

CONDITIONAL SEWER SERVICE AGREEMENT
KONOCTI GARDENS PROJECT
3930 OLD HIGHWAY 53, CLEARLAKE, CA

Project No. _____

This Conditional Sewer Service Agreement (“Agreement”) is made effective as of _____, 2024, and is made by and between CRP Konocti Gardens, LP, a California limited partnership (“Developer”) and the Lake County Sanitation District, hereinafter called “LACOSAN” or “District” (each a “Party” and collectively the “Parties”). The Parties hereby agree as follows:

I. RECITALS

A. Developer has proposed to construct and operate a development referred to as the Konocti Gardens Apartments, a 102-unit 100% low-income project (“Project”) in the City of Clearlake (“City”).

B. The Project is located at 3930 Old Highway 53 in the City of Clearlake, California, identified as Assessor Parcel Numbers 039-560-08 and 039-560-51 (“Property”).

C. On March 17, 2021, Developer submitted an application for the Project to the City.

D. On March 22, 2021, District issued a conditional will serve letter to Developer identifying capacity fees of \$11,684.92 per SFD equivalent (project total of \$880,216.88) subject to an inflation index each year on July 1. Conditions identified in the letter included the requirement to pay Capacity Fees at time of permit issuance, and a statement that Developer will submit a Capacity Analysis/Hydraulic Model specific to the site to identify shortcomings which may require mitigation by Developer.

E. On June 29, 2021, District received a request for a deferral of Capacity Fees from Developer via email.

F. On August 20, 2021, District issued a deferral letter for the Project advising Developer that capacity fees were currently \$11,936.15 per SFD equivalent and that Sewer Capacity Expansion Fees collected at time of occupancy will reflect the current fees established by Ordinance and adjusted by the ENR Index.

G. On March 9, 2022, the Developer received all required approvals from the City to commence construction of the Project.

H. On December 15, 2023, as the Project construction was near completion, Developer paid the Capacity Expansion Fee, which had increased to one million one thousand seven hundred eighty dollars and ninety-one cents (\$1,001,785.91).

I. On December 15, 2023, after the payment of the Capacity Expansion Fee, the District indicated to Developer that the Sewer Capacity Analysis still needed to be completed by an outside consultant and the final inspection of the improvements had not occurred, and both were required before the final certificate of occupancy for the Project could be granted.

J. On December 18, 2023, in an effort to expedite the process District entered into a contract to facilitate completion of the Sewer Capacity Analysis to fulfill Developer's requirement.

K. On February 2, 2024, the outside engineer for the District provided a draft of the Sewer Capacity Analysis, which identified the need for a capital improvement project on the main sewer line that would serve the surrounding area, including the Project. ("Sewer Infrastructure Improvements")

L. The Project will be ready for occupancy as of May 15, 2024.

M. In light of the Sewer Capacity Analysis, and given that the Sewer Infrastructure Improvements would not occur until at least October 2024, Developer expressed to the District its need to obtain its final certificate of occupancy by May 15, 2024, prior to the proposed start date for the Sewer Infrastructure Improvements.

N. Developer and District have expressed their desire to explore alternative methods to allow for occupancy of the Project prior to commencement and completion of the Sewer Infrastructure Improvements, and ensure the affordable housing units at the Project are leased and occupied without delay.

O. In order to obtain a final certificate of occupancy for the Project to allow for leasing and occupancy of the Project, Developer must obtain sign-off from the District.

P. The Parties agree that the existing sewer infrastructure has capacity to serve the Project during the dry season between May 1st and October 15th, and that the Project could use the existing sewer infrastructure (during the dry season) until a temporary sewer bypass system is installed and operational prior to commencement of the wet season beginning October 16th.

Q. The Parties further agree that the construction and installation of a temporary sewer bypass system (“Sewer Bypass System”) designed to accommodate the full flows of the Project would satisfy the District’s need to ensure the Project would have adequate sewer service during construction of the Sewer Infrastructure Improvements.

R. Accordingly, the Parties agree that in order for the District to sign-off on its approval authority so that the Project could obtain a final certificate of occupancy as of May 15, 2024, Developer agrees to pay its proportional share of costs of the Sewer Bypass System and the Sewer Infrastructure Improvements.

S. The purpose of this Agreement is to memorialize the mutual understandings by and between District and Developer with respect to the District's commitment to sign-off on a final certificate of occupancy for the Project for Developer's commitment to connect to the Sewer Bypass System and pay its proportionate share of the Sewer Bypass System and Sewer Infrastructure Improvements prior to commencement of the Sewer Infrastructure Improvements.

T. It is in the best interest of the public to proceed with the occupancy of the Project at the earliest possible date and for the Developer to pay it proportional share of the construction and operation of the Sewer Bypass System and Sewer Infrastructure Improvements.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree as follows:

II. DISTRICT OBLIGATIONS.

District shall:

1. Provide its sign-off to all applicable agencies to enable Developer to obtain its final certificate of occupancy for the Project by May 15, and allow use of existing District sewer facilities during the dry season between May 1st and October 15th of year for the Project. When the District commences the construction and installation of the Sewer Bypass System and the Sewer Infrastructure Improvements (collectively, the "District Sewer Projects"), Developer will connect the Project to the District Sewer Projects.

2. Pursuant to the California Environmental Quality Act (CEQA), act as Lead Agency and assume responsibility for preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of the District Sewer Projects.

3. Do the following for the District Sewer Projects: a) prepare or cause to prepare the necessary plans and design and technical specifications, b) award or cause to award and administer all construction, c) manage inspection, and d) assume one hundred percent (100%) of all requested and approved construction cost increases attributed to the design and related to the construction of (“Change Orders”).

4. Select a contractor for the District Sewer Projects.

5. Direct contractor to obtain all necessary permits, approvals or agreements as may be required by any State or local agency and/or regulatory agency for the initial construction of the District Sewer Projects hereinafter called “Permits”.

6. Provide Developer with written notice when the District has entered a construction contract for the District Sewer Projects.

7. Endeavor to begin construction of the District Sewer Projects by October 2024.

8. Construct or cause to be constructed the District Sewer Projects in substantial compliance with the plans by Jacobs Engineering.

9. Within two (2) weeks of District’s knowledge that the Sewer Bypass System will need to be constructed, installed, and connected to the Project, provide written notice to Developer of District’s intent to commence construction of the Sewer Bypass System.. Within two (2) weeks of completing construction of the District Sewer Projects, provide Developer with written notice that the relevant District Sewer Project (Sewer Bypass System and/or the Sewer Infrastructure Improvements) is substantially complete.

III. DEVELOPER OBLIGATIONS

Developer shall:

1. Enter into a License Agreement granting a license to District to allow access to the entire Property to construct the District Sewer Projects, and any associated appurtenances and pipelines, and to place any required temporary or permanent equipment to effectuate the construction and operation of the District Sewer Projects.

2. Agree to pay its proportionate share of the costs of the District Sewer Projects, as determined based on calculations completed by District's consultant, Jacobs Engineering.

3. As determined by the Jacobs Engineering's April 16, 2024 Sanitary Sewer Collection System Analysis for Konocti Gardens, the Developer's proportionate share of the District Sewer Infrastructure Improvement project is \$173,694.

4. As determined by Jacob Engineering's bypass analysis, the Developer's proportionate share of the District Sewer Bypass Project is \$25,000.

5. The cost of the Development Capacity and Impact Analysis for the Developer Project is \$33,582.

6. Commence payment of its proportionate share of the District Sewer Projects totaling \$232,276 within five (5) days of the completion of the District Sewer Projects and paid out in annual installments of \$23,227.60 over a ten-year period, commencing upon completion of the District Sewer Projects.

7. Cooperate with the District to effectuate the prompt construction of the District Sewer Projects.

IV. ADDITIONAL TERMS

It is further mutually agreed:

1. Each Party shall indemnify and hold the other harmless against all actions, claims, demands, and liabilities and against all losses, damage, cost, expenses, and attorney's fees,

arising directly or indirectly out of an actual or alleged injury to a person or property in the same proportion that its own acts and/or omissions are attributed to said claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either Party. The obligations under this Section shall survive the termination of the Agreement.

2. Each party agrees to fully perform all aspects of this agreement. If a default to this Agreement occurs then the party in default shall be given written notice of said default by the other party. If the party in default does not fully correct (cure) the default within 15 days of the date of that notice (i.e., the time to cure), then such party shall be in default. The time period for corrective action of the party in default may be extended in writing executed by both parties, which must include the reason(s) for the extension and the date the extension expires.

3. Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

4. This Agreement is the result of negotiations between the parties hereto, and the advice and assistance of their respective counsel. No provision contained herein shall be construed against any Party solely because, as a matter of convenience, the Party prepared this Agreement in its final form.

5. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect without being impaired or invalidated in any way.

6. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right of action based upon the provisions of this Agreement.

7. Any and all notices sent or required to be sent to the parties of this Agreement will either be 1) emailed or 2) mailed by first class mail, postage prepaid, to the following addresses:

If to Developer: CRP Konocti Gardens LP
122 East 42nd Street, Suite 1903
New York, NY 10168

If to District: Lake County Special Districts
Administrator
230 N. Main Street
Lakeport, CA 95453

8. Any waiver by any Party of any breach by any other party of any provision of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other provision hereof. Failure on the part of a Party to require from any other Party exact, full and complete compliance with any of the provisions of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping a Party from enforcement hereof.

9. This Agreement is intended by the Parties hereto as a final expression of their understanding with respect to the subject matter hereof, and is a complete and exclusive statement of the terms and conditions thereof. This Agreement may be changed or modified only upon the written consent of the Parties hereto.

10. This Agreement shall be construed in accordance with the laws of the State of California.

11. This Agreement shall not be assigned by either Party, in whole or in part, without the prior written consent of the other Party.

12. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the Courts of Lake County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

13. The Parties certify that the individuals signing below on behalf of the Party has authority to execute this Agreement on behalf of the Party, and may legally bind the Party to the terms and conditions of this Agreement, and any attachments hereto.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. To facilitate execution of this Agreement, the Parties may execute and exchange facsimile or electronic counterparts, and facsimile or electronic counterparts shall serve as originals.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

LAKE COUNTY SANITATION DISTRICT,

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Clerk of the Board

By: _____

DEVELOPER, CRP KONOCTI GARDENS LP

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

County Counsel

By:  _____
Lloyd Guintivano (Jun 14, 2024 10:11 PDT)

Name: Lloyd Guintivano

Title: County Counsel

Date: 06/14/2024






20240613 Final Conditional Sewer Service Agreement - Konocti Gardens

Final Audit Report

2024-06-14

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|-----------------|--|
| Created: | 2024-06-13 |
| By: | Scott Harter (Scott.Harter@lakecountyca.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAuObMA83u3eAPvFMMbw5AkXEg6hQ6M5OB |

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