all activities required to prevent sanitary sewer overflows (“SSOs”) and maintain effective service, such as monitoring flows, cleaning the system with high velocity vacuum cleaner units (i.e., flushing), repairing and/or replacing defective portions of the above mentioned sewer system. The City shall perform such system maintenance, and any and all repairs associated therewith, at the City’s sole cost and expense.
4. The City and/or its agent(s) shall be responsible to immediately notify the District in the event that a sanitary sewer overflow (SSO) has occurred, is imminent, or is suspected to occur.
5. The City and/or its agent(s) shall be responsible for the efforts and associated costs to respond to, contain, mitigate, and restore flow in the event of a SSO. The City shall be responsible to pay any and all fines and fees that may be assessed to the District as a result of any SSO that occurs as a result of a blockage or activities within the Private Sewer Line as denoted in Exhibit A.
6. The City and/or its agent(s) shall test all portions of the sewer system denoted in Exhibit A in accordance with the District Standards Specifications and Improvement Standards for Sanitary Sewers, prior to allowing wastewater from existing District customers to flow through those portions.
7. The City and/or its agent(s) shall test all portions of the sewer system denoted in Exhibit A in accordance with the District Standard Specifications and Improvement Standards for Sanitary Sewers as directed by the District prior to District acceptance thereof.
8. All fees, costs and expenses associated with the preparation, processing and approval of this Agreement by the District, including all legal expenses, shall be borne solely by the City.
9. Until such time as the District accepts the bill of sale conveying the Private Sewer Line to the District, the Private Sewer Line shall remain the property of the City, which shall be solely responsible for its maintenance in compliance with District policies and ordinances, as well as state and federal law.

10. The District shall not be liable for any damages to the Private Sewer Line or any property of the City or to any other property owned or occupied by third parties that may result from the installation, maintenance or use of the Private Sewer Line, which damages shall remain and be the sole responsibility of the City.
11. The City shall defend, indemnify and hold harmless the District, its directors, officers, employees and agents, against and from any and all claims, actions, lawsuits, fines, cease and desist orders, clean up and abatement orders or any type of regulatory activity brought by any persons as a result of the construction, installation, use, operation or maintenance of the Private Sewer Line, and City shall reimburse the District, and its directors, officers, employees and agents, for any and all costs and expenses, including reasonable attorney's fees, incurred in defending any such claim or action or enforcing the provisions of this Agreement.
12. This Agreement shall not be construed to create any third-party beneficiaries. This Agreement is for the sole benefit of the parties, their respective successors and permitted transferees and assigns, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.
13. This Agreement requires the approval of the Board of Directors of the District and the City Council of the City of Rocklin. Modifications or amendments to this Agreement shall be in writing and executed by both the City and the District.
14. This Agreement shall remain in effect in perpetuity until the District has accepted the Private Sewer Line via a duly executed and approved bill of sale, and shall be binding on the City and its successors and assigns. This Agreement may not be transferred or assigned without the express, written consent of the City and the District.
15. This Agreement represents the final, entire and complete agreement between the parties relating to the temporary connection of the Private Sewer Line to District facilities pending the District's formal acceptance of the Private Sewer Line and supersedes all other prior or contemporaneous agreements, communications or representations, whether oral or written, express or implied. The parties acknowledge and agree that they may not and are not relying on any representation, promise, inducement, or other statement, whether oral or written and by whomever made, that is not contained expressly in this Agreement or in the Atherton Trunk Line Agreement. This Agreement may only be modified by a written instrument signed by representatives authorized to bind all parties. Oral modifications are unenforceable.
16. No waiver of any right or remedy by a Party with respect to any occurrence or event under this Agreement shall constitute a continuing waiver or be deemed a waiver of any right or remedy in respect to any other or subsequent occurrence or event.
17. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.
18. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the

remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished.

19. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first set forth above.

“DISTRICT”

SOUTH PLACER MUNICIPAL UTILITY DISTRICT

ATTEST:

By: \_\_\_\_\_  
District Secretary

By: \_\_\_\_\_  
General Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
District General Counsel

“CITY”

CITY OF ROCKLIN

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney