

**CUPERTINO SANITARY DISTRICT
SANITARY BOARD MEETING
WEDNESDAY, AUGUST 4, 2021**

AGENDA

In accordance with Executive Order N-33-20, meeting to be held at 7:00 p.m. via teleconference [call 1 (866) 899 - 4679 Conference Access Code: 251566821] and anyone interested may also call in. The District Office at 20863 Stevens Creek Blvd, Suite 100, Cupertino is closed.

1. ROLL CALL

2. PUBLIC COMMENTS

THIS PORTION OF THE MEETING IS RESERVED FOR PERSONS DESIRING TO ADDRESS THE BOARD ON ANY MATTER NOT ON THE AGENDA. SPEAKERS ARE LIMITED TO THREE (3) MINUTES.

ALL STATEMENTS REQUIRING A RESPONSE WILL BE REFERRED TO STAFF FOR FURTHER ACTION. IN MOST CASES, STATE LAW WILL PROHIBIT THE BOARD FROM MAKING ANY DECISIONS WITH RESPECT TO A MATTER NOT LISTED ON THE AGENDA.

3. CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District and the City of Milpitas v. The City of San Jose, The City of Santa Clara and Does 1 through 50 inclusive.

4. MINUTES

- A. APPROVAL OF THE MINUTES OF JULY 21, 2021
- B. APPROVED MINUTES OF JUNE 16, 2021

5. CORRESPONDENCE

NONE

**CUPERTINO SANITARY DISTRICT
SANITARY BOARD MEETING
WEDNESDAY, AUGUST 4, 2021**

6. MEETINGS

- A. TELECONFERENCE MEETING OF THE SAN JOSE/SANTA CLARA TREATMENT PLANT TECHNICAL ADVISORY COMMITTEE (TAC) TO BE HELD ON AUGUST 9, 2021 IS CANCELED
- B. CSRMA TRAINING TO BE HELD AUGUST 11, 2021 IN SAN DIEGO, CA
- C. CASA ANNUAL CONFERENCE TO BE HELD AUGUST 11-13, 2021 IN SAN DIEGO, CA
- D. TELECONFERENCE MEETING OF THE SAN JOSE/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE (TPAC) TO BE HELD ON AUGUST 12, 2021 IS CANCELED.

7. REPORTS

NONE

8. UNFINISHED BUSINESS

- A. VALLCO INSTALLER'S AGREEMENT – MAKE READY UTILITIES
- B. COVID-19 UPDATES

9. NEW BUSINESS

- A. SAN JOSE CAPITAL PAYMENT – CHECK REISSUE

10. STAFF REPORT

- A. PEAK FLOW REDUCTION

11. CALENDAR ITEMS

- A. NEXT REGULAR DISTRICT BOARD MEETING IS SCHEDULED TO BE HELD ON WEDNESDAY, AUGUST 18, 2021

12. ADJOURNMENT

CUPERTINO SANITARY DISTRICT BOARD MEETING WEDNESDAY, JULY 21, 2021

The Sanitary Board of the Cupertino Sanitary District convened this date at 7:00 p.m. This meeting was conducted in accordance with the Executive Order N-33-20 via teleconferencing. The District office at 20863 Stevens Creek Blvd, Suite 100, Cupertino was closed.

1. ROLL CALL:

President Saadati called the meeting to order, and the following proceedings were had to wit: Roll call was taken, with the following members in attendance:

Directors present: Angela S. Chen, Taghi S. Saadati, John M. Gatto, William A. Bosworth, and Patrick S. Kwok.

Staff present: District Manager Benjamin Porter, Deputy District Manager Robert Woodhouse, and Counsel Marc Hynes.

District Consultant: Richard Tanaka

Public: None

2. PUBLIC COMMENTS:

There were none.

3. CLOSED SESSION:

President Saadati adjourned the regular meeting session and opened the closed session at 7:01 p.m. Manager Porter and Deputy Manager Woodhouse were excused from the closed session.

- A. Conference with legal counsel – Existing Litigation in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District, and the City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50 inclusive.

The closed session was adjourned at 7:33 p.m. and the regular meeting was called to order. District Manager Porter and Deputy District Manager Woodhouse rejoined the regular meeting.

There was no reportable action.

4. MINUTES & BILLS:

- A. On a motion by Director Bosworth, seconded by Director Chen, by a vote of 5-0-0 the minutes of Wednesday, June 16, 2021, were approved as written.
- B. By consensus, the Minutes of Wednesday, May 19, 2021, is to be Noted & Filed.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, JULY 21, 2021

- C. The Board reviewed June payable warrants and financial statements. Manager Porter discussed the current District financial statement. On a motion by Director Gatto, seconded by Director Kwok, by a vote of 5-0-0, the financial statement and payment of bills were approved as written.
- D. Board members will submit their July timesheets to Manager Porter.

5. CORRESPONDENCE:

- A. The Board reviewed correspondence from the Cupertino Rotary Club, announcing continuation of the 2021 Silicon Valley Fall Festival to be held September 11, 2021. The Board supports participation in the Rotary Club Fall Festival.

6. MEETINGS:

- A. District Manager Porter plans to attend the teleconference meeting of the San Jose/Santa Clara Treatment Plant Technical Advisory Committee (TAC) to be held on August 9, 2021.
- B. Director Kwok plans to attend the teleconference meeting of the San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) to be held on August 12, 2021.

7. REPORTS:

- A. Director Bosworth reported on the CSRMA Board of Directors meeting held on June 24, 2021. Insurance costs have gone up significantly in four of the past five years due to natural disasters in California. As a result, the costs for CSMRA insurance will go up in the future.

8. UNFINISHED BUSINESS:

- A. District Manager Porter reported on COVID-19 updates. Santa Clara County now recommends that all people wear masks when indoors. No change to the ability for the Board to meet virtually. Mark Thomas will return to work in late September with most staff working in the office two days per week.
- B. District Manager Porter reported on the CASA 2021 Annual Conference registration status.

9. NEW BUSINESS:

There was none.

10. STAFF REPORTS:

- A. District Manager Porter reported on future development projects. Vallco has minor comments on the new Installer's Agreement for Make Ready Utilities. On a motion by Director Kwok, seconded by Director Gatto, by a vote of 5-0-0 the Installer's Agreement was approved with non-substantive revisions.
- B. District Manager Porter and Deputy Manager Woodhouse reported on the Peak Flow Reduction.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, JULY 21, 2021

C. District Manager Porter reported on the monthly maintenance report.

11. CALENDAR ITEMS:

The next regular District Board meeting is scheduled to be held on Wednesday, August 4, 2021.

12. ADJOURNMENT:

On a motion properly made and seconded, at 8:23 p.m. the meeting was adjourned.

Secretary of the Sanitary Board

President of the Sanitary Board

CUPERTINO SANITARY DISTRICT BOARD MEETING WEDNESDAY, JUNE 16, 2021

The Sanitary Board of the Cupertino Sanitary District convened this date at 7:00 p.m. This meeting was conducted in accordance with the Executive Order N-33-20 via teleconferencing. The District office at 20863 Stevens Creek Blvd, Suite 100, Cupertino was closed.

1. ROLL CALL:

President Saadati called the meeting to order, and the following proceedings were had to wit: Roll call was taken, with the following members in attendance:

Directors present: Angela S. Chen, Taghi S. Saadati, John M. Gatto, William A. Bosworth, and Patrick S. Kwok.

Staff present: District Manager Benjamin Porter, Deputy District Manager Robert Woodhouse, and Counsel Marc Hynes.

District Consultant: Richard Tanaka

Public: None

2. PUBLIC COMMENTS:

There were none.

3. PUBLIC HEARING:

A. The Board conducted a public hearing on collection of sanitary sewer service charges for Fiscal Year 2021-2022.

1. A Staff presentation was given by District Manager Porter.
2. President Saadati opened the public hearing at 7:05 p.m. to receive testimony from the public. There were no public comments.
3. President Saadati closed the public hearing at 7:06 p.m.
4. The Board discussed proposed collection of sewer charges.
5. On motion by Director Gatto, seconded by Director Kwok, by a vote of 5-0-0, Resolution No. 1331, Confirming Report on Rates and Charges for FY 2021-2022 was approved as written.
6. On motion by Director Gatto, seconded by Director Kwok, by a vote of 5-0-0, Resolution No. 1332, Collection of Rates and Charges for FY 2021-2022 was approved as written.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, JUNE 16, 2021

4. CLOSED SESSION:

President Saadati adjourned the regular meeting session and opened the closed session at 7:08 p.m. Manager Porter and Deputy Manager Woodhouse were excused from the closed session.

- A. Conference with legal counsel – Existing Litigation in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District, and the City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50 inclusive.

The closed session was adjourned at 7:38 p.m. and the regular meeting was called to order. District Manager Porter and Deputy District Manager Woodhouse rejoined the regular meeting.

There was no reportable action.

5. MINUTES & BILLS:

- A. On a motion by Director Gatto, seconded by Director Chen, by a vote of 5-0-0 the minutes of Wednesday, May 19, 2021, were approved as written.
- B. By consensus, the Minutes of Wednesday, May 5, 2021, is to be Noted & Filed.
- C. The Board reviewed May payable warrants and financial statements. On a motion by Director Kwok, seconded by Director Gatto, by a vote of 5-0-0, the financial statement and payment of bills were approved as written.
- D. Board members will submit their June timesheets to Manager Porter.

6. CORRESPONDENCE:

- A. The Board reviewed correspondence from CASA announcing 2021 Annual CASA Conference and CSRMA Training. The conference will be held August 11 – 13, 2021 in San Diego at the Hilton Hotel. The Board will confirm attendance at the next regular Board meeting.
- B. The Board reviewed the LAFCO Budget for Fiscal Year 2021-2022. It is to be Noted & Filed.

7. MEETINGS:

- A. Director Bosworth plans to attend the CSRMA Board of Directors Meeting to be held on June 24, 2021.
- B. TAC AND TPAC meetings for July have been canceled.

8. REPORTS:

- A. Director Gatto reported on the teleconference meeting of the San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) held on May 20, 2021.

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- B. Director Bosworth reported on the Santa Clara County Special Districts Association regular meeting held on June 7, 2021. State Special Districts has a website that CUSD can use at no cost. We may want to apply for available funding that has been approved by the State specifically for State Special Districts (\$100 M) for 5000 State Special Districts.
- C. District Manager Porter reported on the teleconference meeting of the San Jose/Santa Clara Treatment Plant Technical Advisory Committee (TAC) held on June 7, 2021.
- D. Director Kwok reported on the teleconference meeting of the San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) held on June 10, 2021.

9. UNFINISHED BUSINESS:

- A. District Manager Porter reported on COVID-19 updates.
- B. District Manager Porter reported on the Budget for FY 2021-2022. On a motion by Director Gatto, seconded by Director Chen, by a vote of 5-0-0, the Budget for FY 2021-2022 was approved as written.

10. NEW BUSINESS:

- A. The Board reviewed request for reimbursement of sewer permit fees for APN 316-38-065. On a motion by Director Gatto, seconded by Director Chen, by a vote of 5-0-0, reimbursement was approved in the amount of \$700.00.

Director Kwok left the Board meeting (technical difficulties).

- B. The Board reviewed the CSRMA Insurance Renewal and Proposal package. On a motion by Director Bosworth, seconded by Director Gatto, by a vote of 4-0-0, the Board approved the proposal and renewal.

Director Kwok re-joined the Board meeting.

11. STAFF REPORTS:

- A. District Manager Porter reported on future development projects.
- B. District Manager Porter reported on the monthly maintenance report.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, JUNE 16, 2021

12. CALENDAR ITEMS:

The next regular District Board meeting is scheduled to be held on Wednesday, July 7, 2021.

13. ADJOURNMENT:

On a motion properly made and seconded, at 8:40 p.m. the meeting was adjourned.

Secretary of the Sanitary Board

President of the Sanitary Board

I_N_S_T_A_L_L_E_R_'_S
A_G_R_E_E_M_E_N_T

VALLCO UTILITY MAKE READY UTILITIES

THIS AGREEMENT, made this _____ day of _____, 2021, between the CUPERTINO SANITARY DISTRICT of Santa Clara County, California, a public corporation duly organized and existing under Part I Division 6 of the Health and Safety Code of the State of California, hereinafter called "District," and Sand Hill Property Company, a California Limited Liability Company, hereinafter called "Installer";

W_I_T_N_E_S_S_E_T_H

WHEREAS, the District is owner and operator of a sanitary sewer system and facilities along Wolfe Road, Perimeter Road, and additional sanitary sewer easements through the Vallco property, which provides sewer service to the property and a large portion of the entire District;

WHEREAS, the Installer desires to relocate said District owned sanitary sewer system to allow for their future construction of a commercial and residential Mixed-Use development;

WHEREAS, this Agreement will not cover any of the Sewer Conveyance or Sewer Capacity Improvements for the future development. Future upsizing of District-owned sanitary sewer mains will be determined at a future date and will be part of a future Agreement between the parties. This Agreement only covers the sewer relocation discussed below;

WHEREAS, on-site and off-site Sewer Conveyance Improvements, Sewer Development Fees, Treatment Plant Capacity Fees, Permit Review and fees for specific residential and suite tenant improvements, and Peak Flow Mitigation as part of the Inflow & Infiltration Study will be part of a separate future Agreement (s);

WHEREAS, the Installer has submitted a 2nd Revision to their originally submitted project as follows:

- 1) Vallco Town Center, "Make Ready Utility Package" CuSD Permit No. 18-227 and City of Cupertino Building Permit Number B-2018-1854.
 - a. Revised Plans are Revision 2 (R2) and dated 06/15/2021.

These projects will impact the Cupertino Sanitary District facilities as follows:

Demolition					
Pipe Segments					
USMH	DSMH	Length (feet)	Diameter (in)	Material	Comment
L3-6F	T-476	0	8	VCP	Manhole T-476 will be removed. Pipe segment will remain in place and will be capped.
T-476	T-475	271	8	VCP	Complete abandonment

Pipe Segments					
USMH	DSMH	Length (feet)	Diameter (in)	Material	Comment
T-475	Unnamed MH	162	12	PVC SDR26	Complete abandonment
Unnamed MH	Unnamed MH #2	35	12	PVC SDR26	Complete abandonment
Unnamed MH #2	T-474	277	12	PVC SDR26	Complete abandonment
T-490	T-472	122	8	VCP	Complete Abandonment
T-472	T-473	263	15	VCP	Partial Abandonment. Segment is 284' long and 21' will remain in place.
T-473	T-474	150	15	VCP	A portion of this will be replaced with proposed 15" pipe.

Manholes

- Manholes to be Abandoned
 - T-473
 - T-475
 - T-476
 - T-490
 - “Un-named MH” on Perimeter Road
 - “Un-named MH #2” on Perimeter Road

NOW, THEREFORE, IT IS AGREED, as follows:

1. **SEWER CONSTRUCTION:** Installer shall install, or cause to be installed, the said sanitary improvements in strict accordance with the plans, profiles, and specifications approved by District. Installer further hereby agrees to pay any and all costs in connection with the construction of said sanitary sewer facilities, including, but not limited to, materials, work, inspection, supervision, legal, engineering, recording, and all incidental expenses before final acceptance thereof by District.

Installer shall construct on-site sewer system, which once accepted, will be owned and maintained by the District. These facilities include:

New Construction

Pipe Segments						
USMH (CuSD Name)	USMH (Vallco Name)	DSMH (CuSD Name)	DSMH (Vallco Name)	Length (feet)	Diameter (in)	Material
-	SSMH #1	-	SSMH #2	199	15	PVC SDR26
-	SSMH #2	-	SSMH #3	64	15	PVC SDR26
-	SSMH #3	-	SSMH #4	134	15	PVC SDR26
-	SSMH #4	T-474	SSMH EX.	99	15	PVC SDR26

Manholes

- New Manhole Construction:
 - SSMH #1
 - SSMH #2
 - SSMH #3
 - SSMH #4

Segments to be Plugged/Capped

- Segment #300001698
 - Segment will be capped with inflatable plug at manhole 2086-1 on Norwich Avenue
- a) 60 days prior to construction, Installer shall submit the following documents:
 1. Plans for final signoff and approval by the District
 2. Sewer bypass plan for the construction of new sanitary sewer facilities
 3. Material submittals for pipe, manholes, pipe bedding, trench backfill, and other materials. Materials must be in accordance with District Standard Specifications and Details.
 4. Legal description and plats for the new sanitary sewer easements
 5. Quitclaim documentation for existing sanitary sewer easements
 6. Post the Performance and Material bonds in the amount of \$350,000.
 7. Pay fees as described in Section 4 and deposit fees as described in Section 5.
 - b) 15 days prior to construction, Installer shall submit the following documents.
 1. Survey cut sheets showing proposed cuts/fills for the new sewer construction.
 - c) Installer shall hydro-flush and clean the sewer mains and laterals per District's specification standard in presence of District Inspector.
 - d) Installer shall perform closed circuit television video (CCTV) inspection per District specification and NASSCO standard of all newly installed sanitary sewer mainlines, laterals and manholes.
 - e) Installer shall provide CCTV results per District specification and NASSCO standard, for all mainlines, laterals and manholes, to District for review.

- f) Installer shall perform hydrostatic testing and mandrill testing per District's specification standard in the presence of a District Inspector. Final results shall be provided to District Manager for review and final approval.
- g) Once District has approved CCTV and the installation, District will initiate acceptance of the onsite sanitary sewers and begin one-year warranty period.
- h) As each building or tenant occupancy is issued a building permit from the City of Cupertino, District will review building permit application and provide the City with District's comments/recommendation and/or approval. District will continue to track the number of lateral connections and change in use fee. If the change in use fee exceeds previously approved usage, an additional fee will be made payable to the District.
- i) When the building or tenant occupancy is 50% completed, Installer shall hydro-flush and clean the entire main and lateral constructed as part of this project in presence of District Inspector.
- j) When the building or tenant occupancy is 100% completed, Installer shall hydro-flush and clean the entire main and lateral constructed as part of this project in presence of District Inspector and provide CCTV of all mains and laterals constructed.
- k) Installer shall provide CCTV for District review and approval.

3. INSPECTION: Installer hereby agrees to provide and assure said District and its employees and any person or persons designated by it the right to inspect said sanitary sewer facilities, as outlined in section above, and the plans, materials and work thereof at any reasonable time or times before, during or after such are installed.

4. DEPOSITS BY INSTALLER: From time to time the Installer will be asked to pay the District a deposit to pay for District services to support the project. When the deposit amount is expended to 70%, District will determine based on project status and estimated level of work required to complete each new phase of construction. Installer shall agree to deposit additional fees as requested by the District. Any balance of said sum remaining on the District administration fees deposit after payment of all such charges and costs shall be refunded to Installer. No interest shall be paid by District on the money so refunded. If the deposit for District administrative fees is insufficient to pay all such charges and costs, Installer hereby agrees to pay all such charges and costs in excess of the sum so deposited prior to the acceptance of the said sanitary sewer improvements.

- Installer has deposited to District a sum of \$20,000 in the previously entered Installer's Agreement executed on October 28, 2015, for conceptual and preliminary phase for the Vallco Redevelopment.
- Installer has deposited an additional \$70,000 for conceptual and preliminary phase for the Vallco Redevelopment on January 25, 2021.
- Installer has deposited an additional \$75,000 for conceptual and preliminary phase for the Vallco Redevelopment on April 2, 2021.
- The total amount deposited to date is \$ 165,000.

As of June 25, 2021, District staff have expended \$121,477 to support the project. These expended funds represent 74 % (\$121,477/\$165,000) of the total deposited funds. In accordance with the 2015 agreement, the District is requesting additional funding of \$75,000 to be deposited with this agreement as the expended funds have exceeded the 70 percent threshold amount. This work will be performed in accordance with District labor rates which are shown on Attachment 1. These

rates are escalated each year to account for cost of living and inflation costs in the San Francisco Bay Area market.

5. PAYMENT OF FEES TO BE PAID BY INSTALLER:

Installer further hereby agrees to pay:

- a) Deposits described in Section 4 of this agreement.
- b) Sewer Development & Treatment Plant Capacity fees will be required as part of a future Installer's Agreement.

6. SECURITY FOR PERFORMANCE OF WORK:

(a) Performance and Payment Bonds. As security for performance of all work necessary for construction of the sanitary sewer facilities and for payment of all labor and material costs pertaining thereto, Installer or its contractor shall furnish to District two separate performance and payment bonds, on forms provided by District for each phases of project in which District will ultimately take ownership of the constructed sewer facilities. The amount of bonds will be determined from time to time as required.

The performance and payment bonds shall be issued by a surety company admitted to transact business in the State of California, as approved by the District Manager-Engineer, and shall remain in full force and effect at all times during the performance of the work.

The performance and payment bonds shall be issued by a surety company permitted to transact business in the State of California, as approved by the District Manager-Engineer, and shall remain in full force for a period of 5 years from execution of this Agreement.

The estimated construction cost for the planned pipeline and manhole improvements shown on Pages 2 & 3 of this agreement is \$350,000. Therefore, the Installer is required to submit to the District performance and payment bonds in the amount of \$350,000.

(b) Certificate of Deposit As Security. As an alternative to the delivery of performance any payment bonds pursuant to Paragraph (a) above, Installer may elect to deliver to District a Certificate of Deposit payable to District and issued by a bank acceptable to District, in an amount equal to the estimated cost to construct all improvements contemplated by this Agreement, as determined by the District Manager-Engineer. In the event of any default hereunder, District shall be entitled to withdraw any portion or all of the amount deposited irrespective of any interest or penalty that may be charged by the bank for early withdrawal, and District may utilize the funds to complete any unfinished work, or to correct any defective work, or to compensate District for any damage suffered or costs incurred as a result of Installer's default.

(c) Reduction of Security Upon Completion. Upon completion of all construction work and final acceptance of the Sanitary Sewer Facilities by District, Installer may reduce the performance bond or the certificate of deposit, as the case may be, to an amount equal to ten percent (10%) of the original security amount, to secure Installer's obligation hereunder to correct work which is found to be defective or not constructed in accordance with the Approved Plans and Specifications, for a period of one (1) year from the date of final acceptance of the work by District. At the termination of the one (1) year warranty period on any completed improvements, District shall authorize the surety to cancel the bonds, or District shall refund to Installer any balance of the Certificate of Deposit, except for any amount determined by the District Manager-Engineer to be needed for the repair or replacement of any defects subject to warranty under this Agreement, as identified in writing

by the District Manager-Engineer, Installer shall be entitled to any unused interest that may have accrued on the certificate of deposit returned by District to Installer.

7. COMPLIANCE WITH ORDINANCES, RULES AND REGULATIONS: Installer shall comply with all District ordinances, rules and regulations, as now or hereafter amended. Installer must also comply with all State, County, City, and other agency regulations, rules and ordinances affecting, in any manner, the construction of sanitary sewer facilities, and shall obtain any and all necessary permits and shall pay all fees and charges relating thereto or required therefore.

8. TRANSFER OF TITLE: Upon completion of the construction of said sanitary sewer facilities by Installer and final approval thereof by District, title to said sanitary sewer improvements shall be transferred and conveyed to District. Installer waives any and all rights or claim Installer may have to or for any other consideration from District for said transfer of title, except as is otherwise provided by this Agreement.

9. INDEMNIFICATION: Installer shall defend, indemnify and hold District, the District Manager-Engineer, Mark Thomas & Co. Inc., the County of Santa Clara and the City in which the referred to real property is situated, their officers, agents and employees, free and harmless from any liability or claim of liability for costs and expenses incurred, directly, or indirectly, by Installer in the construction of the sanitary sewer facilities, which are the subject of this Agreement. Installer further agrees to require Installer's contractor to maintain full insurance coverage of not less than standard limits, and to defend, indemnify and hold the District, the District Manager-Engineer, Mark Thomas & Co. Inc., and the City in which the referred to real property is situate, their officers, agents and employees, free and harmless from any damage or claim of damage for injury to person or property arising from the activities of Installer and its contractor in the performance of this Agreement.

10. COSTS OF SUIT: In the event legal action is necessary in order to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.

11. SCOPE OF AGREEMENT: This writing constitutes the entire Agreement between the parties, and no modification or waiver of all or any part thereof shall be valid unless in writing and signed by both parties hereto. Waiver by either party of any breach of this Agreement shall not be deemed waiver of any subsequent breach of the same or of any other provision of this Agreement. If any part of this Agreement is held to be indefinite or uncertain or unenforceable, such determination shall not invalidate any other part of this Agreement. This Agreement shall bind and inure to the benefit of the heirs, administrators, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

"DISTRICT"
CUPERTINO SANITARY DISTRICT
Santa Clara County, California

By: _____
President of the Sanitary Board of said District

ATTEST: _____
Secretary of said District

“INSTALLER”
SAND HILL PROPERTY COMPANY, LLC
A California Limited Liability Company

By: _____
Name: _____
Title: _____





Memo

Item 9A

To: Board of Directors

From: Benjamin Porter, District Manager-Engineer

Date: August 4, 2021

Re: Reissuance of Check to San Jose for Treatment Plant Capital Expenses

Summary:

During the July 21, 2021 Board Meeting the Payments of Warrants was approved including a payment of \$1,017,799.00 to the City of San Jose for treatment plant capital expenses. This warrant was drawn from the Cal Bank account, which was funded initially by the loan from Zions Bank. This amount was almost wholly expended in 2019-2020 on Capital Expenses, which is a requirement of the loan to provide a favorable tax position. In February 2021, a refund was issued for overpayment of the 2019- 2020 capital expenses and this amount was transferred into the Cal Bank account to keep the Capital Funds in this designated account.

Repeated use of the Cal Bank funds to pay San Jose capital costs will require subsequent deposits of the annual refunds back into the Cal Bank account, and will require ongoing tracking. However, using the remaining Cal Bank funds to pay for District Capital will make tracking of the San Jose refunds unnecessary. The original warrant for the payment of the San Jose 2021-2022 first quarter payment from the Cal Bank account has been voided.

Recommendation:

Approve payment of the San Jose 2021-2022 first quarter capital payment from the Bank of America account to replace the voided Cal Bank payment.

Attachments:

1. Check to the City of San Jose
2. City of San Jose Capital Billing
3. Letter to the City of San Jose
4. Revised Warrant 19193
5. Revised Warrants Payable Summary

CUPERTINO SANITARY DISTRICT

20863 STEVENS CREEK BLVD. SUITE 100
CUPERTINO, CA 95014
(408) 253-7071



WARRANT
NUMBER

19193

11-35/1210

DATE

7/21/2021

City of San Jose

PAY One Million Seventeen Thousand Seven Hundred Ninety-Nine and 00/100*****

AMOUNT

**1,017,799.00

TO

City of San Jose
Finance-Revenue Management
200 E. Santa Clara St., 13th Floor
San Jose, CA 95113

VOID AFTER SIX MONTHS



VOID - COPY

AUTHORIZED SIGNATURE

⑈019193⑈

Security features. Details on back.



MP

MP

CUPERTINO SANITARY DISTRICT

WARRANT
NUMBER

19193

City of San Jose

7/21/2021

Date Type Reference
7/1/2021 Bill 1199540

Original Amt.
1,017,799.00

Balance Due
1,017,799.00

Discount

Payment

1,017,799.00

Check Amount

1,017,799.00

Checking Account - C

1,017,799.00

WARRANT
NUMBER

19193

City of San Jose

7/21/2021

Date Type Reference
7/1/2021 Bill 1199540

Original Amt.
1,017,799.00

Balance Due
1,017,799.00

Discount

Payment

1,017,799.00

Check Amount

1,017,799.00

Checking Account - C

1,017,799.00

City of San José
200 E Santa Clara St, 13th Floor
San Jose, CA 95113

Debtor Number: 92971
Invoice Number: 1199540
Invoice Date: 07/01/2021

ATTN: BENJAMIN PORTER
CUPERTINO SANITARY DISTRICT
20863 STEVENS CREEK BLVD #100
CUPERTINO, CA 95014

**TERM NET- PAYMENT BECOMES
DELINQUENT 45 DAYS AFTER INVOICE
DATE UNLESS OTHERWISE NOTED.
FAILURE TO PAY THE TOTAL AMOUNT
DUE BY THE DUE DATE CAN BE SUBJECT
TO PENALTIES, INTEREST, AND FEES.**

CAPITAL BILLING
FIRST QUARTER
FISCAL YEAR 2021-2022
DELINQUENT 45 DAYS FROM THE DATE OF INVOICE

**Account: Environmental
Services**

51276000008042

REVENUE FROM
CUPERTINO

\$1,017,799.00

Balance: \$1,017,799.00

Questions regarding the bill call: **LAURA BURKE 408-975-2599**
Questions regarding payment call: **Revenue Management (408) 535-7055**

Please return this portion with your payment in the enclosed envelope



Payment Options:

Pay online: Go to www.csifinance.org and select the appropriate link under the **Make A Payment** section.

By Mail: 200 E Santa Clara St., 13th Floor, San Jose, CA 95113 **Make check payable to:** *City of San Jose*

In Person: City Hall 200 E. Santa Clara Street, Tower, 1st Floor. Cashier's Window

By Phone: 408-535-7055 Credit or Debit Cards accepted

Debtor Number: 92971

ATTN: BENJAMIN PORTER
CUPERTINO SANITARY DISTRICT
20863 STEVENS CREEK BLVD #100
CUPERTINO, CA 95014

Revenue Plus#:

Invoice No.	Citation No.	Amount Due	Amount Enclosed
1199540		\$1,017,799.00	

DISTRICT MANAGER-ENGINEER
MARK THOMAS & COMPANY, INC.
BENJAMIN T. PORTER, P.E.

DISTRICT COUNSEL
ARMENTO AND HYNES, LLP.
MARC HYNES



BOARD OF DIRECTORS
JOHN M. GATTO
WILLIAM A. BOSWORTH
PATRICK S. KWOK
ANGELA S. CHEN
TAGHI S. SAADATI

20863 STEVENS CREEK BOULEVARD, SUITE 100
CUPERTINO, CALIFORNIA 95014-2154
PHONE (408) 253-7071 • Fax (408) 253-5173

July 20, 2021

File: CuSD #21-029

City of San Jose
Finance – Revenue Management
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113

Re: Letter of Protest for Payments of Cupertino Sanitary District Invoice No. 1199539 and 1199540, Operations and Maintenance and Capital Billing, First Quarter Fiscal Year 2021-2022.

To Whom It May Concern,

The Cupertino Sanitary District (“District”) remits the attached payments to the City of San Jose in the amount of \$1,666,844.00 (Invoice No. 1199539), for Operations and Maintenance, and in the amount of \$1,017,799.00 (Invoice No. 1199540), for Capital Billing, First Quarter Fiscal year 2021-2022. The District makes these payments under protest because some or all of the costs (including for capital improvements and/or operation and maintenance) being invoiced are not in compliance with, and/or are not authorized by, the District’s Master Agreement for Wastewater Treatment with the Cities of San Jose and Santa Clara, dated March 1, 1983 (“Master Agreement”).

For the reasons detailed in the *Claims of Breach of Agreement and Inequities* dated January 22, 2016, and *Claims of Breach of Agreement and Inequities* dated September 7, 2016 (both of which were submitted by the District and the other Tributary Agencies) and as set forth in the lawsuit pending in Santa Clara County Superior Court, *County Sanitation District 2-3, et al. v. City of San Jose, et al.*, Case No. 18CV325480, the District reserves its rights and remedies to challenge this billing and all such prior and future billings in accordance with applicable law.

Sincerely,
CUPERTINO SANITARY DISTRICT


John Gatto
Director

CUPERTINO SANITARY DISTRICT

WARRANT REQUEST

Date: July 21, 2021

Warrant No. ~~1008 (CalBank)~~ VOIDED

19193 (B of A)

TO: Accounting
FROM: Benjamin T. Porter
SUBJECT: Payment to City of San Jose for Treatment Plant Capital Billing

FY2021-2022 1st Quarter Billing
Invoice No. 1199540, dated 07/01/2021

\$ 1,017,799.00

WARRANT TO:
City of San Jose
Finance-Revenue Management
200 E. Santa Clara St., 13th Floor
San Jose, CA 95113

APPROVED FOR PAYMENT by MARK THOMAS

ACCOUNT NO. ACCOUNT NAME

710.13 46042 - Treatment Plant Capital

\$ 1,017,799.00

**CUPERTINO SANITARY DISTRICT
WARRANTS PAYABLE - July 21, 2021**

<u>WARRANT NUMBER</u>	<u>FUND</u>	<u>AMOUNT</u>	<u>PAYEE</u>	<u>DESCRIPTION</u>	
N/A	M&O	\$ 1,622.20	ADP	Directors' Salary	
19167	M&O	\$ 1,336.56	eFuel, LLC	Gasoline, Oil, & Fuel	
19168	M&O	\$ 992.08	Dooley Insurance Services	Insurance - Group Life & Dental	
19169	M&O	\$ 331.00	Alliant Insurance	Insurance - ACIP Crime FY21-22	
19170	M&O	\$ 2,462.00	Alliant Insurance	Insurance - AMVP Renewal FY21-22	
19171	M&O	\$ 374.00	CWEA	Memberships	
19172	M&O	\$ 7,802.95	LAFCO	Memberships	
N/A	M&O	\$ 403.58	CalBank Credit Card Processing Fees	Operating Exp. - Credit Card Processing Fees	
19173	M&O	\$ 426,216.45	Mark Thomas	Office Rent	400.00
				Operating Expenses - General	22.23
				Peak Flow Reduction	49,848.88
				Management Services	28,713.65
				Engineering Services	70,564.78
				Plan Checking & Inspection	20,873.88
				Repairs	69,674.90
				Maintenance	171,496.08
				Travel & Meetings Staff	619.96
				Travel & Meetings BOD	1,859.88
				Utilities	1,052.70
				Emergency Funds	7,470.62
				District Sewer Capital & Support	3,618.89
19174	M&O	\$ 1,668,844.00	City of San Jose	T.P. Operations & Maintenance Q1 FY21-22	
19175	M&O	\$ 2,604.00	Akel Engineering	Peak Flow Reduction	
19176	M&O	\$ 2,400.00	V&A Consulting	Peak Flow Reduction	
19177	M&O	\$ 1,300.00	Richard K. Tanaka	Legal - Consultant Services	
19178	M&O	\$ 2,646.00	Armento & Hynes, LLP	Legal - District Counsel (March Services)	
19179	M&O	\$ 153,208.64	Hunton (April & May)	Legal - CIG/Tribs (CuSD Advance Pay)	119,502.74
				Legal - CIG/Tribs (CuSD Share)	33,705.90
19180	M&O	\$ 3,339.60	Bay Area News Group	Printing & Publications	
19181	M&O	\$ 3,010.32	DB, Inc.	Printing & Publications	
19182	M&O	\$ 3,040.00	Pan-Pacific	Repairs	
19183	M&O	\$ 763.80	Home Depot	Maintenance	
19184	M&O	\$ 7,567.56	RotoRooter	Maintenance	
19185	M&O	\$ 53,123.40	Able Underground Construction	Maintenance	
19186	M&O	\$ 56,795.00	AB/JDD Plumbing Heating & AC	Maintenance	56,420.00
				Emergency	375.00
19187	M&O	\$ 19.68	City of Santa Clara Utilities	Utilities	
19188	M&O	\$ 4,653.55	PG&E	Utilities	
19189	M&O	\$ 101.61	San Jose Water Company	Utilities	
BofA 19193 - Callbank	M&O	\$ 1,017,799.00	City of San Jose	T.P. Capital Q1 FY21-22	
19190	M&O	\$ 9,812.12	Hartzell Air Movement	District Equipment	
19191	M&O	\$ 1,478.81	St. Francis Electric	District Equipment	

TOTAL WARRANTS \$ 3,434,047.91 (NOTE: Highlighted amounts are FY21-22 Expenses to be reflected in next month's Financials)

\$ 2,697,238.95 2021-2022 Prepaid Expenses: San Jose, LAFCO, Insurance (Highlighted above)
 \$ 736,808.96 June Warrant Total

Maintenance Total: \$ 289,370.84 Mark Thomas, Home Depot, Roto Rooter, ABLE, AB/JDD
Utilities Total: \$ 5,827.54 Mark Thomas, Santa Clara, PG&E, San Jose Water
Emergency Total: \$ 7,845.62 Mark Thomas, AB/JDD

EMERGENCY DETAILS:

Roto-Rooter - no emergencies this month
 Able - no emergencies this month
 AB/JDD Plumbing - one emergency this month

**CUPERTINO SANITARY DISTRICT
MEETING/EVENT SCHEDULE**

Item 11A

AUGUST 2021

08/04: 1st Regular Meeting
 08/09: TAC - Canceled
 08/11-13: CASA Annual Conference
 08/12: TPAC - Canceled
 08/18: 2nd Regular Meeting

AUGUST 2021						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 1 st Regular Meeting	5	6	7
8	9 TAC	10	11	12	13	14
15	16	17	18 2 nd Regular Meeting	19 TPAC	20	21
22	23	24	25	26	27	28
29	30	31				

SEPTEMBER 2021

09/07: TAC
 09/08: 1st Regular Meeting
 09/09: TPAC
 09/11: Silicon Valley Fall Festival
 09/13: SCCSDA Meeting
 09/22: 2nd Regular Meeting

SEPTEMBER 2021						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7 TAC	8 1 st Regular Meeting	9 TPAC	10	11 SV Fall Festival
12	13 SCCSDA	14	15	16	17	18
19	20	21	22 2 nd Regular Meeting	23	24	25
26	27	28	29	30		

OCTOBER 2021

10/06: 1st Regular Meeting
 10/12: TAC
 10/14: TPAC
 10/20: 2nd Regular Meeting

OCTOBER 2021						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6 1 st Regular Meeting	7	8	9
10	11	12 TAC	13	14 TPAC	15	16
17	18	19	20 2 nd Regular Meeting	21	22	23
24	25	26	27	28	29	30
31						