

**MEMORANDUM OF UNDERSTANDING**  
**between the**  
**CITY OF BELMONT**  
**and the**  
**HARBOR INDUSTRIAL SEWER MAINTENANCE DISTRICT**

**(SANITARY SEWER SERVICES AND SEWAGE TREATMENT CAPACITY)**

This Memorandum of Understanding (“MOU”), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Belmont (“City”), a municipal corporation of the State of California, and the Harbor Industrial Sewer Maintenance District (“District”), a special district in County of San Mateo, State of California.

**WHEREAS**, the District was formed on December 18, 1951, pursuant to Section 5820 *et seq.* of the Streets and Highways Code to provide sewer service to an unincorporated portion of the County of San Mateo (“County”) commonly known as the Harbor Industrial Area (HIA) which is the Service Area of the District (see Attachment A depicting the Service Area); and

**WHEREAS**, the County Board of Supervisors serves as the *ex officio* Board of the District and the County’s Department of Public Works maintains the District and provides the staff and administrative support necessary to operate the District; and

**WHEREAS**, the District maintains approximately 0.9 miles of sewer lines, some of which were first constructed in 1951 during the initial development of the HIA and the District includes 61 sewer service connections or approximately 183 equivalent residential units based on water consumption calculations consistent with the County’s Ordinance Code; and

**WHEREAS**, the District is one of ten County-maintained districts providing sewer service and is one of the smaller districts in terms of sewer main length and customers served; and

**WHEREAS**, the District entered into a Sanitary Sewerage Treatment Capacity Rights and Services Agreement with the City of San Carlos on January 5, 1982 (San Carlos Agreement) for the transport and treatment of District sewage; and

**WHEREAS**, in 1997 the portion of District Service Area south of Belmont Creek was annexed to the City of San Carlos (San Carlos) and detached from the District and no Amendment to the Agreement was executed to affect the District’s sewage treatment capacity authorized under the Agreement (0.33 million gallons per day); and

**WHEREAS**, the remaining District Service Area is within the sphere of influence of the City of Belmont; and

**WHEREAS**, in 2019, two properties that were previously in the unincorporated District Service Area located at 1304 Elmer Street and 633 O’Neill Avenue annexed to the City and detached from the District as part of the Artisan Crossings housing project to which the City will provide sewer service upon completion of construction; and

**WHEREAS**, the City has received development applications for properties located in the unincorporated HIA and the District’s Service Area at 601, 605, 615 and 625 Harbor

Boulevard and 1421 Old County Road (“601 Harbor” project), and at 604 through 610 Harbor Boulevard (“608 Harbor” project) that propose annexation of the project properties to the City; and

**WHEREAS**, the City, District and County have begun discussing the associated components of orderly annexation with sewage transport and treatment being a significant issue to reach resolution on; and

**WHEREAS**, the District is concerned that the continued one-by-one detachment of parcels from the District contributes to rendering a sewer district that may become infeasible to operate and maintain as a stand-alone District due to reduction in revenue and the potential re-routing of sewage that is inconsistent with the planned routing of sewage through and from the District; and

**WHEREAS**, the proposed developments and future developments will significantly increase sewage generation within the District, providing sewer service (transport and treatment) to accommodate the developments is a complex issue, and treatment capacity is not attainable by the District under the current agreement the District has with the City of San Carlos; and

**WHEREAS**, the District and City have worked collaboratively to examine the proposed developments, future annexations, and the existing sewer infrastructure holistically and wish to ensure that appropriate decisions relative to sewage transportation and treatment are made to reasonably anticipate and accommodate future needs and conditions; and

**WHEREAS**, the District derives revenue via sewer service charges collected on the tax bills and via a limited share of property tax revenue; and

**WHEREAS**, the District expenses include in-District costs, including items such as operation and maintenance, regulatory compliance and District capital improvements, as well as out of District costs, including items such as sewage conveyance, treatment, and capital improvements by the downstream agency; and

**WHEREAS**, the City provides sewer service to areas immediately adjacent to the District’s Service Area (See Attachment A); and

**WHEREAS**, the West Bay Sanitary District and the cities of San Carlos, Belmont and Redwood City are member agencies to Silicon Valley Clean Water (SVCW), a joint powers authority providing sewer conveyance and treatment services to the member agencies; and

**WHEREAS**, the San Mateo Local Agency Formation Commission (LAFCo), in its July 14, 2011 *Municipal Service Review and Sphere of Influence Update for the City of Belmont, Belmont Fire Protection District and related County-governed Districts* report stated that opportunities exist for the County and cities to examine alternatives in operation and governance of sewer operations for a more efficient and regional approach to serve communities served by interconnected systems and the same sewage treatment plant; and

**WHEREAS**, the proximity of City service area to the District’s Service Area and the economies of scale available to the City may allow the City to provide more efficient sewer services to the District’s Service Area in the long term and with more efficient operation and maintenance than what would exist if the District continued to provide that service; and

**WHEREAS**, the City and District believe that there could be benefits from future planning and development opportunities in the Service Area if the District were to dissolve and the City were to extend its sewer service area to include the District’s Service Area; and

**WHEREAS**, the City is exploring possible annexation of the entirety of the Harbor Industrial Area (HIA) currently within the unincorporated County area; and

**WHEREAS**, the City and District desire to enter into a Memorandum of Understanding to evaluate the feasibility of the City assuming responsibility for certain elements of sewer service within the District and a process for potential extension of the City's service area to include the Service Area, in connection with annexation of the overall Service Area, along with each party's respective rights and responsibilities associated with this process; and

**WHEREAS**, the City and District are government agencies duly authorized and existing under the laws of the State of California, and situated within the boundaries of the County of San Mateo; and

**WHEREAS**, Government Code section 54981 allows the legislative body of any local government agency to contract with another agency for performance of municipal services or functions.

**NOW, THEREFORE, IN CONSIDERATION OF THEIR MUTUAL COVENANTS IN THIS MEMORANDUM OF UNDERSTANDING, THE CITY AND DISTRICT AGREE AS FOLLOWS:**

**I. TERMS AND CONDITIONS**

**A. Term of MOU**

The term of this MOU shall be from the date first set forth above to either December 31, 2025 or the effective date of dissolution of the District, whichever comes first. This MOU may be terminated pursuant to Section J.

**B. Authorizations**

The City Manager, serving as the City's designee, is authorized to approve extensions to the term of this MOU, to modify due dates, to resolve conflicts, or otherwise grant approvals on behalf of the City, provided such approvals are not vested in the authority of the City Council, and provided that any approval requiring payment of funds in excess of appropriated funds requires City Council approval of the appropriation of those funds.

The Director of the County of San Mateo Department of Public Works, serving as the County Board of Supervisors' (acting as the Board of the District) designee and the District's Administrative Officer, is authorized to approve the extension of the term of this MOU, to modify due dates, to resolve conflicts, or otherwise grant approvals on behalf of District, provided that any approval requiring payment of funds in excess of appropriated funds requires the County Board of Supervisors' approval of the appropriation of those funds.

**C. Insurance**

Each party will maintain a program of self-insurance or excess insurance, or any combination thereof, and shall name the other party as an additional insured thereto to

protect against any liability for bodily injury or property damage arising out of, or in connection with, the performance of the insuring party, its appointed or elected officials, officers, agents, and employees, under this MOU. The liability coverage under such program of self-insurance or excess insurance shall not be less than Two Million Dollars (\$2,000,000) combined single limit for each occurrence. Each party shall supply a certificate of self-insurance to the other party on or before the time of execution of this MOU. Each party shall notify the other party in writing prior to any termination of such self-insurance program.

**D. Indemnification**

Each party (the “Indemnifying Party”) agrees to indemnify, defend and hold the other party and its affiliates and their respective officers, directors, employees and agents harmless from and against all third-party claims, losses, liabilities, damages, expenses and costs, including attorney’s fees and court costs, arising out of the Indemnifying Party’s (i) negligence or willful misconduct or (ii) its material breach of any of the terms of this MOU. The Indemnifying Party’s liability under this Section shall be reduced proportionally to the extent that any act or omission of the other Party, or its employees or agents, contributed to such liability. The party seeking indemnification shall provide the Indemnifying Party with prompt written notice of any claim and give complete control of the defense and settlement of the Indemnifying Party, and shall cooperate with the Indemnifying Party, its insurance company and its legal counsel in its defense of such claim(s). This indemnity shall not cover any claim in which there is a failure to give the Indemnifying Party prompt notice to the extent such lack of notice prejudices the defense of the claim.

**E. Amendment**

This MOU may be amended at any time upon the written mutual approval of the parties, with such amendment signed by authorized representatives of the Parties.

**F. Notices**

Any and all notices required to be given hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the following mailing address, with a copy provided via electronic mail, or such other addresses as are provided by either party in writing:

<b>To City:</b> City of Belmont 1 Twin Pines Lane Belmont, CA 94002 Attn: Director, Public Works Email: _____	<b>To District:</b> Harbor Industrial Sewer Maintenance District 555 County Center, 5 <sup>th</sup> Floor Redwood City, CA 94063 Attn: Director, Public Works Email: _____
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**G. Severability**

If any provision of this MOU is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the validity, legality, or enforceability of the remaining portions will not in any way be affected or impaired thereby.

**H. Entire Agreement**

This MOU, together with Attachments A, B, C, and D attached hereto and incorporated herein contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, documents, and discussions pertaining thereto.

**I. Debt Limitation**

The City and District are both subject to laws or policies which limit their ability to incur debt in future years. Nothing in this MOU constitutes an obligation of the legislative bodies of the City or District to appropriate funds for purposes of this MOU in future fiscal years.

**J. Termination**

Either Party may terminate this MOU at any time in the event of a breach by the other Party of a material covenant, commitment or obligation under this MOU that remains uncured thirty (30) calendar days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party.

**K. Conflict of Interest**

The City and the District shall each avoid all conflicts of interest in the performance of this MOU and shall immediately notify the other should a conflict of interest arise that would prohibit or impair the party's ability to perform under this MOU.

**L. Non-Discrimination**

Neither the City nor District will discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identification, disability, ethnicity, or national origin, in connection with or related to the performance of this MOU.

**M. Limitations**

Intentionally left blank.

**N. Disputes**

The City and District agree that, with regard to all disputes or disagreements arising under this MOU which are not resolved informally at the staff level after a good faith attempt by both parties, the parties may, at their sole and mutual discretion, agree to engage in mediation. The costs of the mediation shall be divided equally between the parties, unless otherwise agreed.

**O. Relationship of the Parties.**

The relationship of the Parties hereto is that of independent contractors. Nothing in this MOU, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's employees or agents. Each of the Parties is an independent contractor and neither Party has the authority to bind or contract any obligation in the name of or on account of the other Party or to incur any liability or make any statements, representations, warranties or commitments on behalf of the other Party, or otherwise act on behalf of the other. Each Party shall be solely responsible for payment of the salaries of its employees and personnel, workers' compensation, and all other employment benefits.

**P. Force Majeure.**

Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this MOU, except for the payment of money, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, pandemics, epidemics, local disease outbreaks, public health emergencies, acts of God, or other similar or different occurrences beyond the reasonable control of the Party so defaulting or delaying in the performance of this MOU, for so long as such force majeure event is in effect. Each Party shall use reasonable efforts to notify the other Party of the occurrence of such an event within 10 business days of its occurrence.

**Q. Governing Law and Venue.**

This MOU will be governed by and interpreted in accordance with the laws of the State of California. The Parties hereby agree that any action arising out of this MOU will be brought solely in the County of San Mateo Superior Court. Both Parties hereby submit to the exclusive jurisdiction and venue of such court.

**R. Survival.**

Each term and provision of this MOU that should by its sense and context survive any termination or expiration of this MOU, shall so survive regardless of the cause and even if resulting from the material breach of either Party to this MOU.

**S. Rights Cumulative.**

The rights and remedies of the Parties herein provided shall be cumulative and not exclusive of any rights or remedies provided by law or equity.

**T. Counterparts.**

This MOU may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission, email, or electronic signature shall be deemed as effective as an original executed signature page.

**U. Authorized Signatories.**

It is agreed and warranted by the Parties that the individuals signing this MOU on behalf of the respective Parties are authorized to execute such an agreement. No further proof of authorization shall be required.

**V. Waiver.**

No waiver of any term or right in this MOU shall be effective unless in writing, signed by an authorized representative of the waiving Party. The failure of either Party to enforce any provision of this MOU shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this MOU thereafter.

## **II. SCOPE**

**A. Dissolution of District and Transfer of Service to City**

The Parties agree to cooperatively evaluate dissolution of the District and extension of the City's sewer service area to include the District's Service Area in conjunction with the City's annexation of the entire Harbor Industrial Area. Dissolving the District and transferring service to the City will require application to and approval from the LAFCo. A goal of the evaluation process will be for the parties to present mutually agreed upon applications to LAFCo for dissolution of the District and extension of City's sewer service area that address the parties' interests. Once agreed upon, the City and District will coordinate and cooperate in submitting the necessary applications and supporting material for LAFCo action.

To these ends, the parties commit to each other as follows.

1. The District and the City will immediately begin and continue for the duration of this MOU to work collaboratively to evaluate and plan for orderly dissolution of the District and transfer of service and infrastructure to the City. The District and City will confer with LAFCo as appropriate in preparation for making applications to

LAFCo that would target dissolution and transfer of service effective no later than June 30, 2026 unless otherwise agreed upon in writing by both parties.

2. Throughout the evaluation process and before LAFCo action, the City and District will coordinate mutually agreed upon communication and outreach efforts to residents and businesses of the District's Service Area regarding dissolution of the District and transfer of service to the City.
3. The District and the City will work together to evaluate and plan for the disposition of the District's assets and liabilities. To effectuate discussion, the District will provide complete disclosure to the City of all District assets and liabilities including, but are not limited to, all cash reserves, property rights, infrastructure and improvements, loans and related payment obligations, contractual rights and obligations, rights to receive rate revenue, claims, settlements, judgments, injunctions, or decrees requiring present or future action or forbearance or creating other on-going or potential future obligation. The District will update the disclosures as reasonably requested by the City.
4. The District and the City will cooperatively formulate a rate schedule that will be adopted before dissolution for District customers transferring to the City service area. The agreed upon rates will be incorporated into the parties' LAFCo applications.
5. The City and District will work to ensure there is no disruption of activities presently carried out by the District, including but not limited to the provision of sewer service to the Service Area and District administrative functions (including rate collection and payment of fiscal obligations).
6. The District and the City will collaboratively engage the City of San Carlos for the purpose of reaching an agreement with San Carlos to transfer to the City all of the District's remaining treatment capacity allocation (Grant Eligible and Non-Grant Eligible) under the San Carlos Agreement. The District will use its best efforts to secure from San Carlos and transfer to the City the maximum treatment capacity allocation that can reasonably be secured under the District's existing rights.
7. The City and District will make best efforts to complete the dissolution and transfer of service as soon as practicable.
8. The District agrees to comply with all reasonable requests of City and will provide City's personnel and consultants with requested information and access to all documents and facilities as may be reasonably necessary for preparing and submitting an application to LAFCo.
9. The City agrees to comply with all reasonable requests of District and will provide District's personnel and consultants with requested information and access to all documents and facilities as may be reasonably necessary for preparing and submitting an application to LAFCo.
10. District and City will coordinate HISMD projects with proposed annexation projects to maximize developer paid improvements. The City agrees to include District staff in planning for proposed annexation projects and related developer



improvements. The District agrees to include City staff in any capital project planning associated with District improvements.

11. District will avoid incurring new or increased debt.
12. District fund balance from rates will only be used for expenses benefiting the system and not for rate subsidy or uses inconsistent with Proposition 218.
13. District and City will discuss cost sharing of studies.

**B. Redevelopment and Annexation Prior to Dissolution of District**

1. The parties have agreed that the 608 Harbor project properties may detach from the District, annex to the City and be served by the City's sewer system.
2. The parties anticipate that the 601 Harbor project properties will annex to the City and detach from the County but remain in and be served by the District's sewer system, which will be redirected to the City's sewer system for transportation to and treatment at the SVCW treatment facility until dissolution of the District and annexation of the entire HIA to the City. The District reserves the right to oppose any proposed annexations of individual parcels within District Service Area to City after the annexation of 601 and 608 Harbor Boulevard until the effective date of this MOU. In order to serve the sewer needs of the 601 Harbor project before annexation of the HIA to the City, the parties anticipate the following conditions must be satisfied. The City and District will immediately begin and continue for the duration of this MOU to work collaboratively and diligently toward agreement on matters needed to fulfill the conditions.
  - (a) The 601 Harbor project applicant commits in a development agreement with the City (Attachment D): to replace and upsize the District's Harbor Boulevard sewer main in accordance with the City of Belmont Harbor Industrial Sewer Maintenance District Sanitary Sewer Master Plan ("City's Sewer Master Plan") (Attachment C), to reconnect laterals, and to connect the District's improved main to the City's sewer system, all at the applicant's cost including design, construction and permitting.
  - (b) The project applicant applies for the permits necessary to construct the sewer improvements from the appropriate agencies. The District and the City will coordinate the permit process including submittal requirements, design, plan check, permit issuance, inspection, finalizing permits and accepting work. District and County will exercise approval authority in a manner consistent with the City's Sewer Master Plan.
  - (c) The District and City enter into a transportation and treatment agreement for the City to transport and treat the District's sewer flows at the SVCW treatment facility with the District's treatment capacity rights limited to that needed to treat the development existing in the HIA when this MOU is executed and the net additional capacity needed to treat flows from the 601 Harbor project.
  - (d) To the extent that any sewage emanating from the District flows through the City system prior to the annexation of the entire District area, the charges imposed by

the City for transporting the sewage shall be calculated for District rate payers in the same way as the charges are calculated for City rate payers.

- (e) The project applicant commits in a development agreement to pay connections fees to the District based on the Residential Unit Equivalents (RUE) calculated per County Ordinance Code Section 4.24.050 and the total number of sewage receptacles (fixtures) for the project.
  - (f) The City and the District agree upon the amount or method of calculating and distribution between them of sewer service and treatment fees to be charged to the 601 Harbor project until annexation of the HIA, and the project applicant commits in a development agreement with the City to pay the service and treatment fees.
  - (g) The 601 Harbor project applicant and City enter into a reimbursement agreement in which City passes through a fair share contribution from future development approved by the City that connects to the improved sewer main built by the 601 Harbor project in accordance with City's Sewer Master Plan with reimbursement contingent on annexation of the HIA.
3. Following the annexation of 601 Harbor's parcels to the City, the parties agree that no additional parcels in the District will be annexed to the City or detached from the District until dissolution of the District in conjunction with the annexation of the entire Harbor Industrial Area.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Agreement.

**“City”**

CITY OF BELMONT,

a California municipal corporation

By: \_\_\_\_\_

Name: Afshin Oskoui

Title: City Manager

Date: \_\_\_\_\_

Authorized by City Council

Resolution No.: \_\_\_\_\_

Adopted: \_\_\_\_\_, 2023

**“District”**

County of San Mateo Board of  
Supervisors acting as the *ex officio*  
Board of the Harbor Industrial Sewer  
Maintenance District

By: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk of the Board of Supervisors

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott M. Rennie, City Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
Brian Wong, Lead Deputy County  
Attorney

Date: \_\_\_\_\_

**ATTACHMENTS:**

- A – Harbor Industrial Sewer Maintenance District Service Area
- B – Sanitary Sewerage Treatment Capacity Rights and Services Agreement Between the City of San Carlos and the Harbor Industrial Sewer Maintenance District dated January 5, 1982
- C – City of Belmont Harbor Industrial Sewer Maintenance District Sanitary Sewer Master Plan
- D – City of Belmont and 601 Harbor Project Development Agreement