

**SECOND AMENDMENT TO THE COST-SHARING AGREEMENT BETWEEN
CITY OF SAN JOSE
AND
WEST VALLEY SANITATION DISTRICT OF SANTA CLARA COUNTY
FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF JOINT USE
SANITARY SEWERS**

This Second Amendment (“Second Amendment”) to the Cost-Sharing Agreement Between City of San José (“City”) and West Valley Sanitation District of Santa Clara County (“District”) for Construction, Operation and Maintenance of Joint Use Sanitary Sewers is made and entered into this _____ day of _____, 2022 by and between the City, a municipal corporation and District (formerly County Sanitation District No. 4), a sanitation district organized and existing pursuant to the provision of the Health and Safety Code of the State of California, Division 5, Part 3, Chapter 3 (“Party” individually or “Parties” collectively).

RECITALS

WHEREAS, on June 25, 2002, City and District entered into an agreement entitled “Cost-Sharing Agreement between City of San Jose and West Valley Sanitation District of Santa Clara County for Construction, Operation and Maintenance of Joint Use Sanitary Sewers” (“Agreement”); and

WHEREAS, the term of the Agreement was retroactive to July 2, 2000 through June 30, 2020; and

WHEREAS, on June 30, 2020, the Parties executed a First Amendment to the Agreement which extended the term of the Agreement by two (2) years through June 30, 2022 (“First Amendment”); and

WHEREAS, the Parties now wish to further extend the term of the Agreement by an additional three (3) years through June 30, 2025 in order to provide sufficient time to negotiate the remaining terms of a new Cost-Sharing Agreement;

NOW THEREFORE, in consideration of the promises made and recited herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree to enter into this Second Amendment, which modifies and amends the First Amendment as follows:

1. **Recitals.** The foregoing recitals are true and correct and hereby incorporated herein.

2. **Defined Terms.** All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.
3. **Section VI.A. entitled “Term of the Agreement”** is deleted in its entirety and replaced with the following:

VI. TERM OF THE AGREEMENT

- A. **TERM OF AGREEMENT.** This AGREEMENT shall be in full force and effect for a period from July 1, 2000 through June 30, 2025, inclusive, unless terminated earlier by mutual agreement or by operation of law or due to a material breach by either party.
4. **Effect of Second Amendment.** Except as expressly modified by the Second Amendment, all terms and conditions in the Agreement dated June 25, 2002 and First Amendment dated June 30, 2020 shall remain in full force and effect and the Parties hereby ratify and affirm all their respective rights and obligations under the Agreement and the First Amendment, including but not limited to the indemnification obligations. In the event of any conflict between the Second Amendment, First Amendment and/or Agreement, the provisions of this Second Amendment shall govern.
5. **Counterparts.** Execution of this Second Amendment may be accomplished by execution of separate counterparts by each signatory. The separate executed counterparts, taken together, shall constitute a single agreement.

WITNESS THE EXECUTION HEREOF, the parties hereto have executed this Second Amendment on the day and year first hereinabove written.

City of San José
A municipal corporation

**West Valley Sanitation District
of Santa Clara County**
A Sanitation District

By _____
Toni Taber
City Clerk

By _____
Yan Zhao
Chairperson, Board of Directors

APPROVED AS TO FORM:

Kevin Fisher
Assistant City Attorney

Laura McKinney
District Counsel