

SECOND AMENDMENT TO SANITARY SEWAGE AGREEMENT
BETWEEN THE TOWN OF HILLSBOROUGH,
CITY OF SAN MATEO, CRYSTAL SPRINGS
COUNTY SANITATION DISTRICT, AND
THE COUNTY OF SAN MATEO

This Second Amendment to the Sanitary Sewage Agreement entered into as of July 18, 1989 by and among the TOWN of HILLSBOROUGH, a municipal corporation in the County of San Mateo, State of California, hereinafter called “Town”, the CITY OF SAN MATEO, a municipal corporation in the County of San Mateo, State of California, hereinafter called “City”; the CRYSTAL SPRINGS COUNTY SANITATION DISTRICT, a sanitation district in the County of San Mateo, State of California, hereinafter called “District”; and the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter called “County” is made effective as of _____, 2013 and is based on the following:

R E C I T A L S :

WHEREAS, the parties have previously entered into agreements dating back to 1955 which set forth their arrangements and relationships regarding the discharge, pumping, transmission, and treatment of sewage; and

WHEREAS, the parties’ most recent agreement is the Sanitary Sewage Agreement made and entered into July 18, 1989 (the “1989 Agreement”); and

WHEREAS, the parties are subject to the Cease and Desist Order R2-2009-0020 (the “CDO”) issued by the California Regional Water Quality Control Board, which requires that the parties undertake certain actions, studies, and projects to improve the performance and capacity of the sewer facilities that are subject to the 1989 Agreement; and,

WHEREAS, the parties previously amended the 1989 Agreement to provide for the allocation of costs for the environmental review and preliminary design work for the Crystal Springs/El Cerrito Trunk Sewer Improvements required by the CDO, as further described below (the “Improvements”), and agreed to allocate these costs on the basis of peak wet weather flows (the “2010 Amendment”); and,

WHEREAS, one or more of the parties intend to fund their share of the cost of constructing the Improvements with loan proceeds from the Clean Water State Revolving Fund Program administered by the State Water Resources Control Board, and, as a result, additional environmental review (referred to below as “CEQA Plus” environmental review) will be required; and,

WHEREAS, the parties desire to further amend the provisions of the 1989 Agreement to provide for the allocation of costs for completing the final design and “CEQA Plus” environmental review of the Improvements and reimbursing staff costs, and to establish the roles and responsibilities of the parties for completion of the final design and environmental review, and to agree to allocate these costs on the basis of peak wet weather flows, and to enter into this amendment to establish those obligations; and,

WHEREAS, certain elements incorporated into the Improvements may provide greater benefit to certain parties of the agreement and each party agrees to pay the full construction costs of elements which are to their sole benefit; and,

WHEREAS, the parties anticipate amending the 1989 Agreement or executing a new, comprehensive agreement prior to beginning construction of the Crystal Springs/El Cerrito Trunk Sewer Improvements; and,

WHEREAS, until a new or further amended agreement is adopted, the parties must allocate costs associated with the final design and “CEQA Plus” environmental review related to Crystal Springs/El Cerrito Trunk Sewer Improvements so that these improvements can be completed within the time allotted by the CDO;

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

Section 1. Definitions

The following definitions apply to terms used in this amendment:

“CEQA Plus”- means the scope and process of environmental review required by the State Water Resources Control Board application process for State Revolving Fund Loans.

“days” – means calendar days unless otherwise stated

“direct project costs” – includes all costs incurred by the lead agency specifically for the design and environmental work necessary to implement the project Improvements, including professional consultant costs, and staff costs of the lead agency. In addition, direct project costs includes any liability the lead agency incurs in prosecuting the project work and any claims adjusting, claims investigation, and costs incurred in defending claims (including reasonable attorney fees) brought by any contractor or third party for damages arising out of the prosecution of the project work.

“lead agency” – the agency responsible for performance of tasks required to implement and complete the design and environmental review of Improvements, or a portion thereof, on behalf of all parties, including tasks such as obtaining and overseeing professional services.

“partner agency” – those agencies not serving as lead agency

“staff costs” – the actual costs incurred by lead agency staff for hours spent in direct participation in activities to implement the planning, design, and environmental review of the Improvements.

Section 2. Crystal Springs/El Cerrito Trunk Sewer Improvements

The CDO Provision I.A. requires that the Crystal Springs/El Cerrito Trunk Sewer Improvements (the “Improvements”) be completed by September 11, 2015. The scope of the required work is one continuous segment of sewer trunk, approximately four miles long, with an estimated total project cost of \$27,000,000 including design, environmental review, construction and staff costs. The upstream limit of work is the intersection of Crystal Springs Road and Woodridge Road in the Town of Hillsborough, and the downstream terminus is at the intersection of Sunnybrae Boulevard and South Idaho Street in the City of San Mateo.

The Improvements consist of two segments:

- a. *Crystal Springs/El Cerrito Trunk Sewer Phase II (the “Phase II Project”).*
The upstream limit of the Phase II Project is located at the intersection of Crystal Springs Road and Woodridge Road in the Town of Hillsborough, and the downstream limit is the point of connection with the City of San Mateo’s El Cerrito Meter at the City of San Mateo city limits near the intersection of El Cerrito Avenue and Gramercy Drive. The Phase II Project is approximately two miles in length, and will increase the capacity of the sewer trunk lines located in Crystal Springs Road and El Cerrito Avenue. The estimated cost of the Phase II project is \$12,000,000 including design, environmental review, construction and staff costs.
- b. *El Cerrito Relief Line Project (the “Relief Line Project”).* The upstream limit of the Relief Line Project is the point of connection of the Phase II project with the City of San Mateo’s El Cerrito Meter at the City of San Mateo city limits near the intersection of El Cerrito Avenue and Gramercy Drive, and the downstream limit is located at the intersection of Sunnybrae Boulevard and South Idaho Street in the City of San Mateo. The Relief Line Project is approximately two miles in length and involves altering the current sewer

system to accept additional flows from the Crystal Springs / El Cerrito trunk line during wet weather. The estimated cost of the Relief Line project is \$15,000,000 including design, environmental review, construction and staff costs

Section 3. Financial Participation

A. All financial participation requirements established in the 2010 Amendment shall remain in force and are not modified by this Amendment.

B. The City, County, District and Town shall each be responsible for the independent funding of its portion of the direct project costs. In the event of an annexation, merger, or other acquisition, the successor entity shall be responsible for the amounts owed by the entity that is acquired by annexation, merger, or other means and the percentage owed by the acquired entity under Section 3C shall be added to the percentage owed by the acquiring entity following acquisition.

C. The portion of the direct project costs to be paid by each agency to complete final design and environmental review for the Improvements shall be determined by the estimated Peak Wet Weather Flow (PWWF) generated from each agency's sewage area.

The PWWF estimated in the May 2010 *Sewer System Flow Monitoring and Hydraulic Modeling* study authored by RMC Water and Environment, will be used for the purpose of allocating each party's proportional share of the direct project costs related to the CDO-mandated capital improvements (i.e., the Phase II Project and the Relief Line Project). This study was jointly commissioned by the City, County, District and Town. Based on the conclusions in the RMC study, each party's share of the direct project costs, including design, environmental review, and staff costs described in this amendment, based on the PWWF, are as follows:

City:	6%
County:	6%
District:	37%
Town:	51%

Section 4. Lead Agency

a) The Phase II Project.

The Town of Hillsborough will serve as the lead agency for completion of the design and “CEQA Plus” environmental review of the Phase II project.

b) The Relief Line Project

The City of San Mateo will serve as the lead agency for completion of the design and “CEQA Plus” environmental review of the Relief Line project.

Section 5. Financial Commitments

A. Each partner agency shall deposit its share of the future estimated direct project costs with the lead agency prior to the award of professional service agreement(s) or the performance of additional work on existing professional service agreement(s) for the final design and CEQA or “CEQA Plus” environmental review for the Improvements. Such deposit shall be made within 30 days of request for funding sent by the lead agency to each party. Such funding requests shall include an itemized description of the estimated staff and project costs for which the request is made, along with the calculation showing each party’s proportional share in accordance with the percentages stated in Section 3 above. Failure of any partner agency to provide funding within 30 days of a request from the lead agency will constitute a breach of this Agreement, and may result in a cessation of work on the project. If a party breaches this agreement by failing to make a required deposit within the time described herein, that party shall bear costs resulting

from the breach, including any damages resulting from the cessation of work on the project.

B. Fund deposits and payments for costs incurred for the Improvements shall be made directly and without offset for any other financial obligations of the parties.

C. Each party shall pay the following amounts calculated in accordance with Section 3 above:

a) The Phase II Project.

Pursuant to the 1989 Master Agreement and 2010 Amendment, the Town expended staff time and engaged engineers to prepare the design and environmental consultants to conduct the cultural resources investigation and to update the 2002 environmental study previously prepared for the Town for the Phase II Project. Town has advanced the amount of approximately \$1,892,116 for direct project costs incurred from July 1, 2004 to date on the Phase II Project and shall invoice each partner agency for its respective proportional share of those actual direct project costs within three (3) months of execution of this Second Amendment. All invoices are due and payable within 30 days of date of issuance. Any invoice not paid within 60 days shall bear interest at the rate of 10% per annum. Interest on past due invoices shall begin accruing at 30 days from date of issuance.

Completion of the final design and "CEQA Plus" environmental work for the Phase II Project is estimated to cost an additional \$93,000, including staff costs. The parties shall deposit their shares of these direct costs in accordance with Section 5A above.

b) The Relief Line Project

Pursuant to the 2010 Amendment, the City of San Mateo has expended staff time and engaged engineers to design the Relief Line Project and to conduct the

environmental review. City has advanced the amount of approximately \$138,183.00 for staff costs to date on the Relief Line Project and shall invoice each Partner Agency for its respective proportional share of those actual direct project costs within three (3) months of execution of this Second Amendment. All invoices are due and payable within 30 days of date of issuance. Any invoice not paid within 60 days shall bear interest at the rate of 10% per annum. Interest on past due invoices shall begin accruing at 30 days from date of issuance.

Prior to authorizing the consultant(s) to complete final design work and “CEQA Plus” environmental work at an estimated cost of \$762,000.00 including staff costs, City shall invoice each party for its respective proportional share of the estimated cost in accordance with Section 5A above. Each party shall deposit with the City its respective proportional share of the estimated cost within 30 days of receipt of this invoice. City shall notify each party when 80% of the estimated cost established herein is expended and shall provide a revised estimate of costs to complete the work. Costs are incurred and funds are considered expended at the time the work is performed.

When the design and environmental work is completed City will calculate the actual direct project costs incurred. If the funds collected exceed the actual direct project costs upon completion of design and environmental work, City shall refund the balance to the parties in accordance with the percentages in Section 3 above. If the funds collected are insufficient to cover the actual direct project costs, City shall invoice each party for the additional costs in accordance with the percentages in Section 3 above. Any invoice not paid within 30 days shall bear interest at the rate of 10%.

Section 6. Survival

In the event that the 1989 Agreement is terminated or found to be unenforceable, the provisions of this Second Amendment shall remain in effect as the funding mechanism for the Improvements.

Section 7. Limitations

This Second Amendment shall not affect the allocation of costs for treatment, capital improvements, or other services under the 1989 Agreement. The parties shall continue to share costs for those services in accordance with the procedures set forth in the 1989 Agreement until it is amended or replaced. Except as modified herein, the terms of the 1989 Agreement shall continue in full force and effect.

ATTEST:

CITY OF SAN MATEO

Patrice M. Olds
City Clerk

David Lim
Mayor

APPROVED AS TO FORM:

Shawn M. Mason

ATTEST:

COUNTY OF SAN MATEO

Clerk of the Board

President, Board of Supervisors,

APPROVED AS TO FORM:

County Counsel

ATTEST:

CRYSTAL SPRINGS COUNTY
SANITATION DISTRICT

Clerk of the District

President, Board of Supervisors,
Ex-Officio Governing Board of the District

APPROVED AS TO FORM:

District Counsel

ATTEST:

TOWN OF HILLSBOROUGH

City Clerk

City Manager

APPROVED AS TO FORM:

Town Attorney

Certificate of Delivery

(Government Code Section 25103)

I certify that a copy of the original document filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Clerk of the Board of Supervisors