

LOAN AGREEMENT BETWEEN THE CRYSTAL SPRINGS COUNTY SANITATION DISTRICT AND THE COUNTY OF SAN MATEO

THIS AGREEMENT, entered into this ____ day of _____, 2014, by and between the County of San Mateo, a political subdivision of the State of California, hereinafter called "County" and the Crystal Springs County Sanitation District, a county sanitation district of the County of San Mateo ("District"),

WITNESSETH

WHEREAS, Section 4764 of the Health and Safety Code of the State of California provides that county sanitation districts may borrow money to guarantee the performance of its contractual obligations; and

WHEREAS, the District is a party to a July 18, 1989 Sanitary Sewage Agreement (Sanitary Sewage Agreement) with the Town of Hillsborough (Town), the City of San Mateo (City), and the County, pursuant to which each agency is responsible to pay its respective share of the cost of the use of certain jointly used sewage transmission and treatment facilities; and

WHEREAS, the Crystal Springs/El Cerrito Trunk Sewer transmission lines are jointly used facilities, as defined in the Sanitary Sewage Agreement, and these jointly used facilities carry sewage collected from the County's Tower Road facilities, the De Anza Boulevard area in the City, the District, portions of the Town, and other portions of the City to the City's facilities and eventually to City's Wastewater Treatment Plant; and

WHEREAS, pursuant to a Cease and Desist Order issued by the Regional Water Quality Control Board (RWQCB), certain improvement must be made to the Crystal Springs/El Cerrito Trunk Sewer transmission lines lying within the Town and the City; and

WHEREAS, the parties to the Sanitary Sewage Agreement have entered into an amendment to that agreement (Amendment 3) that sets forth their respective proportional liability for the costs of such mandated improvements; and

WHEREAS, Amendment 3 provides that the District will pay the Town and City for its proportional share of the costs of the mandated improvements as they are incurred; and

WHEREAS, the County is a political subdivision of the State of California with the authority to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws under Article XI, Section 7 of the California Constitution; and

WHEREAS, the County therefore has the police power to provide and regulate sewer service for inhabitants of the County; and

WHEREAS, the District is a public entity organized and existing under Division 5, Part 3, Chapter 3 (commencing with Section 4700) of the Health and Safety Code; and

WHEREAS, pursuant to Health and Safety Code Sections 4738 *et seq.*, the District has the authority to “acquire, construct, and complete within or without the district, sewage collection, treatment and disposal works,” including “sewage treatment plants, outfalls, intercepting, collecting and lateral sewers, pipes, pumps, machinery, easements, rights-of-way, and other works, property or structures necessary or convenient for sewage collection, treatment, and disposal”; and

WHEREAS, the District does not presently have adequate available funds to pay for its proportional share of the costs of the mandated improvements as they are incurred; and

WHEREAS, the District lies entirely within the unincorporated portion of the County and the County and the District have the power, common to both, to provide and regulate sewer service for the area served by the District; and

WHEREAS, under the Joint Exercise of Powers Act (Gov. Code Sections 6500 *et seq.*), the County and the District may contract to jointly exercise any power common to both entities, and Government Code Section 6504 provides that advances of public funds may be made for the purpose set forth in the agreement, such advances to be repaid as provided in said agreement; and

WHEREAS, subject to the terms and conditions set forth herein, it is necessary and desirable that the sum of \$8,720,050 be loaned to District from the County General Fund to allow the District to meet its estimated financial obligations to the Town of Hillsborough (Town) and City of San Mateo (City) for the construction costs of the Crystal Springs/El Cerrito Trunk Sewer Improvements through the Town and City; and

WHEREAS, it is in the public interest of the County to assist the District in meeting its obligations under Amendment 3 by advancing the loan funds as such an advancement will enable completion of improvements mandated by the RWQCB Cease and Desist Order; and

WHEREAS, the parties agree that the County's loan to the District will be secured by the District's Net Revenues (as defined herein).

NOW, THEREFORE, THE PARTIES SHALL JOINTLY EXERCISE THEIR COMMON POWER TO PROVIDE AND REGULATE SEWER SERVICE as follows:

1. Loan Amount - County agrees to lend the District up to EIGHT MILLION SEVEN HUNDRED AND TWENTY THOUSAND AND FIFTY DOLLARS (\$8,720,050) that will be used by the District to reimburse the Town and City for the District's share of the costs incurred by the Town and City for the Crystal Springs/El Cerrito Trunk Sewer Improvements (the Loan). The District will draw from the Loan as invoices are presented to the District by the Town and City in accordance with Amendment No. 3 to the Sanitary Sewage Agreement. The amount of each disbursement by the County to the District shall be annotated upon the Schedule of Disbursements attached hereto as Exhibit A. The outstanding cumulative amount of such disbursements by the County shall be referred to as the "Loan Amount."

2. Source of Loan Funds – County will make the Loan to District from the County General Fund.

3. Term of Loan - District agrees to fully repay the Loan Amount plus accrued interest no later than twenty (20) years from the date County disburses the final payment amounts under the Loan. District shall make at least two (2) payments per year to the County no later than January 1 and July 1 of each year during the term of the Loan. The District shall be allowed to repay the Loan at an accelerated schedule without a prepayment penalty.

4. Interest Rate on Loan - District agrees to pay interest on the Loan Amount at a rate equal to the annual interest rate paid on pooled reserves in the County Treasury.

5. Repayment Schedule - District agrees to prepare an estimated repayment schedule for the Loan Amount with each payment and shall deliver said schedule to the County Controller with each payment. The repayment schedule shall be based on two payments by District per year. These payments shall be due on January 1 and July 1 of each year until the Loan Amount is repaid in full. District agrees to make these payments as they come due from

the District's Revenues and/or other amounts legally available to the District for such payments. For purposes of this Agreement, "Revenues" means, for each fiscal year, all gross income and revenue received or receivable by the District from the ownership or operation of the System, including all rates, fees, and charges (including connection fees and charges) as received by the District for services from the System, and all other income and revenue howsoever derived by the District from ownership or operation of the System or arising from the System.

6. Continuous Use of Project – The District agrees that, except as otherwise provided in this Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the System or any significant part or portion thereof without the prior written consent of the County. For purposes of this Agreement, "System" means all wastewater collection, transport, treatment, storage, and disposal facilities, including land and easements thereof, owned by the District, and all other properties, structures, or works hereafter acquired and constructed by the District and determined to be part of the System, together with all additions, extensions, or improvements to such facilities, properties, structures, or works.

7. Security – The District agrees that repayment of the outstanding Loan Amount under this Agreement shall be and is hereby secured by a lien on and pledge of all "Net Revenues" collected by the District as such Net Revenues become available. For purposes of this Agreement, "Net Revenues" means, for each fiscal year, the District's Revenues, less the District's operations and maintenance costs (i.e., the reasonable and necessary costs paid or incurred by the District for maintaining and operating the System). The District's repayment obligation pursuant to this Agreement shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the District, with the exception that the District's obligations under this Agreement shall be subordinate to the District's obligations to

the State Water Resources Control Board (“State Water Board”) under the Installment Sale Agreement Between the District and the State Water Board for Clean Water State Revolving Fund Project No. 7811-110. The District is obligated to repay the Loan Amount notwithstanding any individual default by its constituents or others in payment to the District of fees, charges, taxes, assessments, tolls or other charges.

8. Obligations Binding on Successors in Interest - The Parties agree that their obligations under this Agreement shall be binding on their respective permitted successors and assigns. Therefore, for example, if another agency or entity assumes ownership of and/or responsibility for the District’s System, that agency or entity shall have the responsibility to make the payments to the County required under this Agreement.

9. Governing Law - This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

10. Amendment - No amendment of the terms of this Agreement shall be valid unless it is in writing and signed by the parties. No oral understanding or agreement not incorporated into this Agreement is binding on any of the Parties.

11. Accounting – The District shall maintain an accounting of all funds advanced to it pursuant to this Agreement and shall provide any documentation and records to the County Controller, or his designee, upon request.

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