

LOAN AGREEMENT BETWEEN THE BURLINGAME HILLS SEWER MAINTENANCE DISTRICT AND THE COUNTY OF SAN MATEO

THIS AGREEMENT, entered into this ____ day of _____, 2020, by and between the County of San Mateo a political subdivision of the State of California, hereinafter called “County” and the Burlingame Hills Sewer Maintenance District, a county sewer district of the County of San Mateo (“District”),

WITNESSETH

WHEREAS, the District is a dependent county sewer district organized and existing under Division 5, Part 3, Chapter 4 (commencing with Section 4860) of the Health and Safety Code and under the supervision and control of the County; and

WHEREAS, pursuant to Cal. Government Code § 29000 *et seq.* (the “County Budget Act”), the county budget includes the operations of the governmental and proprietary funds of the county, dependent special districts and other agencies whose affairs and finances are under the supervision and control of the board of supervisors; and

WHEREAS, pursuant to the County Budget Act, the County has broad authority to appropriate funds as it deems necessary or desirable to carry out the functions of the County or its dependent special districts or other agencies under the Board of Supervisors’ supervision and control; and

WHEREAS, Section 4894 of the Health and Safety Code of the State of California provides that sewer maintenance districts may borrow money from a county

or another sewer maintenance district for construction, reconstruction, and repair of sewer systems; and

WHEREAS, pursuant to Health and Safety Code Section 4885, the County's Board of Supervisors, as the governing board of the District, has the authority to "make and enforce all rules and regulations necessary for the administration and government of the district and for the cleaning, repair, reconstruction, renewal, replacement, operation, and maintenance of lateral and collecting sewers"; and

WHEREAS, in 2011, the District completed a Capacity Assurance Plan (Plan) which provided an update to the District's 1999 Sewer Master Plan and included a list of recommended Capital Improvement Projects; and

WHEREAS, the Plan dated June 24, 2011, identified the need to rehabilitate the Hillside and Adeline Area sewer main segments as the third Capital Improvement Project to address infiltration and inflow deficiencies in the collection system to reduce the occurrences of sanitary sewer overflows; and

WHEREAS, the Hillside and Adeline Area Sanitary Sewer Rehabilitation Project (Project) consists of rehabilitating approximately 6,570 linear feet of sanitary sewer pipes, replacing existing sanitary sewer manholes in poor condition, reconnecting existing sewer laterals to the new pipes, and restoring existing surfaces (pavement) affected by the work; and

WHEREAS, this is a priority project for the District to complete based on the age and condition of the existing sewer pipe, the reduction in inflow and infiltration into the sewer system that will be realized by completing the Project, and the reduced operation and maintenance expenses to the District from maintaining older pipelines; and

WHEREAS, the District does not presently have adequate available funds to pay for the costs of the Project improvements as they are incurred, but intends to seek an increase in rates from its ratepayers to cover the payments due on the Loan Amount (as defined herein) pursuant to the Repayment Schedule (as defined herein); and

WHEREAS, subject to the terms and conditions set forth herein, it is necessary and desirable that the sum of \$465,000 be loaned to District from available County funds, to allow the District to meet its estimated financial obligations for the Project; 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 HERETO AGREE AS FOLLOWS:

1. **Loan Amount** - County agrees to lend the District up to FOUR HUNDRED AND SIXTY-FIVE THOUSAND DOLLARS (\$465,000) that will be used by the District to complete the Project.
2. **Source of Loan Funds** – County will make the Loan to District from available County funds including but not limited to the “County One-Time Expense Fund” as set forth in Section 2.80.060 *et seq.* of Article 2.8, Chapter 2.80 of the County's Ordinance Code.
3. **Term of Loan** - District agrees to fully repay the Loan Amount plus accrued interest no later December 15, 2036. Beginning April 5, 2021, the District shall make at least two (2) payments per year thereafter to County no later than April 15 and October 15 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 1.372%, which rate was derived from the net earnings rate paid on pooled reserves in the County Treasury in August 2020.
- 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 April 15 and October 15 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 District, including all rates, fees, and charges as received by the District for services, and all other income and revenue howsoever derived by the District from ownership or operation of the District or arising from the District.
- 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

and transport facilities, including easements thereof, owned by the District, and all other 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, or works.

- 7. Security** – The District agrees that repayment of the outstanding Loan Amount under this Agreement shall be made from “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 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 the Controller’s designee, upon request.

ATTEST:

COUNTY OF SAN MATEO

Clerk of the Board

President, Board of Supervisors

ATTEST:

BURLINGAME HILLS SEWER
MAINTENANCE DISTRICT

Clerk of the District

President, Board of Supervisors,
as the Governing Board of the District