

**SEWERAGE AGENCY OF SOUTHERN MARIN  
RESTATED JOINT EXERCISE OF POWERS AGREEMENT  
(Restated as of January 27, 2000)**

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This "Restated Agreement" is made and entered into by and between the local government entities who are presently parties to the "Sewerage Agency of Southern Marin Joint Exercise of Powers Agreement" dated June 1, 1979 (the "Agreement") or who subsequently become parties to this Restated Agreement.

#### Recitals

1.0. The Sewerage Agency of Southern Marin (the "Agency") was formed by the Almonte Sanitary District, Alto Sanitary District, City of Mill Valley, Richardson Bay Sanitary District and Tamalpais Community Services District when those public agencies (the "Member Entities") executed the Agreement effective July 1, 1979.

2.0. The Agreement has been amended six times since the Agency was formed. One such amendment, the Second Amendment dated October 15, 1979, added Homestead Valley Sanitary District as a party to the Agreement as a Member Entity.

3.0. The Member Entities of the Agency wish to restate the Agreement for the following reasons:

3.1. To modernize the Agreement by eliminating outdated provisions and by adding new provisions which reflect the Agency's current organizational philosophy and operational practices; and

3.2 To incorporate all of the provisions of the Agreement in a single written instrument.

#### Terms and Conditions

In consideration of the Recitals stated above and the following Terms and Conditions, the Member Entities of the Agency agree that the Agreement shall be amended and restated in its entirety to read as follows:

#### Section 1. Definition of Terms.

"Act" means the provisions of Chapter 5 of Division 7 of Title 1 of the Government Code (commencing with Section 6500) pertaining to joint exercise of powers agreements.

"Agency" means the Sewerage Agency of Southern Marin.

"Agreement" means the "Sewerage Agency of Southern Marin Joint Exercise of Powers Agreement" dated June 1, 1979, together with the six amendments to the Agreement approved prior to the effective date of this Restated Agreement.

"Commission" means the governing board of the Agency.

"Member Entity" means any city or district which is a party to this Restated Agreement. Currently the Member Entities are the: Almonte Sanitary District, Alto Sanitary District, City of Mill Valley, Homestead Valley Sanitary District, Richardson Bay Sanitary District, and Tamalpais Community Services District.

"Sewer Service Charge" means a periodic lump sum charge payable by each Member Entity to the Agency in accordance with this Restated Agreement

"Restated Agreement" means this "Sewerage Agency of Southern Marin Restated Joint Exercise of Powers Agreement".

Section 2. Creation of Agency. The Agency is a public agency of the State of California which was formed by the Agreement pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California relating to the joint exercise of powers common to public agencies. The Agency is a separate public agency apart from the Member Entities and is the agency which shall administer and execute this Restated Agreement.

Section 3. Purposes. The purposes of this Restated Agreement are to continue the Agency and to plan, acquire, construct, maintain, own and operate facilities for the collection, treatment, reclamation and disposal of sewage and other wastewater for the benefit of lands and inhabitants within or without the collective boundaries of the Member Entities.

Section 4. Term and Effect. This Restated Agreement shall become effective when all eligible Member Entities have approved and authorized its execution by their respective governing bodies and it shall continue in full force and effect until the Agency is dissolved as provided in Section 21.2. This Restated Agreement supersedes the Agreement and any other existing agreements between Member Entities providing for wastewater treatment and disposal.

Section 5. Powers.

5.1. The Agency has the power and authority to plan, acquire, construct, maintain, own and operate facilities for the collection, treatment, reclamation and disposal of sewage and other wastewater for the benefit of lands and inhabitants within or without the boundaries of the Member Entities. The Member Entities relinquish, and the Agency assumes for the benefit of the Member Entities, responsibility for all functions pertaining to the treatment and disposal of sewage and other wastewater. The Agency may perform directly or enter into contracts to perform any or all of these functions.

5.2. The Agency is authorized, in its own name, to do all acts necessary for the exercise of its powers for the purposes of this Restated Agreement, including but not limited to any or all of the following:

5.2.1. To make and enter into contracts and apply for and accept grants, advances, and contributions;

5.2.2. To employ agents, consultants and employees;

5.2.3. To acquire, construct, manage, maintain and operate any buildings, works or improvements;

5.2.4. To acquire, hold or dispose of property;

5.2.5. To sue and be sued in its own name;

5.2.6. To incur debts, liabilities, or obligations; to issue revenue bonds, notes, warrants, and other evidences of indebtedness to finance the costs and incidental expenses of the projects of the Agency;

5.2.7. To exercise all powers conferred by the Act;

5.2.8. To exercise all powers conferred by other provisions of this Restated Agreement; and

5.2.9. To exercise all other powers common to the Member Entities not specifically mentioned in this Restated Agreement which may be necessary to carry out the purposes of this Restated Agreement.

5.3. The Agency and/or any one or more of its Member Entities are authorized to participate, jointly or severally, in any program of insurance or self-insurance as to which participation by public agencies is authorized under California law. The expense of participation in such programs shall be shared proportionately by the participants according to their respective responsibilities for the costs of premiums, deductibles, fees, retentions or other assessments of any kind, as well as costs of administration and overhead and other relevant factors. No part of the costs of any such program shall be borne, directly or indirectly, by any party to this Restated Agreement who is not a participant in that program.

5.4. No debt, liability or obligation of the Agency shall constitute a debt, liability or obligation of any Member Entity.

5.5. The Agency has no power to levy or cause to be levied ad valorem property taxes.

5.6. As required by Government Code Section 6509, the manner in which the Agency exercises its powers shall be subject to the restrictions applicable to the exercise of powers by a sanitary district pursuant to the Sanitary District Act of 1923 (Health and Safety Code Section 6400 et seq.).

Section 6. Governing Body of the Agency. The Agency shall be governed by the Commission. Each Member Entity shall appoint one commissioner as its representative on the Commission. Each commissioner shall have one vote. Each Member Entity shall also appoint an alternate who shall exercise the Member Entity's voting right in the absence of the regular commissioner. Each commissioner and alternate shall be a voting member of the governing body of the Member Entity that he or she represents and shall serve at the will and pleasure of that Member Entity.

Section 7. Officers and Duties.

7.1. A President, a Vice-President and a Secretary shall be elected by the Commission from its own members. The term of each office shall be one year and thereafter until a successor is elected.

7.2. The Agency's officers shall perform directly, or, with approval of the Commission, cause to be performed by other Agency representatives, the duties described below and such other duties as may be imposed by the Commission:

7.2.1. President: Sign contracts and other instruments on behalf of the Agency.

7.2.2. Vice President: Act in the absence of the President.

7.2.3. Secretary: Countersign contracts and instruments on behalf of the Agency; keep minutes of all Commission meetings, copies of which shall be provided to Commission members and the Member Entities.

7.3. The Commission may appoint a General Manager who shall perform such duties as specified in this Restated Agreement and as assigned and directed by the Commission. The General Manager shall report to the Commission.

7.4. In the absence of a General Manager, the Commission shall cause the duties of the General Manager to be performed by other persons.

7.5. The Commission shall designate a person who has the qualifications specified in Government Code Sections 6505.5 and 6505.6 as the Agency's Treasurer. Unless the Commission specifies otherwise, the Treasurer shall also serve as Auditor-Controller of the Agency to draw warrants to pay demands against the Agency approved by the Commission. The Treasurer and Auditor-Controller shall have the duties and obligations set forth in Government Code Sections 6505.5 and 6505.6.

Section 8. Enforcement.

8.1. The Agency is authorized to take any or all legal and equitable actions, including but not limited to injunction and specific performance, which are necessary and permitted by law to enforce this Restated Agreement.

8.2. The Agency is authorized and empowered to require the Member Entities to observe and comply with applicable provisions of law and any and all orders, contractual commitments, regulatory standards, permits and grant conditions, and other similar obligations and requirements which have been lawfully imposed on the Agency in the conduct of its governmental functions; and each Member Entity agrees to conform and comply with such obligations and requirements and, as necessary, to impose and enforce such obligations and requirements on its constituents and others to the extent the Member Entity is legally able to do so.

Section 9. Duties of the Commission; Compensation.

9.1. The duties of the Commission shall be:

9.1.1. To make all policy decisions.

9.1.2. To exercise all of the powers of the Agency except those which may be and have been lawfully delegated to others;

9.1.3. To submit full and regular reports to the Member Entities; and

9.1.4. To adopt from time to time such orders, resolutions, ordinances and other rules and regulations, including bylaws, for the conduct of its affairs and the business of the Agency as may be required.

9.1.5. To adopt an annual budget; and

9.1.6. To cause the obligations of the Agency under this Restated Agreement to be fully performed.

9.2. The members of the Commission shall receive no compensation except as may be provided by the respective Member Entities which they represent.

Section 10. Meetings of the Commission.

10.1. Regular meetings of the Commission shall be held at such time and place as shall be established by the Commission by resolution.

10.2. All meetings of the Commission shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (Section 54950 et seq.).

Section 11. Quorum. The attendance at a Commission Meeting of a majority of the voting members of the Commission constitutes a quorum. Any action of the Agency shall require the affirmative vote of a majority of the quorum unless by law a greater number of affirmative votes is required.

Section 12. Accountability Reports and Audits.

12.1. The Agency shall cause accurate and correct financial records and books of account to be kept as required by law and in conformance with the Uniform Systems of Accounts of the State Controller. There shall be strict accountability for all funds and properties of the Agency. The books and records of the Agency shall reflect all receipts and disbursements of the Agency including the details of the costs and expenses of construction, operation and maintenance of Agency properties and facilities and all financial transactions between the Agency and its Member Entities. The books and records of the Agency shall be open to inspection at all reasonable times by representatives of the Member Entities and the public.

12.2. The Commission shall cause annual audits of the accounts and financial records of the Agency to be conducted in accordance with the requirements of Government Code §§6505 and 6505.6.

12.3. The Commission shall cause periodic financial reports, including all such reports as are required by law, to be prepared and reviewed by the Commission on a regular basis.

Section 13. Bonding Persons Having Access to Property.

13.1. Any officer at the Agency or other person who has charge of, handles, or has access to cash, cash equivalents, securities, evidences of indebtedness, bank or investment accounts, or other financial instruments of any kind of the Agency, shall be required to file an official bond with the Agency in such amount as may be established by the Commission. Should an existing bond of any officer or officers or person or persons be extended to cover the obligations provided in this Restated Agreement, that bond shall be the official bond required to be posted by this Restated Agreement. The premium on any such bond or bonds shall be an appropriate expense of the Agency. Any payment to the Treasurer or Auditor-Controller required in the operation of the Agency shall be an appropriate charge against the Agency.

13.2. The General Manager shall have overall responsibility for the financial assets and other property of the Agency and shall cause all claims and demands for the disbursement of Agency funds to be reviewed and approved prior to submittal of the claims and demands to the Commission for its approval.

Section 14. Bonds.

14.1. The Agency shall have the power and authority to issue and sell bonds in accordance with applicable law.

14.2. For purposes of referendum and vote on an Agency-wide basis, the boundaries of the Agency shall be the consolidated boundaries of its Member Entities. Under applicable law, the Agency may form improvement districts in which event the boundaries of the improvement districts shall be determinative with respect to referendum and voting. Bond elections shall be conducted pursuant to the Uniform District Election Law and applicable provisions of the Elections Code.



14.3. The Agency shall have and exercise all powers conferred on "local agencies" by the provisions of the law with respect to revenue bonds.

Section 15. Operating Funds and Sewer Service Charges.

15.1. An operating fund shall be established and maintained which shall be used to pay all administrative and incidental expenses incurred by the Agency, together with all costs of maintenance and operations.

15.2. The Agency shall impose on and collect from the Member Entities a periodic Sewer Service Charge, the revenues from which shall be deposited in the operating fund. The manner in which the Sewer Service Charge is imposed and the amount of the charge shall be determined by the Agency.

15.3. Each Member Entity, in turn, shall derive the revenues necessary to pay its Sewer Service Charges to the Agency.

Section 16. Other Funds, Fees and Charges.

16.1. The Agency shall establish and maintain such other funds as are required to adequately account for revenues and expenses of the Agency which must or, in the discretion of the Commission, should be accounted for separately from the operating fund's revenues and expenses such as, for example, a fund or funds pertaining to capital facilities, repayment of bonds, and other similar activities.

16.2. In addition to its Sewer Service Charge, the Agency may impose and collect other fees and charges as authorized by law.

16.3. Excess capital funds, if any, generated by and not expended for annual capital replacement requirements, or from other sources, are the property of the Agency and, after approval by the Commission, may be used to pay for capital improvements, including payment of indebtedness incurred to make capital improvements or to establish reserves for such purposes.

16.4. Excess funds, if any, generated from whatever source for administration, operation and maintenance requirements but not expended are the property of the Agency. After provision, if any, for such reserves as the Commission determines are necessary and desirable, the Commission may allocate all or a share of such funds to reduce the amounts required for the following year's budget or to make capital improvements.

Section 17. Ownership and Operation of Properties and Facilities; Functional Responsibilities.

17.1. The Agency shall own, operate and maintain all properties and facilities which are or were contributed by the Member Entities or other properties and facilities which are or were financed by Agency funds including cash, Sewer Service Charge revenues and the proceeds from the sale of revenue bonds.

17.2. Member Entities shall retain ownership of and operate and maintain their respective properties and facilities including wastewater collector systems.

17.2.1. The Agency and any Member Entity may, by agreement, provide for operation and maintenance of that Member Entity's facilities, all or in part, by the Agency. Any such agreement must provide that all costs associated with the operation and maintenance of a Member Entity's facilities by the Agency shall be charged to and paid by the Member Entity.

17.2.2. Member Entities will be responsible for processing and review of permit applications, collection and accounting for permit fees, inspection of connections and all attendant record keeping, and will retain all fees generated from those functions.

17.2.3. Unless otherwise agreed upon, member Entities will have total responsibility for their respective wastewater collector systems and the right to impose charges to pay for this service within their respective jurisdictions is reserved to them.

Section 18. Hold Harmless.

18.1. It is specifically understood and agreed that no Member Entity nor any of its officers or employees, is responsible for any damage or liability occurring by reason of anything done or not done by the Agency in connection with any work, authority or jurisdiction not delegated to the Member Entity under this Restated Agreement. It is also understood and agreed that, pursuant to Government code Section 895.4, the Agency shall fully indemnify and hold each Member Entity harmless from any damage or liability occurring by reason of anything done or not done by the Agency in connection with any work, authority or jurisdiction not delegated to any of the Member Entities under this Restated Agreement.

18.2. It is specifically understood and agreed that neither Agency nor any of its officers or employees, is responsible for any damage or liability occurring by reason of anything done or not done by any of the Member Entities pursuant to this Restated Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, each Member Entity shall fully indemnify and hold the Agency harmless from any damage or liability occurring by reason of anything done or not done by such Member Entity pursuant to this Restated Agreement.

Section 19. Capacity Allocation.

19.1. It has previously been established by the Commission and agreed to by the Member Entities that the Member Entities have been allocated and presently own capacity entitlements in the Agency's treatment plant and other jointly used capital facilities as follows:

<u>Member Entity</u>	<u>Capacity Allocations</u>	
	<u>By Percentage</u>	<u>By EDUs*</u>
Almonte SD	5.2	936
Alto SD	3.4	612
Homestead Valley SD	7.3	1,314
City of Mill Valley	49.2	8,856
Richardson Bay SD	35.5	6,030
Tamalpais CSD	<u>1.4</u>	<u>252</u>
	100.0	18,000

\*EDU - The average flow of wastewater produced by a single family Equivalent Dwelling Unit, which the parties have determined and agreed equates to 200 gallons per day.

19.2. Each Member Entity is entitled to discharge wastewater to the Agency for treatment, reclamation and disposal up to but not exceeding the Member Entity's established Capacity Allocation measured in EDUs.

19.3. The Agency's costs incurred for the repair, renovation and replacement of its capital facilities, as authorized and approved by the Commission, shall be allocated to the Member Entities, and the Member Entities shall pay those costs in the same proportions as their respective percentages of the Capacity Allocations.

19.4. Member Entities may enter into agreements with one or more other Member Entities to acquire, temporarily or permanently, some portion or all of that Member Entity(ies') unused Capacity Allocation upon such terms and conditions as the affected Member Entities may mutually agree in writing; but no such agreement shall be effective without the consent of the Agency, which consent shall not be unreasonably withheld. Agency considerations will include an assessment of the impact on the adequacy of Agency facilities. Any reallocations of Capacity Allocations pursuant to this Subsection shall be recognized by the Agency for purposes of capital facilities charges and other similar purposes.

19.5. If the Commission undertakes to increase the capacity of the Agency's capital facilities, only those Member Entities which elect to purchase and pay for additional Capacity Allocations shall share in the new capacity, such sharing to be in proportion to the participating Member Entities'

respective contributions. But no such increase in the Agency's capacity shall affect the right of Member Entity to continue to discharge wastewater pursuant to the Member Entity's present Capacity Allocation except to the extent it may subsequently be modified pursuant to Section 19.4 above.

19.6. The provisions of this Section are for the benefit of the Agency and of each Member Entity, and any affected party is entitled to pursue such remedies as may be afforded by law to protect the party's interests.

Section 20. Settlement of Disputes.

20.1. Except as indicated in Subsections 20.2 and 20.3 below, if a dispute arises as to the construction, interpretation or implementation of any provision of this Restated Agreement and the dispute directly affects the Agency, the dispute shall be submitted to binding arbitration in accordance with Sections 20.1 and 20.4.

20.2. A dispute between two or more Member Entities which does not directly affect the Agency is not governed by this Section.

20.3. At the request of any party to a dispute concerning the withdrawal of a Member Entity from the Agency or the termination of the Agency, the dispute shall not be governed by Sections 20.1 and 20.4.

20.4. Except as otherwise provided in this Section, the arbitration proceeding shall be conducted in accordance with the provisions of Title 9 of Part 3 of the Code of Civil Procedure.

20.5. A single arbitrator shall be selected by unanimous agreement of all members of the Commission. In the absence of unanimous agreement, the Commission, by majority vote (counted by excluding the votes of members in dissent), shall select an arbitrator and the members of the Commission in dissent shall select an arbitrator. The two arbitrators so selected shall select a third arbitrator and the dispute shall be determined by a majority vote of the panel of arbitrators. If for any reason the parties are unable to select an arbitrator in accordance with the provisions of this Subsection, the arbitrator shall be appointed by the Presiding Judge of the Marin County Superior Court.

20.6. The fees and expenses of the arbitrator or arbitrators shall be shared equally by each side to the dispute. Otherwise each party shall bear its own costs and expenses of the proceedings, including attorneys' fees.

20.7. Nothing in this Section shall preclude any party in a proper case from commencing a proceeding in a court of law seeking urgent interim or provisional relief. Pursuit of interim or provisional relief shall not constitute a waiver of the right to pursue arbitration under this Section, nor shall it relieve a party of its obligation to arbitrate all matters pertaining to the dispute which are not resolved by the court.

Section 21. Withdrawal or Dissolution. Upon withdrawal of a Member Entity from the Agency or upon dissolution of the Agency, there shall be partial or complete distribution of assets and discharge of liabilities as follows:

21.1. Withdrawal.

21.1.1. A Member Entity may withdraw from the Agency with the unanimous consent of the remaining Member Entities and upon mutually agreeable terms and conditions. In the absence of unanimous consent and mutual agreement, a Member Entity may withdraw only if the Agency's continued existence and governmental effectiveness will not be jeopardized by the withdrawal of the Member Entity and the Member Entity pays or secures payment of (a) all cost and expenses incurred by reason of the Member Entity's withdrawal and (b) the value of any economic detriment suffered or to be suffered by the Agency due to the withdrawal.

21.1.2. Upon withdrawal of any Member Entity from the Agency, the withdrawing Member Entity shall receive its proportionate share of the assets of the Agency and shall contribute its proportionate share toward discharge of the liabilities of the Agency, whether actual or contingent, as the same appear on the books of the Agency.

21.2. Dissolution. The Agency may be dissolved at any time by unanimous agreement of its Member Entities. Upon dissolution of the Agency, each Member Entity shall receive its proportionate share of the assets of the Agency and shall contribute its proportionate share toward discharge of any enforceable liabilities incurred by the Agency as the same appear on the books of the Agency.

21.3. For purposes of distributions and contributions required by Sections 21.1.2 and 21.2 above, the determination of what constitutes a "proportionate share" shall be made by the Commission in accordance with the following principles:

21.3.1. A "proportionate share" is an amount of money, property or money and property measured in dollars which the Commission determines is owed to or by a Member Entity taking into account pertinent factors such as, for example, the value of contributions made to the Agency by the Member Entity as compared to the contributions of other Member Entities, the proportionate value of benefits received by a Member Entity, the time value of money, the length of the Member Entity's participation in the Agency, and any other factors which the Commission determines to be reasonable and relevant and will lead to a fair and equitable result for all Member Entities and the Agency.

21.3.2. Any surplus money remaining after dissolution shall be returned to the Member Entities pursuant to Government Code Section 6512 in proportion to the respective contributions made by the Member Entities to the Agency.

21.3.3. The Agency's assets may be distributed in kind or they may be sold and the

proceeds distributed. If assets are to be distributed in kind and if a particular asset was contributed by a Member Entity, the asset shall be reconveyed to the contributing Member Entity if that Member Entity so requests and the reconveyance is otherwise consistent with that Member Entity's proportionate share.

21.3.4. Contributions which may be required of a Member Entity pursuant to Section 21.1.2 shall be made in money and not by property unless the Commission expressly agrees to accept a contribution of property

Section 22. Miscellaneous.

22.1. The section headings used in this Restated Agreement are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

22.2. This Restated Agreement is made in the State of California and under its Constitution and laws, and it is to be so construed.

22.3. To preserve a reasonable degree of flexibility, many parts of this Restated Agreement are stated in general terms. The Commission may from time to time adopt and implement rules and regulations to further define the rights and obligations of the Member Entities and of the Agency to carry out the purposes of this Restated Agreement.

22.4. This Restated Agreement may be amended in any particular, from time to time, by unanimous approval of the Member Entities.

Section 23. Partial Invalidity. If any one or more of the terms, provisions, promises, covenants, or conditions of this Restated Agreement shall to any extent be adjudged invalid, unenforceable, void, or voidable for any reason by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Restated Agreement shall not be affected and they shall be valid and enforceable to the fullest extent permitted by law.

Section 24. Successors. This Restated Agreement shall be binding upon and shall inure to the benefit of the successors of the parties.

Section 25. Effective Date. The effective date of this Restated Agreement shall be January 27, 2000.

As evidence of their Restated Agreement, each of the Member Entities has caused this instrument to be executed and attested by its duly authorized officers, and its official seal to be applied.

ALMONTE SANITARY DISTRICT

  
\_\_\_\_\_  
President

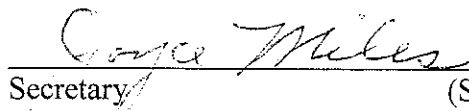
ATTEST:

  
\_\_\_\_\_  
Secretary (Seal)

ALTO SANITARY DISTRICT

  
\_\_\_\_\_  
President

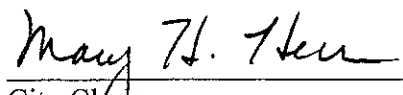
ATTEST:

  
\_\_\_\_\_  
Secretary (Seal)

CITY OF MILL VALLEY

  
\_\_\_\_\_  
Mayor

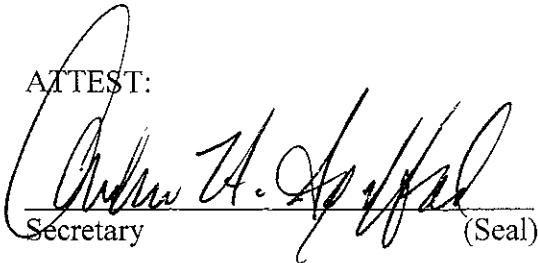
ATTEST:

  
\_\_\_\_\_  
City Clerk (Seal)

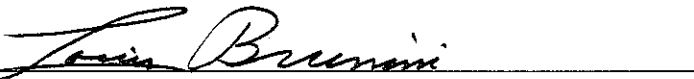
HOMESTEAD VALLEY SANITARY DISTRICT

  
\_\_\_\_\_  
President

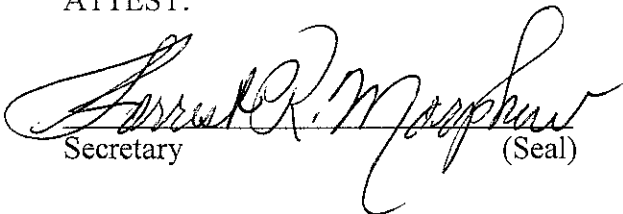
ATTEST:

  
\_\_\_\_\_  
Secretary (Seal)

RICHARDSON BAY SANITARY DISTRICT

  
\_\_\_\_\_  
President

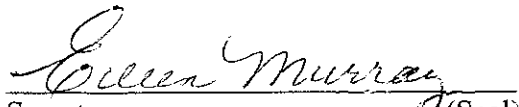
ATTEST:

  
\_\_\_\_\_  
Secretary (Seal)

TAMALPAIS COMMUNITY SERVICES DISTRICT

  
\_\_\_\_\_  
President

ATTEST:

  
\_\_\_\_\_  
Secretary (Seal)