

CONTRACT NO. _____

**JOINT EXERCISE OF POWERS AGREEMENT
BETWEEN THE COUNTY OF SAN DIEGO AND THE CITY OF SAN DIEGO
FOR THE OPERATION AND MAINTENANCE OF MISSION TRAILS REGIONAL PARK**

This Agreement, is made and entered into as of the 5th day of March, 2021 (“Effective Date”), by and between the County of San Diego (“County”) and the City of San Diego (“City”), both political subdivisions of the State of California (referred to collectively herein as the “Public Agencies”).

WITNESSETH

WHEREAS, the Public Agencies are each empowered by law to acquire land, to plan and design public facilities and appurtenances, and to improve, maintain and operate sites for park purposes;

WHEREAS, the Public Agencies desire to jointly exercise their common powers in the manner set forth in this Agreement, to work cooperatively to operate and maintain Mission Trails Regional Park (“Mission Trails”) for the benefit for their citizens and others;

WHEREAS, the Public Agencies agree that such cooperation and participation will be mutually beneficial and in the best interests of the public;

WHEREAS, the Public Agencies jointly own undivided one-half interests in real property located in the City of San Diego on Cowles Mountain in Mission Trails (“Jointly Owned Property”) reflected on Exhibit “A.”

WHEREAS, the Jointly Owned Property is particularly geographically suited for the use of electronic communications facilities for governmental as well as private commercial use, and certain facilities have been constructed and improvements have been made to the Jointly Owned Property to allow for these private commercial and governmental uses;

WHEREAS, the City and the County have been and desire to continue to derive revenue from the commercial leasing or licensing of Jointly Owned Property for the benefit of Mission Trails and also to use the Jointly Owned Property for governmental purposes;

WHEREAS, the County desires to designate the City as the agency to negotiate and administer any commercial leases and licenses of the Jointly Owned Property and to solicit for and receive proposals for any future development of the Jointly Owned Property that the City and the County deem appropriate;

WHEREAS, the Public Agencies desire that this Agreement replace and supersede any other agreements between them governing the maintenance and operation of Mission Trails, including but not limited to that Joint Exercise of Powers Agreement for the operation of Mission Trails dated March 4, 1996, that May 20, 1985 Joint Exercise of Powers Agreement Between the City of San Diego and the County of San Diego For the Planning, Development, Operation, and Maintenance of Mission Trails Regional Park, and the Agreement for Development of an Electronic Communications Facility on Cowles Mountain dated March 9, 1982.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Public Agencies agree as follows:

1. PURPOSE

This Agreement is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of Government Code of the State of California (commencing with section 6500) which allows for the joint exercise of powers by public agencies. The purpose of this Agreement is for the City and County to jointly exercise their common powers to operate and maintain Mission Trails for the benefit for their citizens and others. The purpose of this agreement is also to provide for the management and administration of the Jointly Owned Property and any facilities or improvements thereon, including administration of any leases and revenues derived from the same.

2. SUPERCEDEURE

Upon the Effective Date, the Joint Exercise of Powers Agreement for the operation of Mission Trails dated March 4, 1996, that May 20, 1985 Joint Exercise of Powers Agreement Between the City of San Diego and the County of San Diego For the Planning, Development, Operation, and Maintenance of Mission Trails, and the Agreement for Development of an Electronic Communications Facility on Cowles Mountain dated March 9, 1982, are hereby terminated and replaced in their entirety by this Agreement.

3. ADMINISTRATION

3.1 ADMINISTRATION BY PARTIES. This Agreement shall be administered on behalf of County by the Director of Parks and Recreation or his/her designated representative, hereinafter referred to as "County Director," who shall represent the County in all matters pertaining to this Agreement unless stated otherwise herein; and on behalf of City by the Director of Parks and Recreation Department or his/her designated representative, hereinafter referred to as "City Director," who shall represent the City in all matters pertaining to this Agreement unless stated otherwise herein.

3.2 TASK FORCE. The Lake Murray/Cowles Mountain Regional Park Task Force, renamed to the Mission Trails Regional Park Task Force (Task Force) in 1980, was established on May 5, 1977, pursuant to San Diego Resolution 218325 at a joint meeting of the Board of Supervisors of the County of San Diego (Board of Supervisors) and the Council of the City of San Diego (City Council). On January 7, 1980, pursuant to Resolution R250938, the Lake Murray, Cowles and Fortuna Mountain Regional Park was renamed the "Mission Trails Regional Park". The name reflects the area's historic connection to the San Diego Mission through the historic Old Mission Dam and associated flume.

As of the Effective Date, the purpose of the Task Force and its composition shall be as set forth in this Section 3.2.

3.2.1 Purpose of Task Force. The purpose of the Task Force is to serve in as an advisory body to the County Director and City Director by providing broad goals for the use, maintenance and development of Mission Trails, the preparation of a Master Plan for Mission Trails, the acquisition of property within Mission Trails, and the formulation of improvement and operation plans for Mission Trails.

3.2.2 Composition of Task Force. The Task Force is comprised of seven members as follows:

- a. City of San Diego: two councilmembers that are appointed by the City Council on an annual basis.
- b. County of San Diego: two supervisors that are appointed by the Board of Supervisors on an annual basis.
- c. City of Santee: one councilmember that is appointed by the City Council on an annual basis, and one alternate.
- d. City of La Mesa: one councilmember that is appointed by the City Council on an annual basis.
- e. Citizens' Advisory Committee [at-large member]: one member of the Lake Murray, Cowles, and Fortuna Mountain Citizens' Advisory Committee that is appointed by the Task Force every two years.

The Task Force shall have a Chair and Vice Chair, nominated by the then-current Chair and confirmed by the members of the Task Force. The Task Force may adopt rules and regulations as required to conduct meetings and business, such as bylaws or operating rules.

3.3 CITIZENS' ADVISORY COMMITTEE. The Lake Murray, Cowles, and Fortuna Mountain Citizens' Advisory Committee (CAC), renamed to the Mission Trails CAC in 1980, was established in December 1977 by the Task Force. As of the Effective Date, the purpose and composition of the CAC shall be as set forth in this Section 3.3.

3.3.1 Purpose of the CAC. The purpose of the CAC is to serve as an advisory body to the Task Force as follows: consider and make recommendations on items referred to the CAC by the Task Force; review and evaluate staff proposals; make proposals on its own initiative; and provide an additional forum for public input. Recommendations of the CAC are sent to the Task Force for consideration.

3.3.2 Composition of CAC. The CAC is comprised of representatives from the affected major community planning areas and local jurisdictions adjoining or directly affected by Mission Trails. At large members are appointed by the Task Force. Other members are nominated by the agency or organization they represent and confirmed by the Task Force.

4. TERM

The term of this Agreement commences upon the date of execution of this Agreement by both parties and shall continue for twenty-five (25) years or until terminated by one or both of the Public Agencies. This Agreement may be extended for an additional ten (10) years with the written consent of both parties.

5. OPERATIONS

5.1 COORDINATION OF OPERATIONS. On or before January 1 of each year, the County Director and the City Director, or their designees, shall meet to discuss any issues regarding development, operation and maintenance of the Mission Trails property identified in Exhibits "A" and "B". Exhibits "A" and "B" reflect ownership as of the Effective Date. This Agreement will also apply to property acquired by either party to include in Mission Trails and to parcels within Mission Trails which may change ownership among

the Public Agencies.

5.2 OPERATIONAL RESPONSIBILITIES. The City shall, at its cost and subject to availability of funds as determined by the City Council, keep and maintain the Jointly Owned Property as shown in Exhibit "A", in a good and sanitary order, condition and repair, and in a manner acceptable to the County. The City shall maintain records and make such reports regarding operation and maintenance as required by the County to enable the County to audit and analyze the performance of any acts under this Agreement. These records shall be open and available for inspection by the County on reasonable notice during normal business hours of City. Upon mutual written agreement between the representatives of the City and the County, the property covered by this Agreement as reflected in Exhibit "A" may be modified without the need for a formal amendment to this Agreement.

The City and the County shall, at their cost and subject to availability of funds as determined by the City Council and the Board of Supervisors (respectively), keep and maintain property solely owned by each jurisdiction as shown in Exhibit "A", in a good and sanitary order, condition and repair.

6. TITLE

Title to any portion of the property identified in Exhibit "A" shall remain vested in both Public Agencies and shall not be affected by the assignment of management or maintenance responsibilities provided herein.

7. COUNTY'S ENTRY ON JOINTLY OWNED PROPERTY

The County reserves, and shall always have the right, during the term of this Agreement to enter the Jointly Owned Property, described in Exhibit "A" as being managed by the City, for the purpose of inspecting and ascertaining the maintenance and condition thereof and/or to protect its interests in the Jointly Owned Property.

8. RIGHTS OF ENTRY BY THIRD PARTIES

The City shall be responsible for granting all rights of entry or temporary construction/access easements for the Jointly Owned Property

9. JOINTLY OWNED PROPERTY WIRELESS COMMUNICATION FACILITY.

9.1 OPERATIONS AND MAINTENANCE. As long as a wireless communication facility ("WCF"), as defined in San Diego Municipal Code section 113.0103, as amended from time to time, exists on the summit of the Jointly Owned Property, operations of the WCF shall be managed by the City. The City will also be responsible for the maintenance and improvement needed for the WCF and access roadway. Neither the County nor the City shall pay fees for use of or access to the WCF.

9.2 CONTRACTING AUTHORITY. The City shall have the authority, on behalf of itself and the County to conduct such procedures and engage in such negotiations and enter into such contracts or other commitments as the City and the County deem necessary to effectively use and operate WCF on the Jointly Owned Property and to continue to derive revenue from those WCF. These include, but may not be limited to, solicitation for and receipt of proposals to lease and develop the property, license and develop the property, conducting negotiations with proposers and developers, entering into options to lease and leases, licenses, consent to subleases, and to administer any such licenses, options to lease or leases as may be

entered into. The City's authority granted herein shall be exercised in accordance with the provisions of law applicable to the exercise of such authority by the City of San Diego and consistent with the City's then current practices regarding such contracts. For all contracts or other commitments entered into by the City pursuant to this section, the City will notify the County prior to execution, and to the extent indemnity is required of the agreement, must include indemnity to the County.

9.3 TRANSMITTAL OF DOCUMENTS TO COUNTY. The City must promptly provide the County with a copy of any contract, lease, license, or other agreement that the City enters into pertaining to the Jointly Owned Property. Any such documents should be sent to:

Director
Department of Parks and Recreation
County of San Diego
5500 Overland Avenue, Suite 410
San Diego, California 92123

9.4 REVENUE. The City, or its authorized representative, is hereby designated as the receiver and depository of all funds derived by the City from licenses, options to lease or leasing of the Jointly Owned Property ("Revenues"). The City shall:

- (a) Receive and place all Revenues to the credit of a special Mission Trails Regional Park Fund ("Fund");
- (b) Be responsible for the safekeeping and disbursement of all Fund money so held;
- (c) Be responsible and make certain that all interest accrued to the Fund be attributed to the Fund;
- (d) Pay all sums, when due and owed by the Fund, only upon duly authorized checks of the City acting as the fiscal agent of the Fund;
- (e) Provide a completed budget report annually, in October of each year, to the City Director and to the County Director the following information regarding the Fund: previous balance, all revenues, all expenditures, accrued interest, administrative charges, and a revised balance. The report will also include a list of all active licenses and leases on the Jointly Owned Property.
- (f) The County may also audit the Funds and records and shall coordinate with the City on any audit.
- (g) If the City conducts an audit of the Funds and records, the City shall notify the County when the audit is initiated, and the County shall participate in the audit.

9.5 EXPENDITURES FROM MISSION TRAILS FUND

- (a) Charges of the City and the County for financial and administrative services in connection with this Agreement shall be borne by each as such charges are minimal.
- (b) The City and the County agree that all Revenues obtained from the Jointly Owned Property described in Exhibit "A" shall be placed and retained in the Fund to be expended solely and exclusively to acquire additional property and to pay for capital and maintenance projects

focusing on those identified in the 2019 Mission Trails Regional Park Master Plan Update. Said revenues shall not be used for operations of the Mission Trails, unless expressly allowed herein.

- (c) City may issue a license or lease of the Jointly Owned Property which provides for rent credits or other rental structure in return for the lessee performing Telecommunications Facilities Maintenance. For purposes of this Agreement, "Telecommunications Facilities Maintenance" includes access road maintenance; brush management within the fenced telecommunications facility area; electrical maintenance and site power (to include capacity upgrades); lightning protection/site grounding, and emergency battery, generator, propane tank maintenance.

9.6 DISTRIBUTION OF ASSETS. Upon the termination of all licenses or leases on the Jointly Owned Property, any funds remaining in the Fund shall be used to restore the Jointly Owned Property to its natural open space condition or to site new recreational amenities as agreed by the City and the County. Any remaining monies in the Fund or other assets shall be divided equally between the City and the County.

10. DEFEND, INDEMNIFY AND HOLD HARMLESS

To the fullest extent permitted by law, the County shall not be liable for, and the City shall defend and indemnify the County and its officers, agents, employees and volunteers (collectively, "County Parties") against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to the acts or omissions of the City and its agents, officers, or employees in performing this Agreement or the services herein, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. The City shall have no obligation to defend or indemnify County Parties against Claims if it is determined by a court of competent jurisdiction that such Claim was caused by the sole active negligent act or willful misconduct of County Parties.

To the fullest extent permitted by law, the City shall not be liable for, and the County shall defend and indemnify the City and its officers, agents, employees and volunteers (collectively, "City Parties") against any and all Claims, which arise out of or are in any way connected to the acts or omissions of County and its agents, officers, or employees in performing this Agreement or the services herein, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of City Parties. The County shall have no obligation to defend or indemnify the City Parties against Claims if it is determined by a court of competent jurisdiction that such Claim was caused by the sole active negligent act or willful misconduct of City Parties.

11. NOTICE

Any notice or notices provided by this Agreement or required by law to be given or served upon the City or the County may be given or served by depositing same in the United States Mail, postage prepaid, addressed to the following address:

TO: COUNTY

TO: CITY

County of San Diego
Director, Department of Parks and Recreation
5500 Overland Ave., Suite 410 (029)
San Diego, CA 92123

City of San Diego
Director, Parks and Recreation Department
202 C Street, MS 39
San Diego, CA 92101

Phone: (858) 966-1301

Phone: (619) 236-6643

Notice shall be deemed received three business days after mailing.

12. FORCE MAJEURE.

If any party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, pandemics, strikes, civil disorders or other cause without the fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be waived for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

13. GOVERNING LAW.

This Agreement shall in every respect be binding upon the parties hereto and their respective successors and assignees. This Agreement shall be governed by the laws of the State of California.

14. PROVISIONS REQUIRED BY LAW.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if for any reason any such provision is not inserted, or is not correctly stated, then upon application of either party the Agreement shall forthwith be amended to make such insertion or correction.

15. PARTIAL INVALIDITY.

If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

16. EXECUTION.

This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by the City and the County, all with the same full force and effect as though the same counterpart had been executed simultaneously by each the City and the County.

17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement. This Agreement may be modified or terminated only by written consent signed by both parties, unless otherwise stated herein.

18. NO WAIVER.

The failure of either party to enforce any term, covenant or condition of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce this, or any other term, covenant or

condition of this Agreement. No waiver shall be deemed effective unless the waiver is expressly stated in writing and signed by the party waiving the right or benefit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the date first written above.

CITY OF SAN DIEGO

COUNTY OF SAN DIEGO:

By: _____

Deputy Chief Operating Officer,
Neighborhood Services

By: _____

BRIAN ALBRIGHT
Director of Parks and Recreation

APPROVED AS TO FORM:
MARA W. ELLIOTT, City Attorney

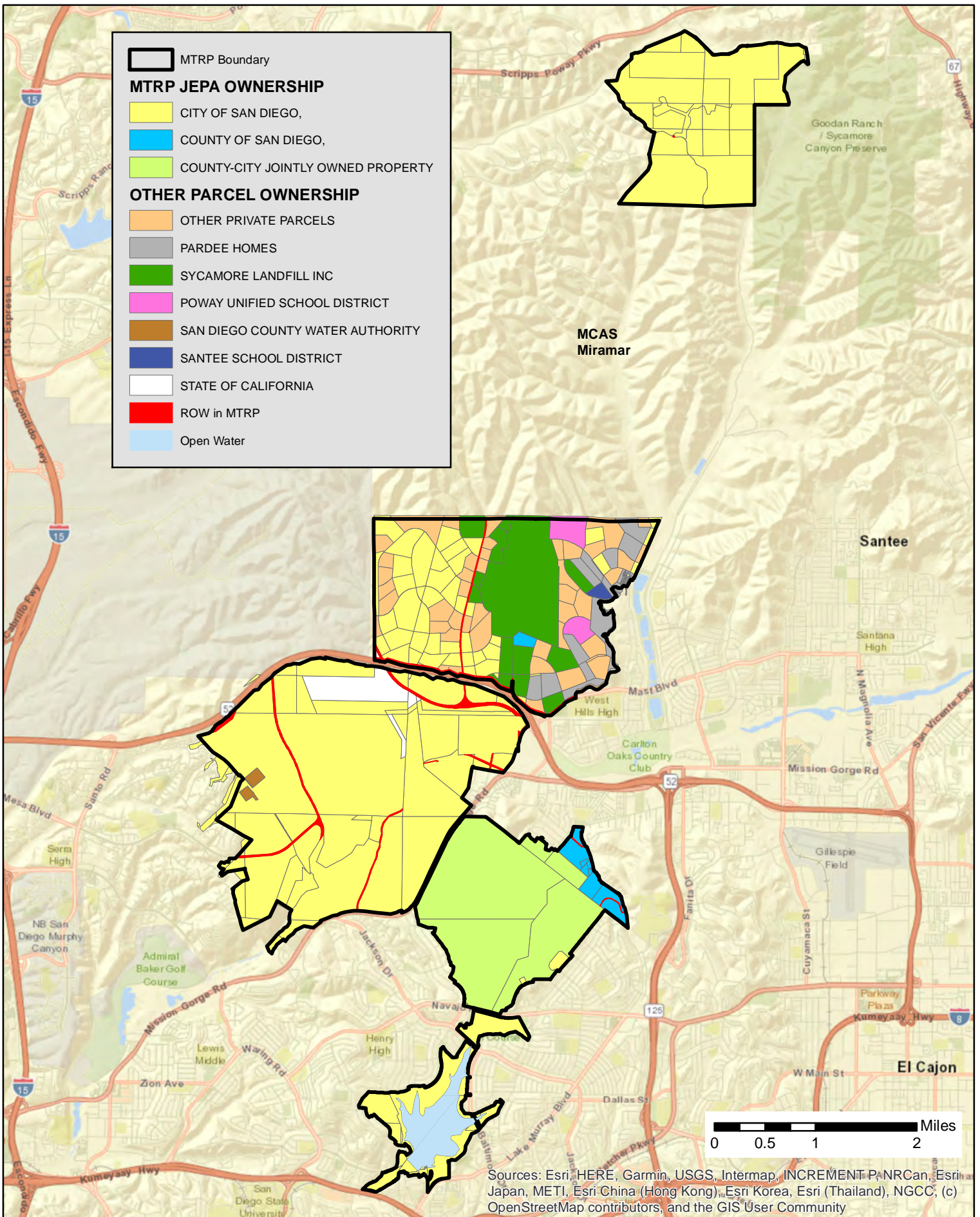
APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL:

By: _____

Deputy City Attorney

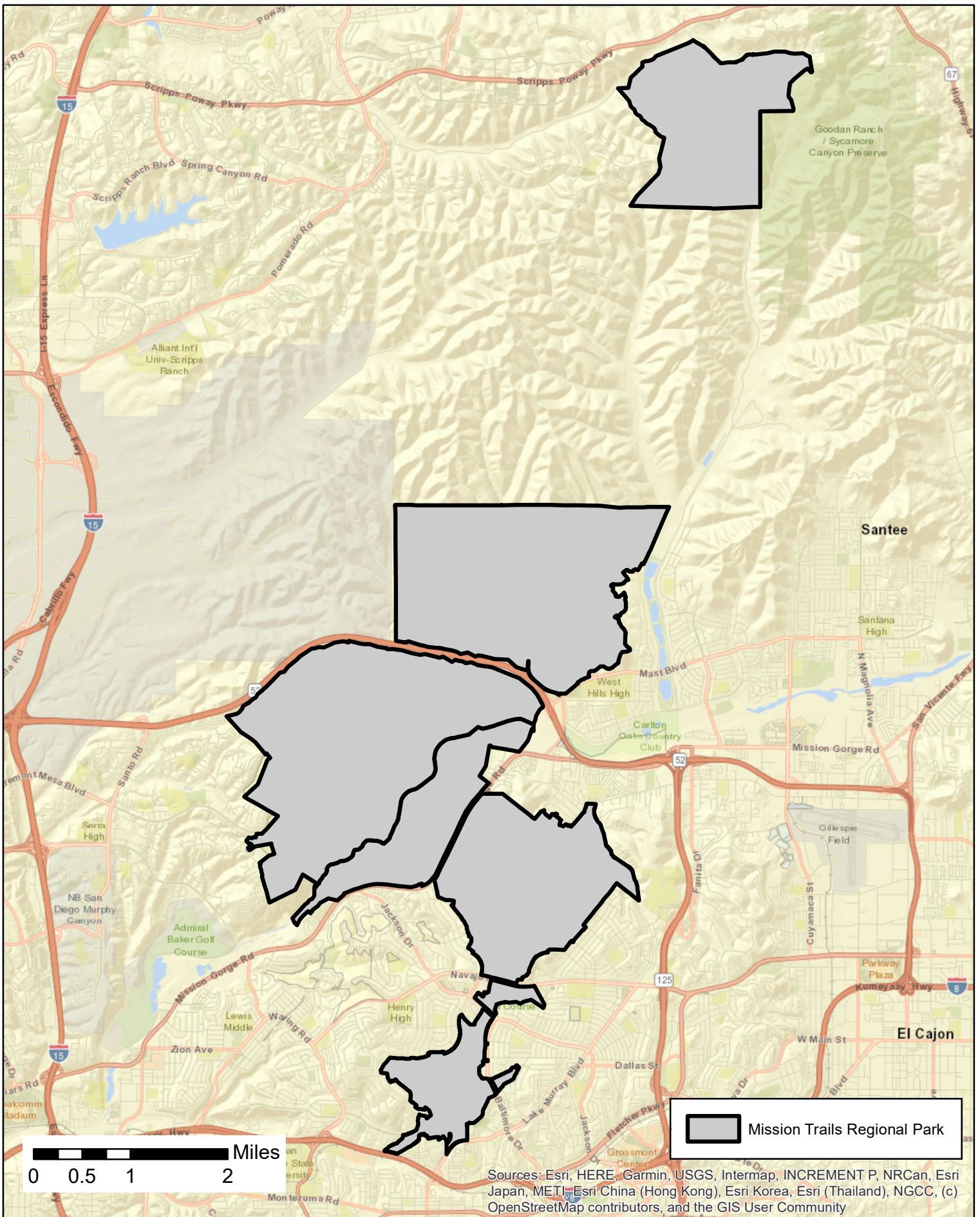
By: _____

Senior Deputy



File Path:

MTRP JEPa Exhibit A



MTRP JEPA Exhibit B- Antenna Fund Use Area