

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between City of Sunnyvale (hereafter “Sunnyvale”), a chartered municipal corporation, and the City of San José, (hereafter “San José”) a chartered municipal corporation. “Parties,” when referenced herein, includes Sunnyvale and San José, collectively.

WHEREAS, Sunnyvale filed a government claim with San José on April 13, 2021 (hereafter the “Claim”); and

WHEREAS, Sunnyvale alleges that since the mid-1950s, Sunnyvale has provided sewer service to a tract of 151 single-family homes within West San José known as Tract 1379, depicted on Exhibit A attached hereto, commonly referred to by Sunnyvale staff as part of the Sunnyvale’s larger Rancho Rinconada service area, and including the three-lot subdivision on Kimberly Street recorded in Book 352, Page 2, in the official records of Santa Clara County, Office of the County Clerk-Recorder; and

WHEREAS, Sunnyvale alleges that the homes on Tract 1379 were built on what was originally unincorporated land of Santa Clara County and annexed to San José in 1956; and

WHEREAS, Sunnyvale alleges that after San José annexed Tract 1379, Sunnyvale continued to provide sewer service to Tract 1379 and collecting service fees from the homeowners; and

WHEREAS, Sunnyvale alleges that on or about December 21, 2020, during routine sewer flushing of the Tract 1379 service area, Sunnyvale sewer crews discovered that a new manhole had been constructed downstream of Sunnyvale manhole #A146-203 on the eastbound side of Bollinger Road; and

WHEREAS, Sunnyvale alleges that upon further investigation, Sunnyvale staff learned that a San José sewer construction project had plugged the Sunnyvale sewer pipe that connected Sunnyvale manhole #A135-219 on Newsom Avenue and installed a new sewer pipe that diverts flow from the homes in Tract 1379 into the San José sewer system; and

WHEREAS, Sunnyvale alleges that the work performed by San José to divert the flow from Tract 1379 was done without Sunnyvale’s knowledge or approval; and

WHEREAS, Sunnyvale alleges that San José’s actions damaged Sunnyvale’s property and have resulted in ongoing loss of sewer service revenue from the Rancho Rinconada service area; and

WHEREAS, San José disputes the allegations from Sunnyvale; and

WHEREAS, during the course of settlement discussions, the Parties recognized there are two (2) additional Rancho Rinconada service area commercial parcels annexed

to San José in 1956, near the southeast corner of Stevens Creek Boulevard and Stern Avenue; and

WHEREAS, the two commercial parcels are located at 5696 Stevens Creek Boulevard, San José, CA (Assessor's Parcel Number 375-12-017) and 90 Stern Avenue, San José, CA (Assessor's Parcel Number 375-12-014) (collectively "Commercial Parcels"); and

WHEREAS, the commercial parcel known as 90 Stern Avenue, San José, CA (Assessor's Parcel Number 375-12-014) is currently connected to San José's sewer service system and Sunnyvale collects the sewer service fees; and

WHEREAS, Sunnyvale collects the sewer service fees for the commercial parcel known as 5696 Stevens Creek Boulevard, San José, CA (Assessor's Parcel Number 375-12-017) and San José believes that it is currently connected to Sunnyvale sewer system and Sunnyvale; and

WHEREAS, as part of this Agreement the Parties desire to have San José own, operate, and maintain the sewer service system for Tract 1379 and the Commercial Parcels as further described below since Tract 1379 and the Commercial Parcels are located within the City of San José and San José's Urban Growth Area and Urban Service Area; and

WHEREAS, the Parties now undertake to settle the Claim (including the Commercial Parcels) in its entirety by entering into this Agreement, pursuant to which Sunnyvale releases and extinguishes on a final basis all claims and potential claims against San José arising out of, or in any way connected with, the subject matters described herein comprising the Claim and Commercial Parcels; and

NOW THEREFORE, the Parties agree as follows:

1. Scope of Settlement. This Agreement shall settle, compromise, and forever discharge all claims of any and every kind, nature and character, which Sunnyvale alleged, or could have alleged, in the Claim (including the Commercial Parcels) arising from or based on any act or omission by the City of San José, City Departments, City elected officials, and all City employees, named or who could have been named in the Claim.

2. Consideration. In consideration for the agreements, promises, covenants, releases, and waivers, stated herein, the Parties agree as follows:

- a. San José shall pay the total sum of eight hundred thousand dollars (\$800,000) in the form of a check payable to the City of Sunnyvale, who shall provide a W-9 prior to issuance of payment. Payment from San José to Sunnyvale shall be made within sixty (60) days from full execution of this Agreement. Said payment shall compensate Sunnyvale for any and all damages claimed, or which Sunnyvale could have claimed, arising from or related in

any way to the subject matters in the Claim and Commercial Parcels.

- b. Sunnyvale fully acknowledges and agrees that this Agreement memorializes the transfer to San José the ownership of the sewer services system within Tract 1379 including the pipeline and appurtenant facilities and equipment. Sunnyvale further acknowledges and agrees, if requested by San José, Sunnyvale shall make, execute, acknowledge and deliver such other instruments and documents, and take all such other actions as may be reasonably required in order to confirm the transfer to San José the ownership of the sewer service system within Tract 1379, including the pipeline and appurtenant facilities and equipment.
- c. Notwithstanding anything to the contrary, the Parties acknowledge and agree that this Agreement shall supersede, replaces, and/or otherwise takes precedent over any prior agreements, arrangements, or practices related to the sanitary sewer system within Tract 1379 and the Commercial Parcels.
- d. Sunnyvale acknowledges and agrees that effective July 1, 2023, it relinquishes and disclaims any and all rights to collect any sewer service fees or sewer related fees within Tract 1379 and on the commercial parcel known as 90 Stern Avenue, San José (Assessor's Parcel Number 375-12-014).
- e. As for the commercial parcel known as 5696 Stevens Creek Boulevard, San José, (Assessor's Parcel Number 375-12-017), this parcel may be redeveloped in the future. The Parties will investigate to confirm that this parcel is currently connected to Sunnyvale's sanitary sewer system. If it is determined that the parcel is already connected to San José's sewer system, Sunnyvale shall relinquish and disclaim any and all rights to collect sewer service fees or sewer related fees from the parcel at that time. If the Parties determine that the parcel is connected to Sunnyvale's sanitary sewer system, Sunnyvale shall relinquish and disclaim any and all rights to collect sewer service fees or sewer related fees from the parcel when the parcel is redeveloped at a future date and a sanitary sewer connection from said parcel to San José's sanitary sewer system is established.

3. Release. Sunnyvale and Sunnyvale's representatives, successors, assigns, attorneys, and agents, hereby generally releases and forever discharge San José and all past and present employees, whether or not the employee was named individually in the Claim. For purposes of this Agreement, the City of San José includes, without limitation, all City Departments and Agencies, the City Council, all past and present elected and appointed officials, City employees, and any person or entity to which the City may owe

an obligation of contractual or implied indemnity relating to a released claim. The release includes, without limitation, any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees, and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged in the Claim, or that could have been alleged in the Claim, whether or not such claims were actually asserted in the Claim.

4. Release of Unknown Claims. Sunnyvale understands this Agreement is a full and final settlement of all disputes and matters arising out of any subject matter identified in this Agreement, including but not limited to all claims and causes of action asserted, or which could have been asserted in the Claim, and all present and future unknown and unanticipated injuries, losses or damages arising out of the Claim (the "Released Matters"). Sunnyvale acknowledges and understands Section 1542 of the Civil Code of the State of California provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

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Initials

Sunnyvale represents that he/she has read, reviewed with counsel, and understood Civil Code Section 1542, and that he/she hereby waives all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the subject of the Claim based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

5. Liability Not Admitted. The Parties acknowledge and agree that San Jose's payment represents a compromise and release of disputed claims and that neither the payment, nor anything stated in this Agreement, constitutes or represents an admission by the San Jose, or any other Party, of liability or responsibility of any kind, or a concession by any Party that assertions or allegations regarding the claims alleged in the Claim are valid. Each Party fully assumes the risk that the facts or law surrounding such claims, and/or the other matters settled pursuant hereto, may be other than that Party believes them to be.

6. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with the Claim, this Settlement Agreement, and the matters settled pursuant to this Settlement Agreement.

7. Consultation with Counsel. The Parties and each of them acknowledge they have carefully read and understand the terms of this Settlement Agreement and have consulted with legal counsel of their choice prior to execution and delivery of this

Agreement. The Parties have voluntarily accepted the terms stated herein for the express purpose of making a full and final compromise and settlement of the Claim.

8. Representations. Each person executing this Settlement Agreement hereby warrants that he/she has full authority to do so. Sunnyvale further represents and warrants that he/she is the sole and rightful owner of the claims asserted in the Claim; that he/she has not assigned any claim or claims, or the right to receive payments that are the subject of this Agreement; and that no liens on the settlement proceeds have been asserted or exist.

9. Severability. If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce the remaining provisions to the extent permitted by law.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

11. Binding Force and Effect. This Agreement shall be governed by California law. It shall bind and inure to the benefit of all Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

12. Entire Agreement. This document is a fully integrated contract. It contains all agreements, covenants, understandings, representations, and warranties between the Parties concerning the subject matter of the Agreement. The Parties have made no other express or implied agreements, covenants, understandings, representations, or warranties concerning the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, understandings, representations, covenants, and warranties concerning the subject matter of this Agreement, other than those referred to herein, are merged herein. This Agreement cannot be modified or amended by the exchange of electronic communications or any means other than a fully integrated writing signed by all Parties.

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IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

CITY OF SUNNYVALE,  
a chartered municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kent Steffens, City Manager  
CITY OF SUNNYVALE

Dated: \_\_\_\_\_

CITY OF SAN JOSE,  
a chartered municipal corporation

By: \_\_\_\_\_  
NORA FRIMANN  
City Attorney as Authorized Agent  
for CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John A. Nagel, City Attorney  
City of Sunnyvale

Dated: \_\_\_\_\_

NORA FRIMANN, City Attorney

By: \_\_\_\_\_  
JOHNNY V. PHAN, Chief Deputy City  
Attorney, City of San José