



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

Jennifer A. Maguire
City Manager

**SUBJECT: SETTLEMENT OF CLAIM BY
CITY OF SUNNYVALE**

DATE: December 5, 2022

RECOMMENDATION

- (a) Approve the settlement of a claim filed by the City of Sunnyvale in the total amount of \$800,000 and authorize the City Attorney to execute a settlement agreement.
- (b) Adopt the following 2022-2023 Appropriation Ordinance amendments in the Sanitary Sewer Connection Fee Fund:
 - (1) Decrease the Unrestricted Ending Fund Balance Reserve by \$800,000; and
 - (2) Establish the City of Sunnyvale Sanitary Sewer Settlement appropriation to the Public Works Department in the amount of \$800,000.

OUTCOME

Settlement of a claim filed by the City of Sunnyvale in the total amount of \$800,000. The City of Sunnyvale will discontinue collecting sewer-related fees in San José, and San José will begin collecting its sewer fees from the affected properties.

BACKGROUND

A single-family housing development at the southeast corner of Bollinger Road and Johnson Avenue, Tract 1379, received its original entitlements in August 1955 from Santa Clara County. The following year, the 30-acre property was incorporated into San José as part of a larger annexation (Johnson No. 1A). The developer constructed the subject tract pursuant to the County-approved entitlements, including connection of its sanitary sewer mains to the City of Sunnyvale.

In 2019, the City of San José's Department of Public Works constructed a new 21" sanitary sewer main on Bollinger Road to provide additional capacity to the existing sanitary sewer system. This improvement project allegedly plugged the pipe that had

connected the subject tract to Sunnyvale's sewer system, diverting the sewage flow into the new sewer main and to the San José-Santa Clara Regional Wastewater Treatment Facility. Upon discovery of this diversion, Sunnyvale filed a claim in April 2021 seeking damages from the City of San José, alleging San José did not have Sunnyvale approval to divert the sewer flow and Sunnyvale would be prohibited from collecting future sanitary sewer connection fees from the 151 parcels in the tract.

ANALYSIS

The two cities have reached a tentative agreement to settle the claim. San José would pay Sunnyvale \$800,000, which is the estimated cost of reverting the connection to Sunnyvale. In return, Sunnyvale will discontinue collecting fees (currently \$693.14 per year for a single-family home) from the tract beginning in Fiscal Year 2023-24, at which point San José will collect its Sanitary Sewer and Storm Service Charges (currently \$643.22) and provide all future sewer services to the area.

During the course of settlement negotiations, the cities identified two additional commercial parcels in San José with a similar development history. One of these parcels, at 90 Stern Avenue, already has a sanitary sewer connection to a San José main sewer system. The second, at 5696 Stevens Creek Boulevard, connects to Sunnyvale sewer system. To align the city limit boundary with the city providing sewer services, the settlement will transfer fee collection on the Stern Avenue parcel to San José from Sunnyvale. The remaining parcel will transfer similarly if and when the property redevelops and a connection to a San José sanitary sewer main can be made.

PUBLIC OUTREACH/INTEREST

This memorandum and settlement agreement have been posted on the City's website for the December 13, 2022 agenda.

COST SUMMARY

The settlement will be paid from the Sanitary Sewer Connection Fee Fund.

COORDINATION

This settlement has been coordinated with the Departments of Public Works, Environmental Services and Transportation.

BUDGET REFERENCE

The table below identifies the fund and appropriation adjustments necessary to pay the settlement recommended in this memorandum.

Fund #	Appn #	Appn. Name	Current Total Appn	Rec. Budget Action	2022-2023 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
540	8999	Unrestricted Ending Fund Balance	\$2,701,040	(\$800,000)	180	10/18/2022, 30833
540	NEW	City of Sunnyvale Sanitary Sewer Settlement	N/A	\$800,000	N/A	N/A

CEQA

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

NORA FRIMANN
 City Attorney



JENNIFER A. MAGUIRE
 City Manager

By _____ /s/ Nora Frimann _____

For questions please contact NORA FRIMANN, City Attorney, at (408) 535-1900, and JIM SHANNON, Budget Director, at (408) 535-8142