

**AGREEMENT FOR CONSTRUCTION
AND USE OF SEWER FACILITIES**

THIS AGREEMENT, entered into this ____ day of _____, 2003, by and between Dr. Lloyd A. and Margaret A. Kwok, hereinafter called "Developers" and BURLINGAME HILLS SEWER MAINTENANCE DISTRICT, of the County of San Mateo, State of California, hereinafter called "District".

W I T N E S S E T H:

WHEREAS, this Board acts as the governing board of the BURLINGAME HILLS SEWER MAINTENANCE DISTRICT , and

WHEREAS, Section 4888 of the Health and Safety Code authorizes said District to contract with any person, firm or corporation for the joint use of sewer facilities, and for the construction, maintenance and payment for said facilities as stipulated by terms and conditions which may be agreed upon by the parties; and

WHEREAS, under the terms or said agreement, Developers agree to construct, or cause to be constructed, the sewer facilities described therein at their own expense and thereafter to convey said facilities to said District for the joint use by the Developers and the District; and

WHEREAS, the District in return for construction of said sewer facilities by the Developers shall attempt to cause reimbursement to be made to Developers by future users of said system as a condition for granting permission to connect to the new sewer facilities pursuant to the terms and conditions set forth in said agreement:

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO as follows:

1. Construction of Sewer Facilities by Developers

Developers shall furnish or cause to be furnished, at their own expense, all labor, materials, tools, and equipment and all incidental work and services required for the construction of a sanitary sewer consisting of approximately 680 L.F. of 6" diameter PVC (SDR-35) sewer line, manholes and appurtenances from the vicinity of 6170 Skyline Blvd. to a existing sanitary sewer main in accordance with plans and specifications prepared on Drawing # 9770 by Al Pascual & Associates, 5506 Sunol Blvd., Suite 203, Pleasanton, CA and approved June 22, 1999, on file in the office of the Director of Public Works. The construction of said sanitary sewer facilities were done under the supervision of, and to the complete satisfaction of, the District.

2. **Conveyance of Sewer Facilities to District by Developer**

Upon the completion of said sanitary sewer in the manner herein provided, and upon the acceptance of said facilities by District, Developers shall convey all rights, title and interest in said sanitary sewer free and clear of all costs, liens, encumbrances, or liabilities in connection therewith, except for reimbursement from future connection charges to said sanitary sewer as hereinafter provided. It is expressly understood that unless and until said sanitary sewer is constructed in the manner herein provided, is accepted by District, and is conveyed by Developer to District, title to said sanitary sewer shall remain with Developer, and District shall have no obligation whatsoever with respect to the maintenance of said sanitary sewer.

3. **Reimbursement to Developer**

The Developers shall be reimbursed a portion of the total construction cost, to include engineering, by each property owner desiring to connect their property to the portion of sewer main constructed by the Developers.

The property owners of property desiring connection shall pay a District administrative fee and all other fees in accordance with the schedule in Exhibit "A". Fees shall be calculated annually from the Construction Cost Index (CCI) as determined for the San Francisco Bay Area and listed in the Engineering News-Record since January 1, 2001. Upon receipt of said payment of fees from the property owner, the District shall attempt to refund the Developers within (60) days

Developers shall transmit annually to the District their current mailing address in order that funds collected on their behalf may be dispersed properly. Failure on the part of the Developers to provide a current and complete address may result in delay for the delivery of any refund. The District shall not be held financially liable or responsible for the failure of the Developer to receive said refunds once transmitted by the District or for failure on the part of the District to collect all sums which may be due the Developer.

It is understood that any funds collected on behalf of Developers by the District shall be in addition to the District connection fees in effect at the time application made by the property owner. It is further understood that the District has no obligation to collect reimbursement monies under this agreement.

4. **Termination**

This agreement shall terminate on January 9, 2011.

5. **Hold Harmless**

Developer shall indemnify and save harmless the County, District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description including those to which injunctive or declaratory relief is sought based whole or in part on the District's entering into this agreement.

ORIGINAL

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first hereinabove written.

"DISTRICT"

BURLINGAME HILLS
SEWER MAINTENANCE DISTRICT

Rose Jacobs Gibson, President
Board of Supervisors, County of San Mateo

ATTEST:

John L. Maltbie
County Manager/Clerk of the Board

"DEVELOPERS"

BY  _____ Date Feb 26, 2003

BY  _____ Date 2-26-'03

EXHIBIT "A"

BUY-BACK AGREEMENT

Schedule of Payment

DEVELOPERS:

Dr. Lloyd and Margaret Kwok ("Developers") extended the existing sanitary sewer main on Skyline Boulevard in the Burlingame Hills Sewer Maintenance District ("District").

A. DESCRIPTION

Developers constructed the main extension from the vicinity of 6170 Skyline Boulevard to an existing District sewer main in accordance with plans and specifications prepared on Drawing # 9770 by Al Pascual & Associates, 5506 Sunol Boulevard, Suite 203, Pleasanton, California and approved June 22, 1999, on file in the office of the Director of Public Works. The sanitary main extension was "Dedicated" and accepted by the District on January 9, 2001.

B. AGREEMENT TERMS

Developers have ten (10) years from completion of Dedication of the main line extension to receive a prorated reimbursement from property owners connecting to the extension. Term is from January 9, 2001 through January 9, 2011.

C. TOTAL COST OF CONSTRUCTION

The total Developer's cost for this project is: \$71,981.46.

D. REIMBURSEMENT TO DEVELOPERS

Reimbursements to Developers shall be in accordance with the formula described below. Buy-in costs will be updated by Department of Public Works whenever a new property owner requests connection to the sewer line extension. Base Construction Cost Index or CCI is established as 7,447.99, published in Engineering News-Record for January 15, 2001.

Buy-in Formula

Anyone connecting to the Kwok sewer main extension after January 9, 2001, is required to Buy-in to the sewer main extension throughout the ten year Agreement Term Period. Total Developer's construction costs is \$71,981.46.

First Buy-in

Family A - Formula: To recalculate the buy-in for Family A.

1. Begin with the original total construction and engineering costs (Exhibit B).
2. To compute adjusted costs, adjust the total construction and engineering costs in #1 above with the current Construction Cost Index to compute adjusted costs;
3. Divide #2 above by 2 to yield the buy-in cost for Family A.;
4. Divide the adjusted buy-in cost (item 3) by 1 to yield the distribution to the Kwok Family.

Second Buy-in

Family B - Formula: To recalculate the buy-in for Family B. (Exhibit B).

1. Begin with the original total construction and engineering costs
2. Adjust #1 above with the current Construction Cost Index to compute adjusted costs;
3. Divide #2 above by 3 to yield the buy-in cost for Family B.
4. Divide the adjusted buy-in cost (item 3) by 2 to yield the distribution to Family A and the Kwok Family.

Third Buy-in

Family C - Formula: To recalculate the buy-in for Family C.

1. Begin with the original total construction and engineering costs (Exhibit B).
2. Adjust #1 above with the current Construction Cost Index to compute adjusted costs;
3. Divide #2 above by 4 to yield the buy-in cost for Family C.
4. Divide the adjusted buy-in cost (item 3) by 3 to yield the distribution to Families A, B and the Kwok Family.

Fourth and Successive Buy-in's

Repeat the model for successive buy-in's.

* * * * *

EXHIBIT "B"

KWOK BUY-BACK AGREEMENT

CONSTRUCTION COSTS

I.	San Mateo County Permits & Fees Road Encroachment Permit	\$ 1, 100.00
II.	Architectural (Construction) Plans	\$ 8, 881.46
III.	Cal North Engineering	<u>\$ 62, 00.00</u>
IV.	Total Buy-Back Agreement	<u>\$ 71, 981.46</u>