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Special Board Meeting
Wednesday Nov. 7, 2018
2:00pm
Mark Twain Medical Center Education Center - Classroom 5
San Andreas, CA

Agenda

Mark Twain Health Care District Mission Statement

“Through community collaboration, we serve as the stewards of a community health system that ensures our residents have the dignity of access to care that provides high quality, professional and compassionate health care”.

1. Call to order:

Debbie Sellick, Chair; Talibah Al-Rafiq, Director; Susan Atkinson, Alternate; Lin Reed and Ann Radford are both Recused.

2. Roll Call:

3. Approval of Agenda: Action

4. Public Comment On Matters Not Listed On The Agenda:

The purpose of this section of the agenda is to allow comments and input from the public on matters within the jurisdiction of the Mark Twain Health Care District not listed on the Agenda. (The public may also comment on any item listed on the Agenda prior to Committee action on such item.) **Limit of 3 minutes per speaker.** The Committee appreciates your comments however it will not discuss and cannot act on items not on the agenda.

This Institution is an Equal Opportunity Provider and Employer

Agenda – Nov. 7, 2018 MTHCD Special Board Committee Meeting

5. **San Andreas Sanitary District:** Action.....Dr. Smart

- Term Sheet for MTMC Funding of Sanitary District Settlement:
- Sewer Capacity Settlement and Release Agreement:

6. **Comment and Future Agenda Items:**

7. **Next Meeting:**

- The next meeting will be November 28, 2018

8. **Adjournment:** Action

SEWER CAPACITY SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made and entered into on November __, 2018 (“Effective Date”) by and between the MARK TWAIN HEALTHCARE DISTRICT (“MTHD”) on the one hand and SAN ANDREAS SANITARY DISTRICT (“SASD”) on the other hand (collectively, “Parties”) as follows:

RECITALS

A. WHEREAS, SASD has been providing sewer service to MTHD’s property located at 768 Mountain Ranch Road, San Andreas, California (hereinafter “Property”). The Property has been and currently is used as a hospital;

B. WHEREAS, in 1995, SASD granted MTHD’s request for additional sewer capacity increasing the total sewer capacity permitted for the Property to 4,650 gallons per day (“gpd”);

C. WHEREAS, since 1999, the Property has been discharging sewage in excess of its permitted capacity. The additional sewer capacity for the Property has not been permitted since 1995;

D. WHEREAS, in 2017, SASD discovered that the sewer discharge for the Property during the 2016/2017 fiscal year exceeded the permit amount by 18,648 gpd. Upon notification, SASD received an application for a permit for additional sewage capacity for the Property which SASD delayed processing to give the occupant of the Property time to reduce its discharge since the amount seemed excessive for the user of the Property;

E. WHEREAS, after the user of the Property was successful in reducing its discharge, the SASD determined that the additional sewage capacity the Property would need was 7,778 gpd, assuming the discharge remained equal to or below the user of the Property’s successful reduction efforts;

F. WHEREAS, while the SASD current capacity charge is \$57.96 gpd, MTHD contends that had SASD discovered the discharge above capacity in prior years, then a portion of the additional capacity being applied for would have been acquired at prior and lower capacity charge rates. SASD contends that SASD customers are responsible for managing their discharges in accordance with its sewer permit and to apply for additional capacity if they exceed their permit amount. Furthermore, the capacity charge levied is the amount in effect at the time of the application;

G. WHEREAS, the Parties have worked together and negotiated in good faith to determine the amount of additional capacity the Property needs as well as the capacity charge applicable to this unique situation;

H. WHEREAS: The Parties desire to resolve their disputes and forego further dispute resolution options.

For good and valuable consideration which is herein set forth and acknowledged, this Agreement is made by and between the Parties as follows:

TERMS AND CONDITIONS

1. Payments

1.1 MTHD shall pay the sum of \$250,000.00 to SASD, which represents 1) the capacity charge for the additional 7778 gpd of capacity for sewer service from SASD at a one-time settlement rate of \$32.00 gpd, and 2) \$1,104 for SASD's administrative expenses incurred as part of the application process. Payment shall be made by no later than November 30, 2018.

2. Approval of Capacity

2.1 Upon receipt of the payment of \$250,000.00, SASD shall grant MTHD's application for additional sewer capacity for 7,778 gpd for the Property. Thereafter the Property's total and permitted sewer capacity shall be 12,428 gpd (hereinafter "Total Capacity").

2.2 In the event the sewer discharge from the Property exceeds the Total Capacity for the Property at any time in the future, the owner of the Property shall, like all SASD customers, be required to apply for additional sewer capacity in accordance with SASD's Ordinance and pay the capacity charge in effect at that time.

3. Releases

3.1 MTHD, on its own behalf and on behalf of its employees, representatives, agents, board of directors, attorneys, insurers, successors and assigns, hereby forever releases and discharges the SASD, and its board of directors, employees, representatives, agents, principals, attorneys, insurers, successors and assigns, from any and all costs, losses, claims, demands, actions, or causes of action, whether past or present, known or unknown, or contingent or certain, arising out of or related to the allocation and payment of permitted sewer capacity by SASD to the Property as of the Effective Date of this Agreement.

3.2 SASD, on its own behalf and on behalf of its employees, representatives, agents, board of directors, attorneys, insurers, successors and assigns, hereby forever releases and discharges the MTHD, and its board of directors, employees, representatives, agents, principals, attorneys, insurers, successors and assigns, from any and all costs, losses, claims, demands, actions, or causes of action, whether past or present, known or unknown, or contingent or certain, arising out of or related to the allocation and payment of permitted sewer capacity by SASD to the Property as of the Effective Date of this Agreement.

3.3 In giving the foregoing releases, SASD and MTHD expressly waive the provisions of Civil Code § 1542, which states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

SASD and MTHD understand and acknowledge that the significance and consequence of such waiver is that, even if it, he or they should eventually suffer additional damage arising out of the matters being released, none of them will not be permitted to make any claim against the other for those additional damages. Further, SASD and MTHD acknowledge that they intend such consequence even as to claims for damages that may now exist but which they do not know exist and which, if known, would materially affect their decision to execute this Agreement, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause.

4. Miscellaneous

4.1 The Parties acknowledge having sufficient opportunity to discuss this Agreement, and its effect, with an attorney of their choosing and enter into this Agreement relying solely on their own judgment and not upon any statement by or advice from any other Party or attorney for any other Party.

4.2 The Parties certify that the execution and delivery of this Agreement has been duly and validly authorized by all necessary public, corporate or other action as appropriate.

4.3 This Agreement contains the entire agreement of the Parties with regard to the settlement of the dispute between them. No other agreement, statement or promise made on or before the Effective Date of this Agreement will be binding on the Parties. This Agreement shall not be modified or amended except by a writing signed by all Parties.

4.4 No term or provision in this Agreement shall be interpreted for or against a Party because that Party or its or his attorney drafted such term or provision.

4.5 If any term or provision of this Agreement shall be illegal, unenforceable or invalid under applicable law, such provision shall be ineffective only to the extent of the illegality, unenforceability or invalidity without affecting the remainder of such provision or any remaining provisions of this Agreement, on the condition that the remainder can be construed in substance to constitute the agreement that the Parties intended to enter into in the first instance.

4.6 This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California. Venue in any action brought to enforce this Agreement or any of its terms shall be in Calaveras County, California.

4.7 This Agreement may be executed in one or more counterparts, which when taken together shall constitute one and the same instrument, and facsimiled, photocopied, or scanned signatures have the same force and effect as originals.

Dated: November __, 2018

Mark Twain Healthcare District
By _____, _____

Dated: November ___, 2018

San Andreas Sanitary District
By Hugh Logan, District Manager

Reviewed and approved as to form:

Dated: November ___, 2018

Daniel J. Schroeder, Esq.
General Counsel for San Andreas Sanitary District

Dated: November ___, 2018

_____, Esq.
General Counsel for Mark Twain Healthcare
District