

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.

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: _____

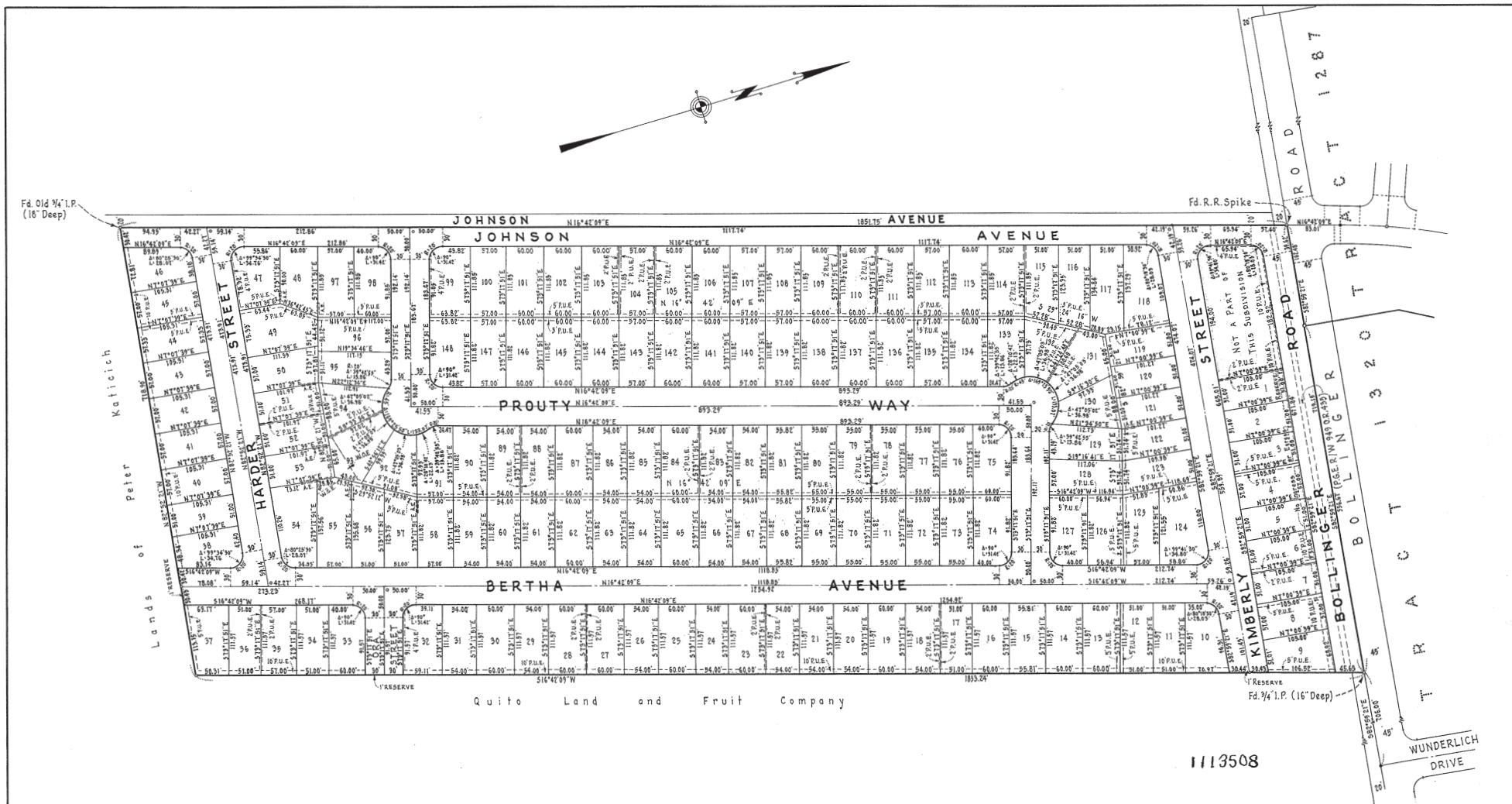
By: _____
John A. Nagel, City Attorney
City of Sunnyvale

Dated: _____

NORA FRIMANN, City Attorney

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

EXHIBIT A



BASIS OF BEARINGS NOTE

The bearing of BOLLINGER ROAD (S82°59'21"E) as shown on the map of TRACT 1287 as filed in Book 48 of Maps, pages 46 & 47 in the office of the Recorder of Santa Clara County was used as the basis of bearings shown upon this map.

NOTES

The blue border indicates the boundary of land subdivided by this map.

All distances and dimensions are shown in feet and decimals thereof.

LEGEND

- $\frac{3}{4}$ " Iron Pipe Monument found.
- $\frac{3}{4}$ " Iron Pipe Monument set. (Monuments in streets are set 5' from centerlines and/or on centerlines extended as shown.)

TRACT 1579
SANTA CLARA COUNTY, CALIFORNIA

BEING A SUBDIVISION OF LOTS 11 & 12, S.R. JOHNSON'S SUBDIVISION OF A PORTION OF THE QUITO RANCHO,
IN SANTA CLARA COUNTY, CALIFORNIA, RECORDED JANUARY 2, 1902 IN "F-2" OF MAPS, PAGE 12

SCALE: 1" = 100' **LAWRENCE G. BRIAN**
CIVIL ENGINEER.

JUNE, 1955

BK.59/51+52 8-1-55

SHEET 2 OF 2 SHEETS

mg

OWNER'S CERTIFICATE

We hereby certify that we are the owners of or have some right, title or interest in and to the real property included within the subdivision shown upon this map, and that we are the only persons whose consent is necessary to pass a clear title to said property, and we consent to the making of said map and subdivision as shown within the border lines and hereby dedicate to public use all the avenues, drives, roads, lanes and walks shown upon said within said subdivision.

We also hereby dedicate for public use easements for public utilities, sewers, and / or drainage and drainage structures under or over those certain strips of land lying between the rear lines and / or side lines of lots and the lines designated as "P.U.E." as shown on said map within said subdivision, said strips of land to be kept open and free from buildings and structures of any kind.

We also hereby dedicate for public use 2'x30' easements for pole anchors designated as "A.E." and being centered on side lines of lots and 30' long.

We also hereby dedicate for public use that certain strip of land designated as "Reserve", being one foot in width across the end of Ora Street, Bertha Street and Kimberly Street, reserved exclusively for the owners of lots in said subdivision, until an additional strip of land adjoining it for the extension of said streets is accepted by the Board of Supervisors of Santa Clara County.

We also hereby dedicate to the County of Santa Clara, and release, relinquish and abandon any and all rights of ingress to and egress from Bollinger Road over and across the southerly line of the 45' foot strip heretofore dedicated for the widening of Bollinger Road.

P.U.E. easements as indicated in area shown as "Not a part of this Subdivision" also dedicated for public use.

VALLEY TITLE COMPANY OF SANTA CLARA COUNTY
(a corporation)

By Don Edwards
President

By Clyda Edwards
Secretary-Treasurer

ACKNOWLEDGMENT

STATE OF CALIFORNIA } S.S.
COUNTY OF SANTA CLARA }

On this 22 day of July, 1955, before me J.D. Castagnoli, a Notary Public in and for the County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared Don Edwards and Clyda Edwards, known to me to be the President and Secretary Treasurer, respectively of the VALLEY TITLE COMPANY OF SANTA CLARA COUNTY, the corporation that executed the within instrument as owner, and known to me to be the persons who executed the same on behalf of the corporation named thereto and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

J.D. Castagnoli
Notary Public in and for the County of Santa Clara,
State of California.

CERTIFICATE OF COUNTY ENGINEER

I hereby certify that I have examined the within final map of TRACT 1379; that the subdivision shown herein is substantially the same as it appeared on the tentative map and approved alterations thereof; that all provisions of the Subdivision Map Act and of any local ordinance applicable at the time of approval of the tentative map have been complied with and I am satisfied that said map is technically correct.

Dated: August 1, 1955

Leonard Bushnell
LEONARD BUSHNELL, County Engineer
of Santa

By: James G. Bracke
Deputy

CERTIFICATE OF ENGINEER

I, Lawrence G. Brian, a Registered Civil Engineer of the State of California, hereby certify that this map, consisting of two (2) sheets represents a survey made under my supervision during June 1954; that the survey is true and complete as shown; that all monuments shown herein actually exist, that their positions are correctly shown, and that said monuments are sufficient to enable the survey to be retraced.

Lawrence G. Brian
Registered Civil Engineer Certificate No. 5597.

CERTIFICATE OF BOARD OF SUPERVISORS

It is ordered that the map of TRACT 1379 be and the same is hereby approved, that all parcels of land offered for dedication to public use for street purposes are hereby accepted. The Public Utility and Anchor Easements are hereby accepted as shown within said subdivision. The widening of Bollinger Road is hereby accepted as shown within said subdivision.

I hereby certify that the foregoing order was adopted by the meeting of said Board on the 1st day of August 1955.

Richard Olson
RICHARD OLSON
Clerk of the Board of Supervisors of the County of
Santa Clara, State of California.

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1113508

CERTIFICATE OF COUNTY RECORDER

Accepted for record and recorded in Book 52 of Maps at Pages 51 & 52 in the Office of the County Recorder of Santa Clara County this 1st day of August 1955, at 4:24 PM.

Syl C. Tully
County Recorder of the County of Santa Clara,
State of California
\$5.00 By E.B. O'Brien Deputy

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SANTA CLARA COUNTY, CALIFORNIA

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SHEET 1 OF 2 SHEETS