

ATTACHMENT A

AGREEMENT FOR WASTEWATER COLLECTION SERVICES BETWEEN THE COSTA MESA SANITARY DISTRICT AND THE CITY OF NEWPORT BEACH

THIS AGREEMENT FOR WASTEWATER COLLECTION SERVICES BETWEEN THE COSTA MESA SANITARY DISTRICT AND THE CITY OF NEWPORT BEACH ("Agreement"), is made and entered into this 22nd day of August 2019, ("Effective Date") by and between the COSTA MESA SANITARY DISTRICT, a California special district formed under the Sanitary District Act of 1923 ("CMSD"), and CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"). CMSD and City are sometimes individually referred to herein as "Party" and collectively as "Parties."

RECITALS

WHEREAS, CMSD provides solid waste and wastewater collection services to public, commercial, industrial and retailer users in the City of Costa Mesa, portions of the City of Newport Beach and unincorporated areas of Orange County ("CMSD's Jurisdictional Limits");

WHEREAS, in 1979, City and CMSD entered into a sewer service and collection agreement wherein CMSD would collect sanitary sewer flow from certain properties within the geographical limits of City, yet outside CMSD's Jurisdictional Limits and convey said sanitary sewer flow to the Orange County Sanitation District ("1979 Agreement");

WHEREAS, on December 12, 1991, City and CMSD amended the 1979 Agreement to update the sewer service fees and modify the number of properties served by CMSD ("1991 Amendment");

WHEREAS, the 1991 Amendment expired in August, 2009, however, CMSD continues to provide wastewater collection services to the parcels identified in the 1991 Agreement; and

WHEREAS, the Parties desire to establish by this Agreement fixed terms and conditions for wastewater collection services by CMSD to certain parcels located within City along with other rights and obligations of the Parties.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

Section 1. Term. The term of this Agreement shall commence on the Effective Date, and shall terminate on August 21, 2029 unless terminated sooner by either Party's giving one hundred eighty (180) days' prior written notice of termination.

Section 2. Sewer Services. CMSD authorizes the conveyance, treatment and disposal of or recycling of all wastewater received ("Sewer Services") from the parcels within the boundary set forth in Exhibit A and more specifically identified in Exhibit B through CMSD's mainline sewer facilities ("Sewer Services") subject to the terms and conditions as set forth in this Agreement. Should the Orange County Local Agency Formation Commission subsequently alter the respective boundaries of the CMSD or the City or the City's sphere of influence as defined by California Government Code section 56076 or any successor provision, the Parties agree to meet and confer to address any amendment to this Agreement made necessary or appropriate by that action.

Section 3. Facilities. The terms and conditions of this Agreement are intended to be applicable to residential development and institutional, office and professional developments within the geographical limits of City and within City's sphere of influence, but is not applicable to developments other than those specifically identified in Exhibits A and B unless the Parties modify the number of properties in accordance with Section 6 of this Agreement.

Section 4. Construction. New construction of sanitary sewer facilities, including manholes, pump stations, underground laterals and mains authorized by CMSD to operate by the CMSD or which are to flow to its facilities by persons or entities other than CMSD shall be constructed in accordance with plans and specifications approved by the CMSD Engineer and in accordance with all laws, regulations, building and plumbing and electrical codes of whatever kind and wherever applicable.

Section 5. Maintenance and Repair. CMSD shall not be responsible for the maintenance, replacement, repair and upkeep of any of that portion of the mainline sewer facilities which are installed outside of CMSD's Jurisdictional Limits. CMSD's responsibility for replacement, repair and upkeep shall begin at a point downstream of City's mainline sewer facilities connection with CMSD's mainline sewer facilities. CMSD shall not be responsible for the maintenance, upkeep, service and repair or replacement of laterals lines.

Section 6. Number of Properties. CMSD currently provides Sewer Services to one hundred forty-six (146) parcels identified in Exhibits A and B. City may increase or decrease the number of parcels CMSD provides Sewer Services to by providing CMSD's Staff Representative written notification no less than forty-five (45) days prior to annual invoicing. In the event of an increase or decrease in the number of parcels served, the annual invoice shall be prorated to reflect the total number of days each parcel received Sewer Services under this Agreement.

Section 7. Sewer Service Fee.

7.1 The CMSD shall impose an annual service fee in lieu of annexation to the CMSD and in lieu of an ad valorem property tax for the Sewer Services provided herein.

7.2 CMSD's Sewer Service fees are established by the "Costa Mesa Sanitary District Sewer Rate Study" and adopted by CMSD in accordance with Articles XIIC and XIID of the California Constitution, Government Code section 53750 *et. seq.* and other applicable laws. City shall pay such Sewer Service fees to the CMSD for parcels receiving services in the amounts set by CMSD as may be amended from time to time. The Sewer Service fees for Fiscal Year 2019-20 are as follows:

7.2.1 Residential Dwelling Units. For residential dwelling units connected to CMSD's sewer system:

- a) Ninety-two dollars and thirty-eight cents (\$92.38) per year for each single-family dwelling unit,
- b) Fifty-four dollars and twenty-one cents (\$54.21) per year for each multi-family dwelling unit,

7.2.2 CITY Residential Dwelling Units. For residential dwelling units directly connected to City's sewer system, Tract 3801 and Tract 4444:

- a) Ninety percent (90%) of the rate set forth in Section 7.2.1(a) for single-family dwelling units,
- b) Ninety percent (90%) of the rate set forth in Section 7.2.1(b) for multi-family dwelling unit,

7.2.3 Non-Residential Parcels. For non-residential parcels:

- a) Forty-one dollars and nine cents (\$41.09) per 1,000 sq. ft. for parcels generating average strength flow,
- b) Forty-four dollars and eighty-one cents (\$44.81) per 1,000 sq. ft. for parcels generating high strength flows, and
- c) One hundred five dollars and eight cents (\$105.08) per 1,000 sq. ft. for parcels generating industrial strength flows.

7.3 The Sewer Service fees provided herein may be adjusted by CMSD to the extent permitted by Articles XIIC and XIID of the California Constitution, Government Code section 53750 *et. seq.* and other applicable laws. In the event of an adjustment in Sewer Service fees, CMSD shall notify City within thirty (30) days of each adoption or rates under this Section 7.

7.4 CMSD shall invoice City for Sewer Service fees annually prior to July 1 of each calendar year. In the event any parcel(s) identified in Exhibits A and B, as may be amended in accordance with Section 6, is annexed into the CMSD's Jurisdictional Limits during a calendar year, CMSD shall prorate the amount owed for that particular parcel(s) based upon the number of months served during the annual invoice period. Example: If one hundred (100) parcels were annexed into the CMSD on January 1 of a calendar year, the Sewer Service fee shall be for six (6) months (July-December) for said annexed properties.

Section 8. Liability. CMSD shall be responsible for sewer spills and releases of sanitary sewer within CMSD's Jurisdictional Limits caused by CMSD's negligence or willful misconduct and agrees to indemnify, defend and hold harmless the City, its City Council, boards and commissions, officers, agents, volunteers and employees from and against any and all claims, demands, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses related to CMSD's negligence or willful misconduct as provided herein.

City shall be responsible for sewer spills and releases of sanitary sewer outside the CMSD's Jurisdictional Limits but within the geographical limits of City caused by City's negligence or willful misconduct and agrees to indemnify, defend and hold harmless CMSD, its Board, commissions, officers, agents, volunteers and employees from and against any and all claims, demands, damages actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses related to City's negligence or willful misconduct as provided herein.

A Party causing or contributing to spills or releases of wastewater within the other Party's area of responsibility as defined in this Section 8 shall be liable for damage, cleanup, and regulatory fines of said spills and releases.

Section 9. Staff Representatives. Each Party shall appoint one (1) staff representative and one (1) alternate staff representative to work with the staff representatives and alternate representatives of other Party to facilitate communication and aid in the administration of this Agreement. City's staff representative is the Utilities Director and CMSD's staff representative is the General Manager.

Section 10. Notices. Any notice or other document and all billings and payments required or permitted to be given by either Party to the other Party shall be deemed received upon personal delivery to the recipient or two (2) business days after deposit in the United States mail in the State of California, with postage prepaid, and addressed to the Party for whom intended at the following address:

To CMSD: Costa Mesa Sanitary District
290 Paularino Avenue
Costa Mesa, CA 92626
Attention: General Manager
Telephone: (949) 645-8400
E-mail: scarroll@cmsdca.gov

To CITY: City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attention: Utilities Director
Telephone: (949) 644-3011
E-mail: mvukojevic@newportbeachca.gov

Billing: City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
Attention: Accounts Payable
Telephone: (949) 644-3117
E-mail: ap@newportbeachca.gov

Either Party may update its addresses for notice from time to time by providing prior written notice to the other Party given as required by this section.

Section 11. General Provisions.

11.1. Neither Party shall delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without the other Party's prior written consent, and any attempt to do so shall be void and of no effect. Neither Party shall be obligated or liable under this Agreement to any person other than the Other Party. There is no intended third-party beneficiary of any right or obligation assumed by the Parties.

11.2. This Agreement shall be binding on the successors and assigns of the Parties.

11.3. Time is of the essence for each and every provision of this Agreement.

11.4. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement.

Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

11.5. The waiver by a Party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by a Party unless in writing signed by one authorized to bind the Party asserted to have consented to the waiver.

11.6. A Party shall not be liable for any failure to perform if it presents evidence acceptable to the other Party that such failure was due to causes beyond the control and without the fault or negligence of the Party claiming the benefit of this paragraph.

11.7. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by either Party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such Party of any or all of such other rights, powers or remedies.

11.8. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

11.9. Exhibits A and B are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and the provisions of any exhibit, the Agreement shall prevail. This instrument contains the entire Agreement between City and CMSD with respect to its subject matter. No other, prior oral or written agreements are binding upon the Parties. Except as provided in Section 6, amendments to this Agreement shall be effective and binding only if made in writing and executed on behalf of both Parties.

11.10. Each Party had an opportunity to consult with an attorney in reviewing and drafting this Agreement. Therefore, the rule construing ambiguities against a drafting party shall not apply.

Exhibits:

A – Sewer Service Boundary

B – Parcels Receiving Sewer Services

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first hereinabove written.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: 
Aaron C. Harp
City Attorney

**CITY OF NEWPORT BEACH,
a California municipal corporation**

By: _____
Diane B. Dixon
Mayor

ATTEST:

By: _____
Leilani I. Brown
City Clerk

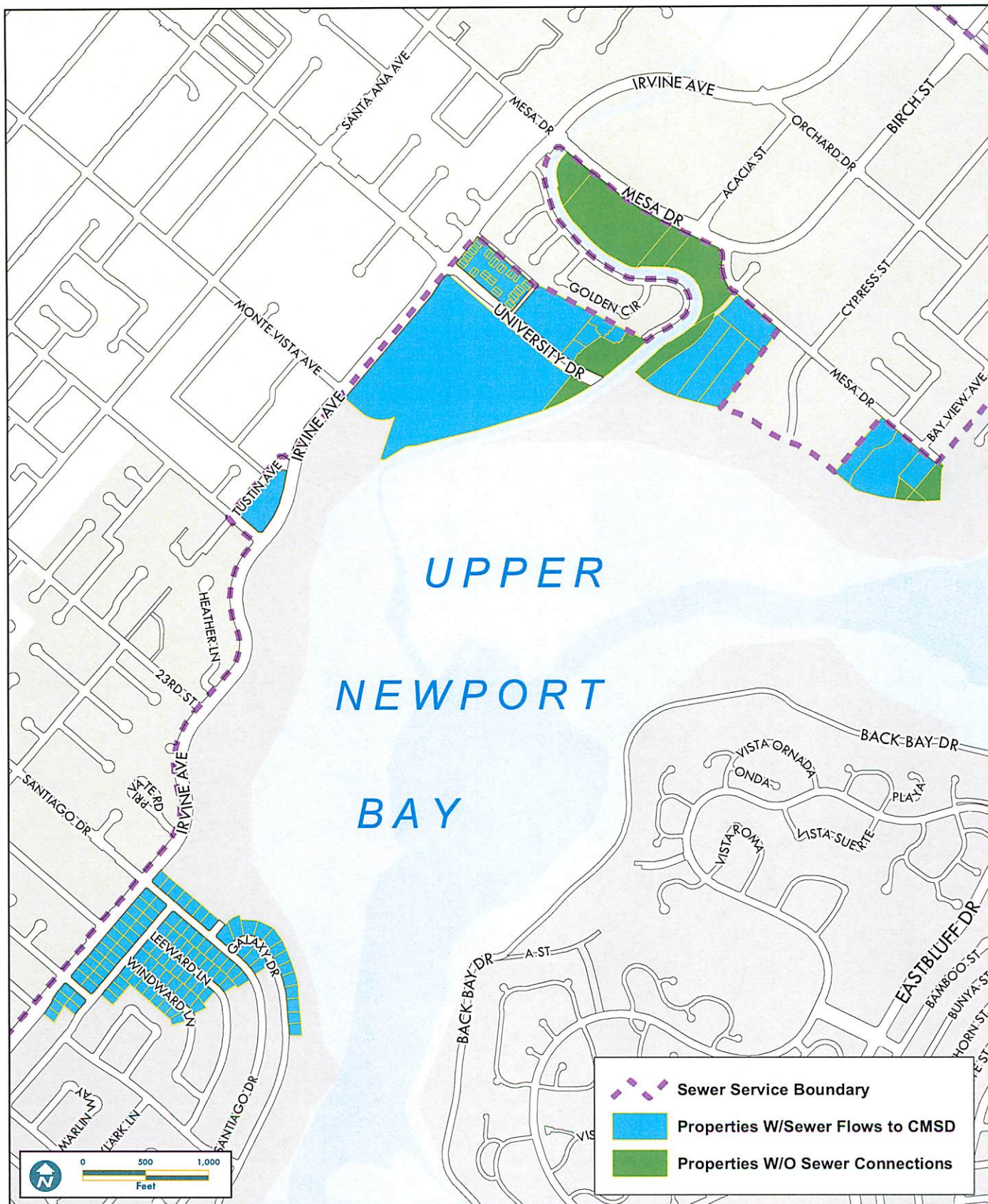
APPROVED AS TO FORM:

COSTA MESA SANITARY DISTRICT

By: _____
Alan R. Burns
Costa Mesa Sanitary District Legal Counsel

By: _____
James Ferryman
President, Board of Directors

EXHIBIT A
Sewer Service Boundary



Properties with Sewer Flows to Costa Mesa Sanitary District

Exhibit A



City of Newport Beach
GIS Division
January 29, 2019

EXHIBIT B
Parcels Receiving Sewer Services

Properties with Sewer Flow to CMSD

Exhibit B

Property Address	APN	Description	Current Boundary	Service Provider
Mesa Drive				
2128 Mesa Drive	439-061-14	SFR	City	City
2140 Mesa Drive	439-061-04	SFR	City	City
2148 Mesa Drive	439-061-05	SFR	City	City
2412 Mesa Drive	439-051-04	SFR	City	City
2600 Mesa Drive	439-051-05	SFR	City	City
2612 Mesa Drive	439-051-06	SFR	City	City
No address	439-051-07	Part of 2612	City	N/A
No address	439-051-09	Part of 2612	City	N/A
No address	439-051-10	Part of 2612	City	N/A
No address	439-061-13	Vacant	City	N/A
No address	439-061-16	Vacant	City	N/A
No address	119-300-15	Part of golf course	City	N/A
No address	119-300-16	Part of golf course	City	N/A
No address	119-300-17	Part of golf course	City	N/A
No address	119-310-04	Part of golf course	City	N/A
Harbor Christian Church				
2401 Irvine Ave	439-152-01	Commercial	City	City
Interpretive Center				
2301 University Drive	440-142-23	Commercial	City	City
	119-261-21	Part of 2301		
TRACT 4444				
2400 University Drive	439-301-11	SFR	City	City
2402 University Drive	439-301-12	SFR	City	City
2404 University Drive	439-301-13	SFR	City	City
2406 University Drive	439-301-14	SFR	City	City
2408 University Drive	439-301-15	SFR	City	City
2410 University Drive	439-301-16	SFR	City	City
2412 University Drive	439-301-17	SFR	City	City
2414 University Drive	439-301-18	SFR	City	City
2416 University Drive	439-301-19	SFR	City	City
2418 University Drive	439-301-20	SFR	City	City
2420 University Drive	439-301-09	SFR	City	City
2422 University Drive	439-301-10	SFR	City	City
2424 University Drive	439-301-07	SFR	City	City
2426 University Drive	439-301-21	SFR	City	City
2428 University Drive	439-301-22	SFR	City	City
2430 University Drive	439-301-23	SFR	City	City
2500 University Drive	439-301-08	SFR	City	City
2502 University Drive	439-301-05	SFR	City	City
2504 University Drive	439-301-06	SFR	City	City
2506 University Drive	439-301-04	SFR	City	City
2508 University Drive	439-301-24	SFR	City	City
2510 University Drive	439-301-25	SFR	City	City
2512 University Drive	439-301-26	SFR	City	City
2514 University Drive	439-301-28	SFR	City	City
2516 University Drive	439-301-27	SFR	City	City
2518 University Drive	439-301-29	SFR	City	City
2520 University Drive	439-301-30	SFR	City	City
2522 University Drive	439-301-31	SFR	City	City
2524 University Drive	439-301-32	SFR	City	City
2526 University Drive	439-301-33	SFR	City	City
2528 University Drive	439-301-02	SFR	City	City
2530 University Drive	439-301-03	SFR	City	City
2532 University Drive	439-301-01	SFR	City	City

Properties with Sewer Flow to CMSD

Exhibit B

Property Address	APN	Description	Current Boundary	Service Provider
2534 University Drive	NO APN	parking lot	City	N/A
YMCA				
2300 University Drive	439-401-01	Commercial	City	City
Bay Corporate Plaza				
2280 University Drive	439-401-08	Commercial	City	City
2260 University Drive	439-401-07	Commercial	City	City
2240 University Drive	439-401-02	Commercial	City	City
	439-401-03	Part of 2240	City	City
2220 University Drive	439-401-04	Commercial	City	City
TRACT 3801				
1830 Irvine Ave	117-574-07	SFR	City	City
1836 Irvine Ave	117-574-06	SFR	City	City
1842 Irvine Ave	117-574-05	SFR	City	City
1848 Irvine Ave	117-574-04	SFR	City	City
1900 Irvine Ave	117-574-03	SFR	City	City
1906 Irvine Ave	117-574-02	SFR	City	City
1912 Irvine Ave	117-574-01	SFR	City	City
1918 Irvine Ave	117-601-05	SFR	City	City
1924 Irvine Ave	117-601-04	SFR	City	City
1930 Irvine Ave	117-601-03	SFR	City	City
1936 Irvine Ave	117-601-02	SFR	City	City
2131 Santiago Drive	117-601-01	SFR	City	City
1831 Tradewinds Lane	117-574-08	SFR	City	City
1837 Tradewinds Lane	117-574-09	SFR	City	City
1843 Tradewinds Lane	117-574-10	SFR	City	City
1849 Tradewinds Lane	117-574-11	SFR	City	City
1901 Tradewinds Lane	117-574-12	SFR	City	City
1907 Tradewinds Lane	117-574-13	SFR	City	City
1915 Tradewinds Lane	117-574-14	SFR	City	City
1921 Tradewinds Lane	117-601-06	SFR	City	City
1927 Tradewinds Lane	117-601-07	SFR	City	City
1933 Tradewinds Lane	117-601-08	SFR	City	City
1939 Tradewinds Lane	117-601-09	SFR	City	City
1945 Tradewinds Lane	117-601-10	SFR	City	City
1834 Tradewinds Lane	117-572-41	SFR	City	City
1840 Tradewinds Lane	117-572-40	SFR	City	City
1846 Tradewinds Lane	117-572-39	SFR	City	City
1800 Irvine Ave	117-571-03	SFR	City	City
1806 Irvine Ave	117-571-04	SFR	City	City
1814 Irvine Ave	117-571-05	SFR	City	City
1820 Irvine Ave	117-571-06	SFR	City	City
2001 Santiago Drive	117-602-10	SFR	City	City
2007 Santiago Drive	117-602-09	SFR	City	City
2015 Santiago Drive	117-602-08	SFR	City	City
2021 Santiago Drive	117-602-07	SFR	City	City
2027 Santiago Drive	117-602-06	SFR	City	City
2033 Santiago Drive	117-602-05	SFR	City	City
2039 Santiago Drive	117-602-04	SFR	City	City
2101 Santiago Drive	117-602-03	SFR	City	City
2107 Santiago Drive	117-602-02	SFR	City	City
2115 Santiago Drive	117-602-01	SFR	City	City
2006 Santiago Drive	117-606-03	SFR	City	City
2012 Santiago Drive	117-606-02	SFR	City	City
2018 Santiago Drive	117-606-01	SFR	City	City
2036 Santiago Drive	117-604-07	SFR	City	City

Properties with Sewer Flow to CMSD

Exhibit B

Property Address	APN	Description	Current Boundary	Service Provider
2100 Santiago Drive	117-604-06	SFR	City	City
2106 Santiago Drive	117-604-05	SFR	City	City
2112 Santiago Drive	117-604-04	SFR	City	City
2118 Santiago Drive	117-604-03	SFR	City	City
2124 Santiago Drive	117-604-02	SFR	City	City
2130 Santiago Drive	117-604-01	SFR	City	City
2006 Leeward Lane	117-602-11	SFR	City	City
2012 Leeward Lane	117-602-12	SFR	City	City
2018 Leeward Lane	117-602-13	SFR	City	City
2024 Leeward Lane	117-602-14	SFR	City	City
2030 Leeward Lane	117-602-15	SFR	City	City
2100 Leeward Lane	117-602-16	SFR	City	City
2106 Leeward Lane	117-602-17	SFR	City	City
2112 Leeward Lane	117-602-18	SFR	City	City
2118 Leeward Lane	117-602-19	SFR	City	City
2124 Leeward Lane	117-602-20	SFR	City	City
2007 Leeward Lane	117-603-09	SFR	City	City
2015 Leeward Lane	117-603-08	SFR	City	City
2021 Leeward Lane	117-603-07	SFR	City	City
2027 Leeward Lane	117-603-06	SFR	City	City
2101 Leeward Lane	117-603-05	SFR	City	City
2107 Leeward Lane	117-603-04	SFR	City	City
2115 Leeward Lane	117-603-03	SFR	City	City
2121 Leeward Lane	117-603-02	SFR	City	City
2127 Leeward Lane	117-603-01	SFR	City	City
1924 Tradewinds Lane	117-603-01	SFR Part of 2127	City	City
2007 Windward Lane	117-572-31	SFR	City	City
2015 Windward Lane	117-572-32	SFR	City	City
2021 Windward Lane	117-572-33	SFR	City	City
2101 Windward Lane	117-572-34	SFR	City	City
2107 Windward Lane	117-572-35	SFR	City	City
2115 Windward Lane	117-572-36	SFR	City	City
2021 Windward Lane	117-572-37	SFR	City	City
2127 Windward Lane	117-572-38	SFR	City	City
2012 Windward Lane	117-575-08	SFR	City	City
2018 Windward Lane	117-575-07	SFR	City	City
2024 Windward Lane	117-575-06	SFR	City	City
2100 Windward Lane	117-575-05	SFR	City	City
2106 Windward Lane	117-575-04	SFR	City	City
2112 Windward Lane	117-575-03	SFR	City	City
2118 Windward Lane	117-575-02	SFR	City	City
2124 Windward Lane	117-575-01	SFR	City	City
1930 Galaxy Drive	117-641-06	SFR	City	City
1936 Galaxy Drive	117-641-05	SFR	City	City
1942 Galaxy Drive	117-641-04	SFR	City	City
1950 Galaxy Drive	117-641-03	SFR	City	City
1958 Galaxy Drive	117-641-02	SFR	City	City
2000 Galaxy Drive	117-641-01	SFR	City	City
2006 Galaxy Drive	117-605-07	SFR	City	City
2012 Galaxy Drive	117-605-06	SFR	City	City
2018 Galaxy Drive	117-605-05	SFR	City	City
2024 Galaxy Drive	117-605-04	SFR	City	City
2030 Galaxy Drive	117-605-03	SFR	City	City
2036 Galaxy Drive	117-605-02	SFR	City	City
2042 Galaxy Drive	117-605-01	SFR	City	City