

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF DALY CITY, THE NORTH SAN MATEO COUNTY SANITATION
DISTRICT AND
THE COUNTY OF SAN MATEO
REGARDING FUNDING OF THE
VISTA GRANDE DRAINAGE BASIN IMPROVEMENT PROJECT**

This Memorandum of Understanding (“MOU”) is entered into as of the Effective Date (defined herein) by and between the City of Daly City (“Daly City”) and the North San Mateo County Sanitation District (“NSMCSD”) on the one hand, and the County of San Mateo (“County”) on the other hand (each, individually, a “Party” and, together, the “Parties”) with respect to certain funding for the Vista Grande Drainage Basin Improvement Project (the “Project”)

RECITALS

WHEREAS, the Vista Grande storm drainage system is comprised of the Vista Grande Canal and Vista Grande Tunnel which collectively carry and discharge stormwater from the northwest area of Daly City and the unincorporated areas of San Mateo County known as the Broadmoor drainage area; and

WHEREAS, in response to ongoing flooding problems in the Vista Grande Watershed, to provide a sustainable source of additional water to increase water surface elevations of Lake Merced, to improve water quality in Lake Merced via increased water surface elevations, and to further the restoration of the drainage basin’s natural hydrology, Daly City approved the Project, which improves the storm water drainage of the Vista Grande Canal and Vista Grande Tunnel to the Pacific Ocean; and

WHEREAS, the Project is a multi-purpose effort to address storm-related flooding that periodically occurs as a result of inadequate storm drainage capacity in Daly City’s Vista Grande Canal and Tunnel, and to augment water surface levels and manage water quality in San Francisco’s Lake Merced; and

WHEREAS, the Project is expected to provide a range of public benefits, including improved storm drainage, water supply, wastewater disposal, solid waste capture, recreation, and environmental enhancement benefits to the Cities of Daly City and San Francisco, the Counties of San Francisco and San Mateo, and their respective residents and other major stakeholders; and

WHEREAS, the total cost to construct and complete the Project is estimated as of December 7, 2023 to be \$150, 858,396 (“Total Estimated Project Cost”); and

WHEREAS, the Parties desire to allocate costs for the Project in proportion to the public benefits provided by the Project to each Party as provided and subject to the limitations and conditions herein; and

WHEREAS, the Parties agree that the Project serves a public purpose, provides public benefits and the County’s financial contribution toward the Project as provided in this MOU serves these interests; and

WHEREAS, Daly City and NSMCSD are collaborating on the Project and have evaluated alternatives concerning stormwater discharge within the Vista Grande Canal and the Vista Grande Tunnel; and

WHEREAS, Daly City has retained Brown and Caldwell, Inc., and McMillian Jacobs & Associates, who in November 2019 prepared "Project Plans for Construction of the Vista Grande Drainage Basin Improvements," which provides the 100 percent design for the Project ("Project 100% Design"), which Project 100% Design Daly City has approved and intends to implement to complete the Project following completion of a competitive procurement process to select a contractor; and

WHEREAS, it is in the interests of Daly City, NSMCSD and the County to proceed with the implementation of the Project, and to do so in a manner that addresses historic flooding and associated problems related to the Vista Grande Canal and the Vista Grande Tunnel, within the unincorporated areas of San Mateo County.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree and understand as follows:

AGREEMENT

1. Term. This MOU shall be effective on the date of the last signature to this MOU and the approval of the Parties' respective governing boards (the "Effective Date") and shall remain in effect until December 31, 2029, unless terminated earlier as provided herein.
2. Purpose. The purpose of this MOU is to outline the Parties' respective obligations for the funding of the Project.
3. County Funding Contribution. Subject to the terms and conditions of this MOU, the County will contribute a lump-sum total amount of Fifteen Million Dollars and Zero Cents (\$15,000,000.00) to be used exclusively for actual, reasonable and necessary allowable costs incurred for the construction of the Project ("County Funding Contribution"); provided that the County Funding Contribution may be subject to reduction, partial refund or offset resulting from Daly City's and/or NSMCSD's receipt of Additional Funding as defined and set forth in Section 5 herein. The County Funding Contribution is conditional upon and shall not be deposited into escrow nor disbursed to Daly City unless and until Daly City has first entered into and approved an agreement with a qualified contractor to perform and execute the Project 100% Design following a competitive procurement process. The County shall have no responsibility to pay or contribute to any debt service associated with the Project. In no event shall the County's fiscal obligation under this MOU exceed the amount of the County Funding Contribution (i.e., \$15,000,000), including if the actual, reasonable and necessary costs to construct and complete the Project exceed the Total Estimated Project Cost or in any other circumstance. Any Project-related costs incurred by Daly City and/or NSMCSD in excess of the County Funding Contribution shall not be the responsibility of the County.
 - a. Disbursement of the County Funding Contribution.

- i. The Parties shall establish, at Daly City's sole expense, an escrow account with Old Republic Title Company, Attn: Susan Goulet (or other Old Republic Title Co. representative), 167 S. San Antonio Road, Suite 5, Los Altos, CA 94022, (650) 941-5700 ("Escrow Agent"). The Parties shall execute and deliver all written instructions to the Escrow Agent to accomplish the terms hereof, which instructions shall be consistent with this MOU. Daly City shall be responsible for and shall pay any and all escrow fees, taxes, recording fees, title insurance fees and premiums, document preparation fees and costs, and any other fees and costs associated with the escrow in connection with this MOU.
- ii. Subject to Daly City and NSMCSD's compliance with the terms and conditions of this MOU, the County shall deposit the County Funding Contribution with the Escrow Agent on the closing date (the "Closing Date") with instructions to hold the County Funding Contribution in an interest-bearing account pending further instructions by the County following its review and approval of disbursement requests by Daly City, for reimbursement of Project expenses and Daly City and NSMCSD's satisfaction of the terms and conditions of the MOU. Interest shall accrue to the benefit of and be paid to the County annually, or quarterly, as the County may direct the Escrow Agent.
- iii. The Closing Date shall occur within thirty (30) days following the date on which all conditions precedent set forth herein and as follows shall have been satisfied:
 1. Daly City shall have furnished the County with evidence that Daly City has entered into and approved an agreement with a qualified contractor to perform and execute the Project 100% Design following a competitive procurement process.
 2. Daly City and NSMCSD shall have executed and delivered to the County any documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the County (to include a fully executed copy of this MOU and governing board approvals).
 3. All representations and warranties of Daly City and NSMCSD contained in the MOU shall be true and correct in all material respects.
 4. The County has provided written confirmation to the Escrow Agent that Daly City and NSMCSD have satisfied the conditions for the Closing Date.
- iv. Disbursement requests. After the Closing Date, Daly City, on behalf of itself and/or NSMCSD, may request disbursement of all or a portion of the County Funding Contribution by submitting a disbursement request or serial requests ("Disbursement Request") electronically to the County to the attention of the person identified in Section 13 of this MOU, or their designee(s), which Disbursement Request shall include the date of the request, disbursement amount, and include supporting documentation

establishing the allowable direct and indirect Project expenses and costs for reimbursement to which the County Funding Contribution shall be applied, including without limitation, invoices, receipts, payroll, and activity logs sufficient to substantiate the expenses, and evidence of work performed, or costs incurred. Daly City shall include a written certification that the costs were actually, reasonably and necessarily incurred for the Project and that the supporting documentation is true, correct and complete. In no event shall the aggregate Disbursement Requests exceed the total amount of the County Funding Contribution.

v. Additional Cost Principles.

1. If Daly City and/or NSMCSD fund any part of the Project with state or federal funds, they shall comply and ensure that any subrecipient, contractor or subcontractor hired to participate in the Project will comply with the federal cost principles and administrative requirements of 2 CFR, Part 200.
 2. Any Project costs for which Daly City and/or NSMCSD has received reimbursement under this MOU that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, and/or Title 48, Chapter 1, Part 31, are subject to repayment to the County. Should Daly City fail to reimburse moneys due the County within thirty (30) days of discovery or demand, or within such other period as may be agreed in writing between the Parties, the County is authorized to withhold and/or offset future disbursements.
 3. Travel costs reimbursed under this MOU shall not exceed the rates paid to San Mateo County employees under current County travel policy as of the Effective Date.
- vi. The County shall review Daly City's Disbursement Request(s), and, if approved, within 45 days shall submit instructions to the Escrow Agent to disburse funds to Daly City in the approved amount of the Disbursement Request. If the County does not approve the Disbursement Request or a portion thereof, the County shall notify Daly City in writing of non-approval. The County and Daly City agree to meet and confer and provide reasonable cooperation to resolve any issues with the Disbursement Request or its supporting documentation. Daly City shall be solely responsible for ensuring that any disbursements, or portion thereof, that Daly City receives on behalf of NSMCSD, are distributed to NSMCSD.
- b. Daly City and NSMCSD understand and agree that, to the extent that the County Funding Contribution is not fully expended or fully disbursed at the time of termination of this MOU, Daly City and NSMCSD must promptly return all unexpended funds to the County, and any unexpended or undisbursed funds at the time of termination shall be forfeited. Daly City and NSMCSD shall cooperate with the County, at the County's request, to provide or consent to written instructions to the Escrow Agent to release any unexpended funds from escrow to the County.

4. Daly City's Funding Commitment. Daly City shall, together with NSMCSD, contribute funds toward the Project in accordance with the Vista Grande Project Cost Allocation Study, dated December 7, 2023, in a total combined amount of \$86,693,467.

5. Additional Funding.

(a) Daly City and NSMCSD shall use reasonable efforts to pursue and secure funding from other public and private entities, and any state or federal funding that may be available to fund the Project (including for the planning, design, construction and implementation of the Project) and shall apply for funding from the California State Revolving Fund and the Federal Water Infrastructure Finance and Innovation Act and other such programs that may be or become available to fund the Project (collectively, "Additional Funding"). Additional Funding does not include funding contributions provided by the County, Caltrans, Bay Area Rapid Transit, Town of Colma, City and County of San Francisco/SFPUC, San Francisco Golf Club and/or the Olympic Club in accordance with their cost allocations in the Vista Grande Project Cost Allocation Study, dated December 7, 2023.

(b) Daly City and NSMCSD agree to apply any such Additional Funding received for the Project toward the Project costs and that any such Additional Funding awarded or received for the Project will be applied to reduce and, as necessary, refund the County's Funding Contribution in proportion to the County's contribution to the Total Estimated Project Cost. If and to the extent the actual, reasonable and necessary costs to construct and complete the Project exceed the Total Estimated Project Cost, Daly City and NSMCD may apply Additional Funding first to cover such excess costs, with any remaining Additional Funding to be applied to reduce and, as necessary, refund the proportional amount of the County's Funding Contribution. If and to the extent the actual, reasonable and necessary costs to construct and complete the Project are less than the Total Estimated Project Cost, Daly City and NSMCSD shall reduce and, as necessary, refund the proportional amount of the County's Funding Contribution.

6. Project Accounting. Daly City, on behalf of it itself and NSMCSD, agrees to submit a written report to the County, biannually, commencing July 1, 2024, outlining progress on the Project and the Project budget and accounting for expenses incurred to date and projected for the upcoming year, which report shall include an accounting for any Additional Funding received, awarded or pledged to the Project and an accounting for any reductions to the County Funding Commitment.

7. Project Management. Daly City shall have sole responsibility for the construction, management, implementation, and operation of the Project, including for securing all necessary insurance against all liability risks associated with construction, management, implementation and operation of the Project.

8. Daly City's Representation and Warranties. Daly City represents and warrants the following:

- a. Daly City shall ensure that the Project is developed, implemented and operated in compliance with applicable law and regulations.
 - b. Daly City is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority that would materially impact its ability to meet its obligations under this MOU. No creditor has given Daly City a notice or threatened to give it any notice of default under any material agreement. No event has occurred and is continuing, and no condition exists that would constitute an event of default or an event which, with the lapse of time or the giving of notice, or both, would become an event of default.
 - c. No action, suit or proceeding (and to its knowledge, no investigation) is pending against Daly City before any court or administrative agency, (i) the outcome of which, by itself or taken together with other such litigation, would be reasonably expected to have a material adverse effect on the Project, or (ii) which purports to affect the legality, enforceability, or validity of this MOU.
 - d. Daly City will submit to the County such documentation as reasonably requested by the County to facilitate disbursement of the County Funding Contribution, and to determine the correct amount of any refunds or offsets to the County Funding Contribution resulting from Additional Funding of the Project.
 - e. Daly City agrees to provide records sufficient to substantiate its representations and warranties upon the County's request. Daly City understands and agrees that the foregoing representations and warranties are material to the County's approval of the MOU.
9. NSMCSD's Representation and Warranties. NSMCSD represents and warrants the following:
- a. NSMCSD shall ensure that the Project is developed, implemented and operated in compliance with applicable law and regulations.
 - b. NSMCSD is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority that would materially impact its ability to meet its obligations under this MOU. No creditor has given NSMCSD a notice or threatened to give it any notice of default under any material agreement. No event has occurred and is continuing and no condition exists that would constitute an event of default or an event which, with the lapse of time or the giving of notice, or both, would become an event of default.
 - c. No action, suit or proceeding (and to its knowledge, no investigation) is pending against NSMCSD before any court or administrative agency, (i) the outcome of which, by itself or taken together with other such litigation, would be reasonably expected to have a material adverse effect on the Project, or (ii) which purports to affect the legality, enforceability, or validity of this MOU.
 - d. NSMCSD will submit to the County such documentation as reasonably requested by the County to facilitate disbursement of the County Funding Contribution, and

to determine the correct amount of any refunds or offsets to the County Funding Contribution resulting from Additional Funding of the Project.

- e. NSMCSD agrees to provide records sufficient to substantiate its representations and warranties upon the County's request. NSMCSD understands and agrees that the foregoing representations and warranties are material to the County's approval of the MOU.

10. Termination. This MOU may be terminated by any of the Parties at any time without a requirement for good cause upon thirty (30) days' advance written Notice to the other Party. The County shall reimburse Daly City and NSMCSD for any allowable, authorized and non-cancelable obligations and costs incurred prior to termination, subject to availability of funding. The County may terminate this MOU based upon the unavailability of Federal, State, or County funds by providing written Notice to Daly City and NSMCSD as soon as is reasonably possible after County learns of said unavailability of outside funding. The County may suspend and/or terminate this MOU for good cause upon 30 days written Notice and failure to cure within that period, if Daly City and/or NSMCSD materially fails to comply with the terms of this MOU (including breach of any representation and warranty provided herein). The County may, in its sole discretion, withhold or cancel pending and future disbursements of funds and/or require Daly City and/or NSMCSD to return some or all funds disbursed under this MOU in the event that Daly City and/or NSMCSD materially fails to comply with the terms of this MOU.

11. Relationship of Parties. Notwithstanding any publicity or other references to the County, the Parties understand and agree that any activities funded by the County Funding Contribution are not performed by Daly City and/or NSMCSD or any other person or entity as an independent contractor of the County, or as an employee of the County, and that neither Daly City or NSMCSD, nor their respective employees, officers, agents, representatives, contractors or subsidiaries acquire any of the rights, privileges, powers, or advantages of County contractors or County employees. Daly City and NSMCSD acknowledge and agree that each is not, and will not hold itself out as, an agent, partner, or co-venturer of the County, and that this MOU is not intended to and does not create an agency, partnership, or joint venture between the Parties. This MOU is entered into for the sole benefit of the Parties and is not for the benefit of, nor may any provision hereof, be enforced by any other person or entity; thus, nothing contained herein or in the Parties' course of dealings shall be construed as conferring any third-party beneficiary status on any person or entity not a party to this MOU.

12. Indemnification. Pursuant to Government Code Section 895.4, Daly City and NSMCSD shall jointly and severally indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this MOU, the performance of any work or services funded under this MOU (including, but not limited to the Project), or payments made pursuant to this MOU brought for, or on account of, any of the following:

- a. injuries to or death of any person, including as to Grantee or its respective employees/officers/agents;
- b. damage to any property of any kind whatsoever and to whomsoever belonging;

- c. any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Daly City's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Daly City and NSMCSD to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

- 13. Amendment. The Parties may amend this MOU from time to time. No alteration, amendment, or variation of this MOU shall be valid unless made in writing and signed by all Parties.
- 14. Notice. All notices, requests, demands, or other communications required or permitted under this MOU shall be addressed as follows:

COUNTY OF SAN MATEO

Michael Callagy
County Executive
400 County Center, First Floor
Redwood City, CA 94063
mcallagy@smcgov.org

With a copy to:

John D. Nibbelin
County Attorney
400 County Center, 6th Floor
Redwood City, CA 94063
jnibbelin@smcgov.org

CITY OF DALY CITY

Thomas J. Piccolotti
City Manager
City of Daly City
333 90th Street
Daly City, CA 94015
tpiccolotti@dalycity.org

With a copy to:

Rose Zimmerman
City Attorney
333 90th Street

Daly City, CA 94015
rzimmerman@dalycity.org

NSMCSD

Thomas J. Piccolotti
General Manager
City of Daly City
333 90th Street
Daly City, CA 94015
tpiccolotti@dalycity.org

With a copy to:

Rose Zimmerman
City Attorney
333 90th Street
Daly City, CA 94015
rzimmerman@dalycity.org

Notice will be deemed effective on the date emailed, personally delivered, or if mailed, three (3) days after placement in the mail. The respective Parties may from time to time designate by notice in writing such other addresses at their election.

15. Records and Audit. Daly City and NSMCSD agree to maintain records and financial documents relating to the Project and this MOU for five years after termination of the MOU and agrees to cooperate with the County to provide or make available such records to the County and any authorized oversight body for examination and/or audit. Daly City shall comply with all program and fiscal reporting requirements as required by County.
16. Assignment. This MOU may not be assigned by any of the Parties without the express written consent of the other Parties.
17. Disputes.

(a) The Parties agree that, with regard to all disputes or disagreements arising under this MOU that are not resolved informally at the staff level after a good faith attempt, the Parties may, at their sole and mutual discretion, agree to engage in mediation, and the costs of any such mediation shall be divided equally among the Parties involved in the mediation. The Parties may not file a civil complaint until after mediation has concluded, or 45 calendar days after making a written request for mediation has been rejected, whichever occurs first.

(b) The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any civil action arising out of this Agreement shall be venued either in the San Mateo

County Superior Court or in the United States District Court for the Northern District of California.

18. Entire Agreement. This instrument constitutes the entire agreement and understanding between the Parties with respect to the subject matters hereof, and supersedes and replaces any prior agreements and understandings, whether oral or written, by and between them with respect to such matters.
19. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all of which together shall constitute one and the same instrument.
20. Authority to Execute. Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU for or on behalf of the parties to this MOU. Each Party represents and warrants to the other(s) that the execution and delivery of the MOA and the performance of such Party's obligations hereunder have been duly authorized.
21. Electronic Signature. The Parties wish to permit this MOU and future documents relating to this MOU to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this MOU may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this MOU.

IN WITNESS WHEREOF, the Parties hereto have entered into this instrument as of the Effective Date.

COUNTY OF SAN MATEO

CITY OF DALY CITY

By: _____
Mike Callagy
County Executive

By: 
Thomas J. Piccolotti
City Manager

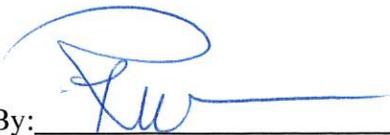
Dated: _____

Dated: 3/28/24

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
John D. Nibbelin
County Attorney

By: 
Rose Zimmerman
City Attorney

NORTH SAN MATEO COUNTY
SANITATION DISTRICT

By: 
Thomas J. Piccolotti
General Manager

Dated: 3/28/24

APPROVED AS TO FORM

By: 
Rose Zimmerman
General Counsel

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