

**COST SHARING AGREEMENT AMONG WEST VALLEY SANITATION
DISTRICT, CUPERTINO SANITARY DISTRICT, COUNTY SANITATION
DISTRICT NO. 2-3, BURBANK SANITARY DISTRICT, AND
THE CITY OF MILPITAS**

This Cost Sharing Agreement ("Agreement") is entered into by and between the West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District No. 2-3, Burbank Sanitary District, and the City of Milpitas (each individually a "Party" and collectively the "Parties" or "Common Interest Group") effective the ___ day of February, 2016 ("Effective Date").

RECITALS

A. On August 25, 2015, the Parties formed a Common Interest Group pursuant to a Common Interest, Privilege, and Confidentiality Agreement ("Common Interest Agreement"), in order to exchange privileged and confidential information among themselves to advance their common interests in negotiating amendments to their respective Master Agreements for Wastewater Treatment with the Cities of San José and Santa Clara.

B. Section 3(E) of the Common Interest Agreement contemplates that the Parties may jointly hire one or more consultants or experts to represent the Common Interest Group, and where such consultant or expert is covered by the common interest doctrine or joint defense privilege that applies to the Common Interest Group thereunder.

C. The Parties now desire to hire one or more consultants or experts to provide services on behalf of the Common Interest Group.

D. The Parties further desire to share the costs associated with (i) hiring the consultants or experts; (ii) attorneys' fees associated with any legal services provided on behalf of the entire Common Interest Group by legal counsel retained for the purposes of common interest efforts contemplated in this Agreement, in the amounts specified herein; and (iii) the costs of any mediation.

E. The Parties' adherence to the Common Interest Agreement shall be considered consideration for this Agreement

TERMS AND CONDITIONS

NOW THEREFORE, the Parties agree as follows:

1. **COST SHARING IN COMMON INTEREST EFFORTS**

A. The Parties hereby agree and acknowledge that the following cost categories shall be shared pursuant to the percentages specified in Exhibit A:

i. The hiring of any consultants or experts on behalf of the Common Interest Group, including but not limited to their costs of performing such consulting or expert services on behalf of the Common Interest Group.

ii. Legal services performed by legal counsel retained by the Administrative Agency on behalf of the Common Interest Group and that are intended to benefit the Common Interest Group as a whole and not an individual Party. The costs of such legal services must be reasonable and must be documented using timekeeping software or other reliable methods of documentation.

a. For the purposes of this Agreement, legal services shall specifically exclude time spent by the Parties' respective legal counsel reviewing attorney work product prepared by legal counsel retained by the Administrative Agency on behalf of the Common Interest Group.

iii. The costs of hiring any mediator, arbitrator, or other third-party neutral.

iv. The costs of hiring a third party financial agent, if necessary, as provided in Section 2(B).

B. Nothing herein shall prevent any Party from incurring consultant, expert, or legal costs and fees on its own behalf to support its independent efforts, and to ensure that the Party is adequately defended in any administrative or legal proceeding.

2. ADMINISTRATIVE AGENCY

A. The Parties hereby designate West Valley Sanitation District ("WVSD") as the initial Administrative Agency responsible for entering into contracts with consultants, experts, and legal services on behalf of the Common Interest Group, the payment of any related invoices, as well as overseeing and distributing the reimbursement of costs as provided in Section 3 below. In the event another Party seeks to enter into contracts with consultants, experts, and/or legal services on behalf of the Common Interest Group, such Party shall notify the Common Interest Group of its intention, and the Common Interest Group shall mutually agree in writing to such arrangement.

B. The term of WVSD as Administrative Agency shall end on December 31, 2016, unless WVSD provides written notice of its intent to continue as the Administrative Agency on January 1, 2017. Within ninety (90) calendar days prior to December 31, 2016, WVSD shall provide all Parties with written notice of either its intent to continue as the Administrative Agency, or its intent to resign as the Administrative Agency. Should WVSD resign its position, then another Party may volunteer to act as the Administrative Agency by providing all Parties with written notice prior to the date of resignation. If a Party volunteers to become the Administrative Agency, then the term shall be for a minimum of one (1) year from the date such duties are assumed. Before the term expires, the same procedures shall be followed for providing written notice of an intent to continue as the Administrative Agency or to resign. If no Party volunteers within thirty (30) calendar days after receiving the written

notice of resignation, then the Parties shall hire a third party financial agent to act as the Administrative Agency.

C. In the event another Party becomes the Administrative Agency, all existing contracts with the prior Administrative Agency shall be assigned to the new Administrative Agency. However, in the event a third party financial agent becomes the Administrative Agency, then the Parties shall promptly meet and confer to determine how existing and new contracts shall be managed.

D. The Administrative Agency shall keep sufficient records that would allow appropriate review by an outside auditor at any time, at the request of any Party.

E. The Administrative Agency shall be entitled to a ten percent (10%) administrative fee for carrying out its obligations pursuant to this Agreement. The fee shall be calculated by multiplying the total cost of services subject to cost sharing by one hundred ten percent (110%) and shall be allocated to the parties in accordance with the cost allocation percentages in Exhibit A.

3. PAYMENT PROCEDURE

A. The Parties shall pay their allocated share of costs identified in Section 1(A) twice per year, by June 30 and December 31 of each year (hereinafter referred to as a "Payment Deadline"), based upon the percentages specified in Exhibit A.

B. Sixty (60) calendar days before any Payment Deadline, each Party that has incurred costs identified in Section 1(A) shall provide the Administrative Agency with an itemized statement of costs incurred, attaching all related invoices and other relevant supporting documentation (hereinafter "Statement").

C. Upon receipt of all Statements, the Administrative Agency shall then have thirty (30) calendar days to review and compile all Statements received for that period.

D. Thirty (30) calendar days before any Payment Deadline, the Administrative Agency shall provide the Parties with an invoice of the allocated amounts owed by each Party. The invoice shall attach the Statements received from each Party and indicate the total amount of costs incurred and shared among the Parties for that period, including the administrative fee of ten percent (10%). On each invoice, the Administrative Agency shall indicate the address where payments shall be sent and to whom payments shall be made payable.

E. Unless payment of an invoice under this Agreement is disputed by a Party from which payment is requested, the Parties agree to pay any invoice that is duly presented pursuant to the terms of this Agreement by the Payment Deadline. All payments shall be by check, warrant, or electronic transfer.

4. AUTHORIZATION OF SERVICES

A. The Administrative Agency shall not contract with a consultant or expert on behalf of the Common Interest Group until the Parties mutually agree in writing regarding the hiring of the consultant or expert. After the Administrative Agency or another Party enters into a contract on behalf of the Common Interest Group that is subject to cost-sharing, no particular work shall be performed until each Party reviews and approves the scope of services to be performed and the estimated costs associated with such services, which for purposes of this Agreement shall be defined as a "Scope of Services." The following individuals, on behalf of each respective Party, are authorized to review and approve any Scope of Services:

For West Valley Sanitation District:

Jon Newby, District Manager and Engineer
West Valley Sanitation District
100 E. Sunnyside Avenue
Campbell, CA 95008
jnewby@westvalleysan.org

For Cupertino Sanitary District

Richard Tanaka, District Manager
Cupertino Sanitary District
20863 Stevens Creek Boulevard, Suite 100
Cupertino, CA 95014
rtanaka@markthomas.com

For County Sanitation District No. 2-3

Richard Tanaka, District Manager
County Sanitation District No. 2-3
20863 Stevens Creek Boulevard, Suite 100
Cupertino, CA 95014
rtanaka@markthomas.com

For Burbank Sanitary District

Richard Tanaka, District Manager
Burbank Sanitary District
20863 Stevens Creek Boulevard, Suite 100
Cupertino, CA 95014
rtanaka@markthomas.com

For City of Milpitas

Nina Hawk, Public Works Director
Public Works Department
City of Milpitas

1265 N. Milpitas Boulevard
Milpitas, CA 95035
nhawk@ci.milpitas.ca.gov

B. Each Party shall approve the Scope of Services by email confirmation or by signing the Scope of Services.

C. At no time during the term of this Agreement shall a Party's total allocated share of costs contemplated under this Agreement exceed one hundred thousand dollars (\$100,000).

5. DISPUTE RESOLUTION

If the Administrative Agency disputes a Statement or if a Party disputes any expense provided in an invoice, the disputing party shall notify the other Party, in writing, within (30) calendar days of receiving the disputed statement or invoice. The Parties shall resolve their disputes informally to the maximum extent possible. The disputing Parties shall negotiate all matters in good faith, with the intention of resolving issues between them in a mutually satisfactory manner. If the disputing Parties cannot informally resolve the dispute, they shall first attempt to resolve such dispute through non-binding mediation for a period not to exceed ninety (90) calendar days. If the Parties cannot mutually agree upon a mediator, then the presiding judge of the Santa Clara County Superior Court shall designate a mediator. Should mediation be unsuccessful, the dispute may be referred to private arbitration upon mutual written approval of the disputing Parties. If the disputing Parties do not mutually agree in writing to arbitration, a disputing party may commence an adversarial proceeding before any court of competent jurisdiction in the County of Santa Clara.

6. DEFAULT AND REMEDIES

If a Party fails to make a non-disputed payment by a Payment Deadline, the Administrative Agency shall provide the Party with written notice of non-payment (the "Non-Payment Notice"). Should a Party fail to remedy such non-payment within ten (10) business days of the receipt of a Non-Payment Notice, that Party shall be in default of this Agreement. In the event of default, such amounts due and owed shall bear interest at four percent (4%) per annum. Payment of such interest shall not excuse the non-payment of the underlying obligation, and such interest shall be owing in addition to all other rights and remedies provided to the Administrative Agency under this Agreement, at law and/or in equity, with respect to such non-payment.

7. TERM

This Agreement shall remain in full force and effect until such time as the Common Interest Agreement is terminated.

8. NOTICES

All notices hereunder must be in writing and must be served on the each of the Parties at the mail addresses or e-mail addresses of the individuals executing this Agreement, with copies to their counsel. Contact information may be changed by written notice to the other Parties to the Agreement. Any notice shall be deemed delivered five (5) business days after such mailing date if by U.S. mail, or the next business day if by e-mail. The mailing address, email address, and telephone number of each Party are as follows:

For West Valley Sanitation District:

Jon Newby, District Manager and Engineer
West Valley Sanitation District
100 E. Sunnyoaks Avenue
Campbell, CA 95008
jnewby@westvalleysan.org

With a copy to:

Sarah Quiter, District Counsel
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
squiter@meyersnave.com

For Cupertino Sanitary District

Richard Tanaka, District Manager
Cupertino Sanitary District
20863 Stevens Creek Boulevard, Suite 100
Cupertino, CA 95014
rtanaka@markthomas.com

With a copy to:

Marc Hynes, District Counsel
Atkinson-Farasyk LLP
5050 El Camino Real, Suite 205
Los Altos, CA 94022
hynes.marc@gmail.com

For County Sanitation District No. 2-3

Richard Tanaka, District Manager
County Sanitation District No. 2-3
20863 Stevens Creek Boulevard, Suite 100

Cupertino, CA 95014
rtanaka@markthomas.com

With a copy to:

Michael L. Rossi, Lead Deputy County Counsel
Office of the County Counsel, County of Santa Clara
70 W. Hedding Street, E. Wing, 9th Floor
San José, CA 95110

For Burbank Sanitary District

Richard Tanaka, District Manager
Burbank Sanitary District
20863 Stevens Creek Boulevard, Suite 100
Cupertino, CA 95014
rtanaka@markthomas.com

With a copy to:

Jennifer Faught, District Counsel
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
jfaught@meyersnave.com

For City of Milpitas

Nina Hawk, Public Works Director
Public Works Department
City of Milpitas
1265 N. Milpitas Boulevard
Milpitas, CA 95035
nhawk@ci.milpitas.ca.gov

With a copy to:

Christopher Diaz, City Attorney
Office of the City Attorney
455 East Calaveras Boulevard
Milpitas, CA 95035
christopher.diaz@bbklaw.com

9. SEVERABILITY

If any provision of this Agreement is found invalid or unenforceable, the balance of this Agreement will remain in full force and effect.

10. AMENDMENTS

This Agreement may not be amended except in a writing signed by all of the Parties.

11. JOINTLY DRAFTED

The Parties agree that this Agreement was jointly drafted by each Party, and no inference or rule of construction shall be applied based on the assumption that any individual Party drafted any provision in this Agreement.

12. CHOICE OF LAW

This Agreement shall be interpreted, governed by, and construed under the laws of the State of California. Any dispute regarding this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Santa Clara.

13. COUNTERPARTS AND SIGNATURES

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts together shall constitute one and the same document. Signatures may be transmitted electronically.

14. AUTHORITY

The undersigned individuals represent that they are authorized to execute this Agreement on behalf of their respective Party.

WHEREFORE, the Parties, acting by their respective District Managers and City Manager, have hereto executed and entered into this Agreement as of the date indicated.

[signatures appear on following page]

WEST VALLEY SANITATION DISTRICT

Jon Newby
Jon Newby, District Manager and Engineer
Dated: 2/11/, 2016

Approved as to Form:

Sarah Quiter, District Counsel

CUPERTINO SANITARY DISTRICT

Richard Tanaka, District Manager
Richard Tanaka, District Manager
Dated: _____, 2016

Approved as to Form:

Marc Hynes, District Counsel

COUNTY SANITATION DISTRICT 2-3

Richard Tanaka, District Manager
Richard Tanaka, District Manager
Dated: _____, 2016

Approved as to Form:

Michael L. Rossi, Lead Deputy
County Counsel

BURBANK SANITARY DISTRICT

Richard Tanaka, District Manager
Richard Tanaka, District Manager
Dated: _____, 2016

Approved as to Form:

Jennifer Faught, District Counsel

CITY OF MILPITAS

Thomas Williams, City Manager
Thomas Williams, City Manager
Dated: 3/7/16, 2016

Approved as to Form:

Christopher Diaz, City Attorney

EXHIBIT A

Agency	FY 2015-16 RWF Capital Cost*	Cost Allocation
West Valley S.D.	\$ 8,196,400	34%
Cupertino	\$ 5,417,000	22%
Milpitas	\$ 9,526,900	40%
C.S.D. No. 2-3	\$ 672,800	3%
Burbank	\$ 297,300	1%
TOTAL	\$ 24,110,400	100%

* Source of data: Table 3 San Jose /Santa Clara Water Pollution Control Plant Allocation of Capital Costs
Fiscal Year 2015-16

Expenses Incurred by Common Interest Group

Paid by WVSD

Payment Date	AP Packet #	Vendor #	Vendor Name	Account #	Invoice Date	Description of Invoice	Invoice #	Total Invoice Amount	Allocation				
									WVSD 34%	City of Milpitas 40%	Cupertino Sanitation 22%	Burbank 1%	Sanitation District 2 & 3 3%
1 2/12/16	02636	51741	Singer Associates, Inc.	0-45120-05	1/31/16	Tributary Common Int. Group	130056	\$29,604.44	\$10,065.51	\$11,841.78	\$6,512.98	\$296.04	\$888.13
2 2/26/16	02645	M1257	Meyers Nave	0-45120-05	2/11/16	Coord. Of Common Int. Work Proj	2016010151	\$3,377.50	\$1,148.35	\$1,351.00	\$743.05	\$33.78	\$101.33
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12.													
13.													
14.													
15.													
Sub-total								\$32,981.94	\$11,213.86	\$13,192.78	\$7,256.03	\$329.82	\$989.46

Paid by Other Agencies

Payment Date	Paid By	Vendor Name	Invoice Date	Description of Invoice	Invoice #	Total Invoice Amount	Allocation					
							WVSD 34%	City of Milpitas 40%	Cupertino Sanitation 22%	Burbank 1%	Sanitation District 2 & 3 3%	
1.							\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
2.							\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
3.												
4.												
5.												
Sub-total							\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Grand Total	\$32,981.94	\$11,213.86	\$13,192.78	\$7,256.03	\$329.82	\$989.46
Administrative Fee (10%)	\$2,176.81		\$1,319.28	\$725.60	\$32.98	\$98.95
Total Billable	\$35,158.75	\$11,213.86	\$14,512.06	\$7,981.63	\$362.80	\$1,088.41
Credits - Paid by Agencies	-\$32,981.94	-\$32,981.94				
Total Invoice	\$2,176.82	-\$21,768.08	\$14,512.06	\$7,981.63	\$362.80	\$1,088.41