

Attachment No. 52

Sample Lateral Loan Agreement

RECORDING REQUESTED BY and AFTER
RECORDING MAIL TO:

East Palo Alto Sanitary District
901 Weeks Street
East Palo Alto, CA 94303
ATTN: General Manager

Recording without fee requested pursuant to Gov. Code § 27383

(Space above this line for County Recorders Use Only)

**AGREEMENT FOR PAYMENT OF INSTALLMENTS
TO FINANCE PRIVATE SEWER LATERALS**

THIS AGREEMENT FOR PAYMENT OF INSTALLMENTS TO FINANCE PRIVATE SEWER LATERALS (“Agreement”) is entered into as of _____, 2019, between _____, (“Participant”) and the **East Palo Alto Sanitary District**, a sanitary district organized pursuant to California Health and Safety Code sections 6420 *et seq.* (“District”) (collectively referred to as “Parties”).

RECITALS

- A. The District is authorized to provide wastewater collection and treatment services to properties located within the jurisdictional boundaries of the District.
- B. In order to receive wastewater collection and treatment services from the District, property owners within the District must construct new, or repair or replace existing, private sewer laterals (the “Improvements”). The cost of Improvements are the responsibility of each property owner requesting service from the District.
- C. The costs for the Improvements may be significant, and the District has determined to provide financial assistance to property owners, upon request, in the form of amortizing the cost of the Improvements over a period of years (the “Installments”).
- D. The District is authorized to enter into voluntary agreements for contractual assessments with property owners for the Improvements pursuant to California Health and Safety Code section 5464 *et seq.* (the “Law”), pursuant to which authority the District may perform the necessary work to complete the Improvements, and collect such costs from the property owner in Installments. The Law further authorizes the District to impose a lien on the property for which the Improvements are provided in order to secure payment of the Installments. The Installments are further authorized to be collected on the property tax roll, pursuant to Health and Safety Code section 5470 *et seq.*
- E. Property-based fees, charges, and assessments, when imposed by a local agency, are subject to the requirements of article XIII D of the California Constitution. Assessments may only be imposed in accordance with notice, protest, and ballot procedures required under article XIII D, section 4, and property-related fees and charges may only be imposed in accordance with

the notice and protest procedures of article XIII D, section 6. Article XIII D also creates substantive requirements applicable to imposition of assessments, and property-related fees and charges (collectively, these requirements are referred to herein as “Article XIII D Requirements”). The Article XIII D requirements are inapplicable to amounts charged as a result of voluntary, arms’ length negotiations, or amounts charged as a part of a voluntary arrangement with the agency, such as the Installments proposed to be charged for financing the costs of the Improvements.

F. Participant is the owner of certain real property within the District requiring the Improvements, as more particularly described in Exhibit A hereto. Participant has requested assistance with financing the costs of the Improvements through entering into this Agreement for payment of Installments, and the District has agreed to provide such assistance.

G. In order to allow Participant to finance the Improvements, the District will be required to pay the up-front costs of the Improvements, to be repaid by the Installments. In consideration for providing such assistance to Participant, Participant wishes to acknowledge and agree that this Agreement is voluntary in nature, and the Installments are not “imposed” for purposes of the Article XIII D Requirements, and therefore, the Article XIII D Requirements do not apply. Participant further wishes to enter into this Agreement for establishing the terms for the Installments, including term, interest rate, enforcement mechanisms, and other matters set forth herein.

NOW, THEREFORE, the District and the Participant agree as follows:

Section 1. **Recitals.** The foregoing Recitals are true and correct.

Section 2. **Participant’s Obligations.**

(a). **Advances to the District for Agreement Expenses.** Participant shall, immediately upon execution of this Agreement, advance the initial sum of \$ [REDACTED] (the “Advance”) to the District to be used for reimbursing the District for the costs associated with preparing and entering into this Agreement, for the costs of implementing this Agreement and the Installments, including any costs associated with enforcement of this Agreement, and placement of the Installments on the property tax roll. If monies in addition to the Advance are necessary for such purposes, the District shall as necessary and from time to time make written demand upon Participant and Participant shall immediately thereafter, within five (5) working days, deposit said monies with the District to pay for such additional expenses. If any such additional monies are not timely received, all actions taken for the implementation of this Agreement shall, at the option of the District and after providing written notice of such suspension to Participant, be suspended until such monies are received or canceled.

(b). **Payment of Installments.** Participant further agrees to pay the Installments required under this agreement, subject to the terms set forth herein.

1. **Term.** Participant agrees to pay the Installments for a term of [REDACTED] years.

2. **Interest Rate.** Participant agrees to pay interest on the outstanding amount due for the Improvements at the rate of % per annum.

3. **Total Cost of Improvements.** The total cost of the Improvements is \$. The total amount of interest to be paid is \$.

4. **Payment Schedule.** The Improvements shall be paid in annual Installments, as set forth in Exhibit B hereto, which amounts shall include both the principle and interest component for each Installment. Each Installment shall be due on the dates set forth on Exhibit B hereto, and shall be the responsibility of Participant.

5. **Collection on Property Tax Roll.** The District may take action in any year, subject to approval by the District's Board of Directors, to provide for collection of the Installments on the property tax roll in the same manner and at the same time as property taxes, pursuant to the authority granted in Health and Safety Code section 5465, and 5470 *et seq.*. Should the District's Board of Directors determine to place the Installments on the property tax roll, Participant agrees not to submit a written protest or otherwise take any action to prevent the District from placing the Installments on the property tax roll.

Section 3. **District's Obligations.**

(a). **Implementation of Agreement.** The District shall take all actions necessary to collect the Installments as set in Exhibit B hereto, following (i) execution of this Agreement by the Parties, and (ii) payment by Participant of the Advance to the District.

(b). **Use and Administration of the Participant Advances.** The District shall use the Advance solely for the payment of expenses relating to implementation and enforcement of this Agreement and the Installments. The District agrees to keep records consistent with its regular accounting practices of the amount of monies advanced by the Participant and the expenditure of such monies. Additionally, the District shall enter into and maintain contracts with all consultants and contractors providing services related to construction of the Improvements, implementation of this Agreement and the Installments that shall specify the scope of services and compensation to be paid to all such consultants. Such records and contracts shall be available for copying by the Participant at Participant's expense, and review during normal business hours upon reasonable notice to the District. If the proceedings to construct the Improvements are not completed and are abandoned by either Party hereto for any reason at any time prior to the completion thereof, there will be no obligation on the part of the District to reimburse Participant for any monies previously advanced pursuant to this Agreement; provided, however, the District does agree to return to Participant any monies previously advanced which remain on deposit with the District and which the District determines are in excess of the amount necessary to pay for any outstanding expenses previously incurred by the District for the purposes of implementing and/or enforcement this Agreement or constructing the Improvements.

(c). **Construction of Improvements.** With the execution of this Agreement and with payment by Participant of the Advance, the District shall commence or contract for the construction of the Improvements.

Section 4. **Participant's Representations.**

(a). Participant understands and acknowledges that:

1. California Constitution, article XIII D, section 4 ("Article XIII D") establishes certain procedural and substantive requirements which apply when any local agency, such as the District, imposes a new or increases an existing property-related assessment.

2. The procedural requirements of Article XIII D include, among other things, the following:

A. The local agency shall identify the parcels upon which the assessment shall be imposed and provide written notice by mail of the proposed assessment to the record owner of each identified parcel.

B. The notice shall identify (i) the amount of the assessment; (ii) the basis upon which the amount was calculated; (iii) the reason for the assessment; and the (iv) date, time, and location of a public hearing on the proposed assessment.

C. The local agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the public hearing and the proposed assessment, accompanied by an assessment ballot whereby the owner of property proposed to be assessed may express such owner's support for or opposition to such assessment. After the public hearing has been closed, the public agency shall tabulate all assessment ballots received prior to the closure of the public hearing. The agency shall not impose the assessment, if there is a majority protest. A majority protest exists if the assessment ballots submitted in opposition to the levy of assessments outweighs the assessment ballots submitted in support to the levy of the assessments. Each assessment ballot is weighted according to the amount of the assessment proposed to be levied on the parcel for which such assessment ballot has been submitted.

3. The substantive requirements of Article XIII D include, among other things, the following:

A. Revenues derived from any assessment shall not exceed the special benefit provided to the property and improvements.

B. Revenues derived from the assessment shall not be used for any purpose other than that for which the assessment was imposed.

C. The amount of the assessment levied on a parcel shall not exceed the special benefit received by such parcel from the improvements being financed by such assessment.

4. California Constitution article XIII D, section 6 also sets forth certain procedural and substantive requirements any time a local agency imposes a new or increases an existing property-related fee or charge. Procedural requirements include holding a public hearing, with notice provided at least 45 days in advance, at which public hearing a majority of affected property owners or customers of record may protest the property-related fee or charge. Additional substantive requirements apply, including requirements that the property-related fee or charge not exceed the proportional cost of service, and be used only for the services for which the fee or charge is imposed.

5. The description of the procedural and substantive requirements established by and contained in Article XIII D set forth above are intended only to summarize certain of such procedural and substantive requirements, and were previously defined as the Article XIII D Requirements.

6. Participant has had a reasonable opportunity to thoroughly read and review the Article XIII D Requirements in their entirety and has further had a reasonable opportunity to consult with Participant's attorney regarding the Article XIII D Requirements.

(b). Participant and District acknowledge, understand, and agree that this Agreement is entered into for the benefit of Participant, in order to accommodate Participant's request to finance the Improvements. Participant and District further acknowledge, understand and agree that the Installments represents the reasonable estimate of the cost of the Improvements, plus interest as authorized by law. Participant further acknowledges, understands and agrees that District is entering into this Agreement with Participant in reliance on Participant's acceptance of and agreement with the amount calculated for the Installments, and that District would not have entered into this Agreement had Participant not agreed to such amounts. Participant further acknowledges, understands, and agrees that this Agreement is voluntary in nature, and is the result of an arms' length negotiation in which Participant had the opportunity to consult with independent counsel. As such, the Installments are not "imposed" for purposes of article XIII C or article XIII D of the California Constitution, and the Article XIII D Requirements do not apply and are otherwise waived. Such understanding, acknowledgement, and waiver are granted knowingly and in consideration for the District's willingness to finance Participant's Improvements through the Installments, and in order that the District may be assured of its ability to be repaid for the Improvements with the Installments.

Section 5. **Effect of Agreement.** Nothing contained herein shall be construed as releasing Participant from any condition of or requirement imposed by the District, including payment of any other fee, charge, tax, or assessment of District, or any other agreement with the District or by any law rule, or regulation of the District, the County of San Mateo, the State of California, or the federal government respecting the Property.

Section 6. **Lien; Recordation.** Upon execution of this Agreement by the parties hereto, District shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Mateo. The Parties hereby acknowledge and agree that this Agreement, and the obligation of Participant to pay the Installments, shall constitute a lien on the Property.

Section 7. **Events of Default.** The following events shall each constitute an Event of Default hereunder:

(a) Failure to make any Installment due hereunder, provided the District shall provide a grace period of five (5) business days from the due date of each Installment in the event the Installments are not collected on the property tax roll.

(b) Failure to comply with any other provision hereunder.

(c) In the event the District's Board of Directors determines to place the Installments on the property tax roll, submission by Participant of a protest against placement of the Installments on the property tax roll.

Section 8. **Remedies.** If an Event of Default occurs, Participant agrees and acknowledges that such a default shall be treated in the same way as a violation of any of the District's ordinances, rules, or regulations, as they exist on the date of such Event of Default, and all remedies existing thereunder shall be available to the District in the enforcement of this Agreement. In addition, upon occurrence of an Event of Default, the District shall have any of the following additional remedies:

(a) The District may terminate this Agreement and declare all amounts remaining of the Installments immediately due and payable on the date thereof.

(b) If Participant fails to pay the Installments, the District may initiate proceedings for termination of sewer service in accordance with the District's ordinances, rules, or regulations, or whatever policy for termination of sewer service exists at such time. Sewer service shall not be resumed until all delinquent charges, including the Installments due hereunder, as well as costs of disconnection and reconnection, have been paid in full to the District.

(c) The District may exercise any and all other remedies available to the District under law. To the extent the Installments are collected by the County of San Mateo on the property tax roll, the Installments shall be subject to the same remedies and enforcement mechanisms applicable to property taxes.

(d) In addition, if an Event of Default under Section 7(c) occurs, the District, in its sole discretion, may opt not to terminate this Agreement, but shall be entitled to charge an additional 12% of the amount of each Installment not collected on the property tax roll, in order to compensate the District for the costs of manually collecting the Installments.

Section 9. **Indemnification.** To the fullest extent permitted by law, Participant shall defend (with counsel of the District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, in any manner arising out of, pertaining to, or incident to the construction or installation of the Improvements, or the subject matter of this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Participant's obligation to indemnify shall not be restricted to insurance proceeds, if any,

received by Participant, the District, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

Section 10. **Miscellaneous Provisions.**

(a) **Applicable Law.** This Agreement and any disputes relating to this Agreement shall be construed under the laws of the State of California.

(b) **Venue.** In the event of any legal or equitable proceeding to enforce or interpret the terms or conditions of this Agreement, the parties agree that venue shall lie in San Mateo County.

(c) **Modification.** This Agreement may not be altered in whole or in part except by a modification, in writing, signed by the parties hereto.

(d) **Entire Agreement.** This Agreement, together with all the exhibits attached hereto and thereto, contains all the representations and the entire understanding between the parties. The parties mutually declare that there have not been any oral promises or agreements not contained in this Agreement. Participant further expressly agrees that Participant has not relied upon any oral promises or oral agreements of anyone connected with the District in executing this Agreement.

(e) **Binding Effect.** This Agreement shall inure to the benefit of a binding upon the parties and their respective purchasers, successors, heirs, and assigns.

(f) **Unenforceable Provisions.** The terms, conditions, and covenants of this Agreement shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Agreement, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.

(g) **Representation of Capacity to Contract.** The party signing this Agreement on behalf of Participant hereby expressly warrants and represents that he/she has the authority to execute this Agreement on behalf of the Participant.

(h) **Opportunity to be Represented by Independent Counsel.** Participant warrants and represents that he/she has been advised to consult independent legal counsel of Participant's own choosing and has had a reasonable opportunity to do so prior to executing this Agreement. Participant further warrants and represents that he/she has carefully read all of this Agreement and has executed this Agreement voluntarily and with full understanding of all terms and conditions herein.

(i) **Notices.** All letters, statements, or notices required pursuant to this Agreement shall be deemed effective upon receipt when personally served or sent certified mail, return receipt requested, to the following addresses:

To Participant:

[Insert contact information]

To District:

East Palo Alto Sanitary District
ATTN: General Manager
901 Weeks Street
East Palo Alto, CA 94303

(j) **Attorney’s Fees.** In the event any action or proceeding is filed by anyone to challenge, invalidate, interpret or enforce this Agreement, the prevailing party between the District and the Participant shall be entitled to recover all attorney’s fees and litigation expenses in addition to all other relief afforded by applicable law.

EAST PALO ALTO SANITARY DISTRICT

PARTICIPANT

By:

By:

Akin Okupe
General Manager

[INSERT NAME OF PARTICIPANT]

ATTEST:

By:

Board Secretary

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

ON _____, before me,
_____, Notary Public,
personally appeared _____,
_____ who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

ON _____, before me,
_____, Notary Public,
personally appeared _____,
_____ who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (SEAL)

ATTACHMENT A

DESCRIPTION OF PROPERTY

[insert legal description of Property]

ATTACHMENT B

INSTALLMENTS

[insert amortization schedule]