

THIRD 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 Third 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 _____, 2014 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 have executed two Amendments to the 1989 Agreement to provide for allocation of costs for the environmental clearance and design of 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; and,

WHEREAS, the parties desire to further amend the provisions of the 1989 Agreement to provide for the allocation of costs for construction of the Improvements including staff costs, and to establish the roles and responsibilities of the parties for completion of construction, and 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 benefit to only certain parties to the agreement and each party agrees to pay the full costs of elements which are to their sole benefit; and,

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

Section 1. Definitions

The following definitions apply to terms used in this amendment:

“days” – means calendar days unless otherwise stated

“direct project costs” – includes all costs incurred by the lead agency specifically to implement and complete construction of project Improvements, including construction contractor costs, professional consultant costs, cost of compliance with mitigation measures, 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 construction of Improvements, or a portion thereof, on behalf of all parties, including tasks such as obtaining and overseeing construction contractors and 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 construction 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 First and Second Amendments 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 owned by the entity that is acquired by annexation, merger, or other means and the percentage owned 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 for construction of 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, construction 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 the construction of the Phase II Project.

b) The Relief Line Project

The City of San Mateo will serve as the lead agency for construction of the Relief Line Project.

Section 5. Financial Commitments

A. Each partner agency shall deposit its share of the estimated direct project costs with the lead agency in accordance with Section 5.C. 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.

Prior to advertisement of a contract(s) for construction of the Phase II Project, each partner agency shall: 1) provide written evidence to the Town confirming, to the satisfaction of the Town, that funding for its share of the estimated total construction phase direct project cost has been secured, and 2) deposit with the Town an initial deposit equal to 25% of its respective proportional share of the estimated total construction phase direct project cost. Such initial deposit shall be calculated based on the Engineer's Estimate of Construction Cost and associated estimated staff and consultant support costs for the construction phase. The Town will issue a funding request for each party's initial deposit amount at least 30 days

prior to the proposed contract advertisement date. Town will not advertise the construction contract(s) until the proportional shares of the initial construction phase deposit amount are received from all parties. Failure of any party to provide the additional funding deposit within 30 days of the request will constitute a breach of this Agreement and may result in the postponement of contract advertisement.

Upon receipt from each partner agency of the initial deposit and satisfactory evidence that funding is secured for the construction phase, the Town, as lead agency, will take appropriate actions to advertise, bid, and award the construction contract(s) and issue Notice to Proceed with Construction. Following issuance of contract advertisement, Town shall invoice each Partner Agency monthly for its respective proportional share of actual direct project costs incurred by Town during the calendar month preceding the invoice. Any invoice not paid within 30 days shall bear interest at the rate of 3% and may result in cessation of work on the project in accordance with Section 5.A.

The deposit amount is subject to change by the Town at any time as needed to manage and complete the construction work without Town incurring costs in excess of the unexpended deposit balance on hand at the time the costs are incurred. Costs are incurred and funds are considered expended at the time the work is performed. Town will issue a funding request to each party as needed to increase each party's deposit amount to cover estimated expenditures to complete construction. Failure of any party to provide the additional funding deposit within 30 days of the request will constitute a breach of this Agreement and may result in the cessation of all work on the project, including work by consultants or construction contractor(s). Costs incurred as a result of a stop work notice to the contractor shall be borne by the partner(s) which failed to provide timely payment.

Payments to the consultant(s) and contractor(s) shall be made by Town out of the funds deposited by the parties. If the total funds collected exceed the actual direct project costs upon completion of construction, Town 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, Town shall invoice each party for the additional cost in accordance with the percentages in Section 3 above. Any invoice not paid within 30 days shall bear interest at the rate of 3%.

b) The Relief Line Project

Prior to advertisement of a contract(s) for construction of the Relief Line Project, each partner agency shall: 1) provide written evidence to the City confirming, to the satisfaction of the City, that funding for its share of the estimated total construction phase direct project cost has been secured, in the form of a State Revolving Fund loan or otherwise, and 2) deposit with the City an initial deposit equal to 25% of its respective proportional share of the estimated total construction phase direct project cost. Such initial deposit shall be calculated based on the Engineer's Estimate of Construction Cost and associated estimated staff and consultant support costs for the construction phase. The City will issue a funding request for each party's initial deposit amount at least 30 days prior to the proposed contract advertisement date. City will not advertise the construction contract(s) until the proportional shares of the initial construction phase deposit amount are received from all parties. Failure of any party to provide the additional funding deposit within 30 days of the request will constitute a breach of this Agreement and may result in the postponement of contract advertisement.

Upon receipt from each partner agency of the initial deposit and satisfactory evidence that funding is secured for the construction phase, the City, as lead agency, will take appropriate actions to advertise, bid, and award the construction contract(s) and issue Notice to Proceed with Construction. Following issuance of contract advertisement, City shall invoice each Partner Agency monthly for its

respective proportional share of actual direct project costs incurred by City during the calendar month preceding the invoice. Any invoice not paid with 30 days shall bear interest at the rate of 3% and may result in cessation of work on the project in accordance with Section 5.A.

The deposit amount is subject to change by the City at any time as needed to manage and complete the construction work without City incurring costs in excess of the unexpended deposit balance on hand at the time the costs are incurred. Costs are incurred and funds are considered expended at the time the work is performed. City will issue a funding request to each party periodically as needed to increase each party's deposit amount to cover estimated expenditures to complete construction. Failure of any party to provide the additional funding deposit within 30 days of the request will constitute a breach of this Agreement and may result in the cessation of all work on the project, including work by consultants or construction contractor(s). Costs incurred as a result of a stop work notice to the contractor shall be borne by the partner(s) which failed to provide timely payment.

Payments to the consultant(s) and contractor(s) shall be made by City out of the funds deposited by the parties. If the total funds collected exceed the actual direct project costs upon completion of construction, 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 cost in accordance with the percentages in Section 3 above. Any invoice not paid within 30 days shall bear interest at the rate of 3%.

c) Town State Revolving Funding

The parties acknowledge that Town is applying for State Revolving Fund (SRF) funding in an amount up to 100% of the estimated cost of Phase II. If funding in such amount is granted, Town reserves the right to apply such funds entirely to

the construction costs for Phase II, which will result in Town paying more than its 51% share. In such event, Town's financial obligation with respect to the Relief Line Project shall be decreased by the amount of such excess, and the obligations of the other parties with respect to Phase II shall be decreased, and with respect to the Relief Line Project shall be increased, each in the ratio which their percentage share bears to 49; provided, however, in no event shall such decrease in the Town's financial obligation with respect to the Relief Line Project exceed 51% of the parties' total financial obligation with respect to the Relief Line Project.

Section 6. Project Coordination

Town shall not be obligated to commence construction on the Phase II project until City has given its contractor a Notice to Proceed on the Relief Line project.

Section 7. Ownership

Ownership of the Improvements will be consistent with the 1989 Agreement.

Section 8. Survival

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

Section 9. Limitations

This Third 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