

CRESTLINE SANITATION DISTRICT

MEMORANDUM

DATE: March 11, 2021

TO: BOARD OF DIRECTORS
Crestline Sanitation District

FROM: RICK DEVER
General Manager

SUBJECT:

Silverwood Lake State Recreation Area
Cleghorn Wastewater Treatment Plant
Wastewater Treatment Service Agreement

A. RECOMMENDATION

I am seeking authorization from the Board of Directors to begin contract discussions with the District's Legal Counsel and California State Parks.

B REASON FOR RECOMMENDATION

The current ten-year contract with California State Parks will expire in October of 2021.

C. OTHER INFORMATION

The original contract was signed by Kathy Whalen (on behalf of CSD) on September 28, 2011, and Kathy Weatherman (CA State Parks) on October 6, 2011.

D. FISCAL INFORMATION

The District bills California State Parks for maintenance and employee salary for time spent at the Cleghorn Wastewater Treatment Plant every six months. Since the change of management Staff has not seen delays on payments.

E. ATTACHMENTS

Wastewater Treatment Service Agreement 2011

**SILVERWOOD LAKE STATE RECREATION AREA
CLEGHORN WASTEWATER TREATMENT PLANT
WASTEWATER TREATMENT SERVICE AGREEMENT**

This Wastewater Treatment Service Agreement ("Agreement") is made and entered into by and between the State of California, acting by and through the Department of Parks and Recreation, hereinafter called "State Parks" which includes its officers, agents, employees and contractors, and the Crestline Sanitation District, hereinafter called "CSD" which includes its officers, agents, employees and contractors, for the operation and service of wastewater treatment at Silverwood Lake State Recreation Area via the Cleghorn Wastewater Treatment Plant.

Recitals

WHEREAS, Cedar Springs Dam and Silverwood Lake Reservoir are a State Water Project under Chapter 1762, Statutes of 1959; and

WHEREAS, State Parks is authorized by Chapter 10, Part 3, Division 6, of Water Code, commonly referred to as the "Davis-Dolwig Act," and other provisions of law, to design, construct and operate and maintain public recreational facilities at State water projects; and

WHEREAS, State Parks may, under said Davis-Dolwig Act and other provisions of law, contract with local public agencies to design, construct, operate and maintain public recreation facilities at State water projects; and

WHEREAS, State Parks operates and manages the Silverwood Lake State Recreation Area at Silverwood Lake Reservoir; and

WHEREAS, CSD owns the Cleghorn Wastewater Treatment Plant building ("WWTP") and the force main and wastewater transport pipeline located on State Park property at Silverwood Lake State Recreation Area, and a disposal site located on CSD property north of Silverwood Lake State Recreation Area; and

WHEREAS, CSD is willing to provide wastewater treatment, transport, and disposal services for public recreation facilities at Silverwood Lake State Recreation Area; and

WHEREAS, CSD is willing to operate and maintain the WWTP; and

WHEREAS, State Parks and CSD desire to avail themselves of all provisions of law applicable to this Agreement and desire to exercise their powers as more fully set forth herein and in particular the power to provide wastewater treatment, transport and disposal services for Silverwood Lake State Recreation Area; and

WHEREAS, State Parks is authorized to enter into this Agreement pursuant to Section 5080.30 of the Public Resources Code and Section 6502 of the Government Code and CSD is authorized to enter into this Agreement by the provision of the Health and Safety Code Section 4700 et seq., Chapter 3, Part 3, Division 5;

Covenants

NOW, THEREFORE, the parties hereto in order to effectuate the purposes hereinbefore set forth and in consideration of the covenants hereinafter contained do mutually covenant and agree as follows:

1. Operation and Maintenance of WWTP. CSD shall operate and maintain the WWTP, dedicated for the treatment of the wastewater from Silverwood Lake State Recreation Area. It is expressly understood and agreed that:
 - a. CSD shall operate and maintain in good repair and good working order the WWTP and shall accept and transport and treat in WWTP all wastewater up to the full plant design capacity of 200,000 gallons per day from Silverwood Lake State Recreation Area. CSD shall replace any portion of the WWTP necessitated by ordinary wear and tear or act or neglect on the part of CSD. CSD shall not be obligated to reconstruct the WWTP or any portion thereof except for cause as provided herein.
 - b. CSD shall undertake and be responsible for improvements and upgrades to the WWTP required by the State Regional Water Quality Control Board or otherwise. Furthermore, CSD shall undertake and be responsible for the planning (including environmental review under the California Environmental Quality Act), permitting, design, and construction of any

WWTP improvements or upgrades. Any such WWTP improvements or upgrades shall be approved by State Parks in writing prior to construction of such improvements or upgrades, which approval shall not be unreasonably withheld, delayed, or denied.

- c. Any improvements or upgrades to the WWTP shall become the property of CSD upon completion.
 - d. In the event the recreational lands in Silverwood Lake State Recreation Area are transferred out of State ownership, CSD's obligation to operate and maintain the WWTP shall terminate on the date of such transfer.
2. Costs to Operate and Maintain WWTP. State Parks shall compensate CSD for actual costs of the CSD's treatment of the wastewater from Silverwood Lake State Recreation Area as follows:
- a. There shall be two billing cycles for each State fiscal year. The billing cycles shall be July 1 through December 31 and January 1 through June 30.
 - b. CSD shall submit to State Parks a detailed and itemized invoice for each billing cycle. The invoice shall include the following items and each item shall include a detailed and itemized explanation of the costs:
 - i. Actual Labor Costs at labor hours X hourly rate (regular salary + benefits)
 - ii. Actual costs for Equipment
 - iii. Actual costs for Communications (ie. phone services)
 - iv. Actual costs for Maintenance Equipment
 - v. Actual costs for Maintenance Structures
 - vi. Actual costs for Utilities
 - vii. Actual costs for Special Department Expenses (ie. security, permits)
 - viii. Actual costs for Laboratory Work
 - ix. Actual costs for Maintenance, Repair, and/or Replacement of any portion of the WWTP
 - x. 20% of Actual costs of Labor (item i) and Equipment, Maintenance, Repair, Replacement, and Operation (items ii – ix) for CSD's Administration and Supervision costs.
 - c. State Parks may request further information or documentation on any item of the invoice.
 - d. State Parks shall submit payment to CSD within 90 days of receipt of an invoice submitted in accordance with this Agreement.

- e. Any late payment penalties shall be calculated in accordance with the California Prompt Payment Act, Government Code Section 927 et seq.
3. Costs for Capital Improvements to the WWTP. For capital improvements and/or upgrades to the WWTP made in accordance with Paragraph 1.b. of this Agreement, State Parks shall compensate CSD for the actual costs of such capital improvements and/or upgrades to the WWTP as follows:
- a. CSD shall submit to State Parks a detailed and itemized invoice, separate from the invoice for operation and maintenance, for the capital improvements and/or upgrades. The invoice shall include the following items and each item shall include a detailed and itemized explanation of the costs:
 - i. Actual Labor Costs at labor hours X hourly rate (regular salary + benefits)
 - ii. Actual costs for Equipment
 - iii. Actual costs for Planning
 - iv. Actual costs for Environmental Review
 - v. Actual costs for Design
 - vi. Actual costs for Construction
 - vii. Actual costs for Special Department Expenses (ie., permits)
 - viii. Actual costs for Laboratory Work
 - ix. 20% of Actual costs of Labor (item i) and Equipment, Planning, Environmental Review, Design, Construction, Permitting, and Laboratory Work (items ii – viii) for CSD's Administration and Supervision costs.
 - b. State Parks may request further information or documentation on any item of the invoice.
 - c. State Parks shall submit payment to CSD within 90 days of receipt of an invoice submitted in accordance with this Agreement.
 - d. Any late payment penalties shall be calculated in accordance with the California Prompt Payment Act, Government Code Section 927 et seq.
4. Term of Agreement. This Agreement shall become effective when approved by an authorized representative of State Parks and the CSD's Board of Directors.

The term of this Agreement shall be for a period of 10 years from the effective date of this Agreement. State Parks and CSD shall have an option to renew said Agreement for an additional 10 years or portion thereof upon mutual agreement of both parties hereto.

5. Termination of Agreement. This Agreement may be terminated as provided herein. Either party, by written notice to the other party, may terminate this Agreement at any time and without cause by giving written notice to the other party of such termination, and specifying the effective date thereof, at least 90 days before the effective date of such termination. Upon termination, CSD shall be fully compensated for all services and charges for which compensation is authorized pursuant to this Agreement.

6. Limitations of Agreement. Nothing herein shall authorize CSD, without prior approval from State Parks, to install wastewater treatment or disposal facilities on any State or federal land. It is expressly understood that nothing in this Agreement shall be construed to include the right to use of Silverwood Lake State Recreation Area property.

7. Lands Served by WWTP. The lands to be served by the WWTP are those lands which encompass Silverwood Lake State Recreation Area.

8. No Taxes or Assessments. Nothing herein shall be construed as consent by State Parks to the levy of any tax or assessment on any land within Silverwood Lake State Recreation Area so long as said lands are State-owned. Private improvements, private possessory interests and other taxable interests in said land are expressly excepted from this prohibition.

9. CSD Waiver of Claims. CSD hereby waives all claims and recourse against State Parks including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with the actions incident to this Agreement except claims arising from the concurrent or sole negligence of State Parks, its officers, agents, and employees.

10. State Parks Waiver of Claims. State Parks hereby waives all claims and recourse against CSD including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with the actions incident to this Agreement except claims arising from the concurrent or sole negligence of CSD, its officers, agents, and employees.
11. CSD Indemnification of State Parks. CSD shall indemnify, hold harmless, and defend State Parks, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability arising from CSD acts or omissions arising out of or related to this Agreement, and for any costs or expenses incurred by State Parks on account of any claim therefore, except for liability arising out of the concurrent negligence or sole negligence of State Parks, its officers, agents or employees.
12. State Parks Indemnification of CSD. State Parks shall indemnify, hold harmless, and defend CSD, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses or liability arising from State Parks acts or omissions arising out of or related to this Agreement, and for any costs or expenses incurred by CSD on account of any claim therefore, except for liability arising out of the concurrent negligence or sole negligence of CSD, its officers, agents, or employees.
13. Apportionment of Liability. In the event judgment is entered against State Parks and CSD because of the concurrent negligence of State Parks and CSD, their officers, agents or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
14. Privileges and Immunities. Notwithstanding anything to the contrary in the Agreement, neither party waives any of the privileges and immunities from liability, exemptions from laws, ordinances, and rules, or any pension, relief, disability, worker's compensation, and/or other benefits which apply to the activity of officers, agents, or employees of either party.
15. No Assignment of Rights. No rights which State Parks or CSD has under this Agreement may be assigned to any other person, persons, corporation or entity without prior written approval of the other party. Any such transfer or assignment made in violation of this Section shall be void.

16. Complete Agreement. This Agreement contains the complete agreement of State Parks and CSD in regards to the subject matter of this Agreement and there are no other agreements, oral or written except as are included within the terms of this Agreement. Any amendments or clarifications to this Agreement must be in writing executed by both parties.

17. Severability. Should any provision of this Agreement be found to be void or unenforceable, it shall be severable from the rest of the Agreement and the remaining terms shall be enforced as if the unenforceable term had not existed.

18. Mutual Drafting. This Agreement shall be deemed to have been drafted by both parties, with each having equal say and status. In no event shall any term be interpreted more favorably as to one party or the other.

19. Interpretation of Agreement. This Agreement is made under and subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance. Venue for any action that is brought in connection with this Agreement shall be in a state or federal court, as appropriate, located in the County of San Bernardino, State of California.

20. Compliance with Laws. The parties shall implement the actions in this Agreement in compliance with all applicable federal, state, and local laws and regulations.

21. No Third Party Beneficiaries. This Agreement does not confer any additional legal rights, liabilities or obligations between the parties or to third parties that do not already exist in law.

22. Independent Contractors. Each party shall perform its responsibilities and activities described herein as an independent contractor and not as an officer agent, servant, or employee of any of the other party hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement effective _____, 2011.

CRESTLINE SANITATION DISTRICT

By *Patty Whalen*
Name/Title *Patty Whalen, General Manager*
Date *09/28/11*

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By *KA Weatherman*
Name/Title *District Superintendent*
Date *10/6/11*