

NOT THE ORIGINAL -
COPY OF THE ORIGINAL

JOINT EXERCISE OF POWERS AGREEMENT
FOR THE
MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

THIS AGREEMENT is made and entered into by and between those certain public agencies, hereinafter designated as "eligible public agencies," which have duly executed, pursuant to resolution or ordinance, a counterpart hereof, as follows:

ARTICLE 1. RECITALS

1.01 Presently Existing Agency. Each of the parties hereto is presently a member of the Monterey Peninsula Water Pollution Control Agency, hereinafter referred to as "MRWPCA," a joint powers agency formed in February 1972 by the cities of Monterey and Pacific Grove and the Seaside County Sanitation District. In April 1975 the City of Salinas and the County of Monterey became members of said MPWPCA. In February 1976 the three members of the Seaside County Sanitation District, namely, the cities of Del Rey Oaks, Sand City and Seaside, became individual members of the MPWPCA in place of said District.

1.02 MPWPCA Activities. MPWPCA has been actively involved in developing and implementing plants for regional sewerage facilities to serve the entire area of north Monterey County, California, as more specifically outlined in the North Monterey County Regional Water Pollution Control Project Financing Plan and Institutional Program, a report prepared by Bartle Wells Associates of San Francisco, California, and dated September 1976. Pursuant to such plans, MPWPCA has let out contracts and has applied for and received state and federal grants for the construction of such facilities.

1.03 Formation of Operating District - MRCSD. In early 1977 the cities of Monterey, Pacific Grove, Seaside, Del Rey Oaks, and Sand City and the County of Monterey acted to create the Monterey Regional County Sanitation District, hereinafter referred to as "MRCSD." The MRCSD was formed for the purpose of operating the sewage collection, treatment and disposal services for the cities within the district, as part of Stage 1 of the aforesaid regional project, and to become the eventual successor entity to the MPWPCA as the owner-operator of the regional facilities

constructed by MPWPCA. During 1978 the City of Salinas, the Castroville County Sanitation District and the Moss Landing County Sanitation District all acted to join and annex to the MRCSD.

1.04 Codify Prior Agreements; Supersede MPWPCA. It is the intent and desire of the parties, by this present Agreement, to clarify, up-date and codify the Joint Powers Agreement for the MPWPCA, which has been amended four times and which contains language and provisions which are no longer operable or applicable to the present circumstances. It is the intention of the MPWPCA and its member entities, all of which are parties to this Agreement, that the Agency created by this Agreement, the Monterey Regional Water Pollution Control Agency, shall supersede and in all manner and respects be the legal successor in interest of the MPWPCA, and as such successor, be legally entitled to all of the rights, entitlements and assets of, and subject to all of the duties and obligations of, the MPWPCA.

1.05 Joint Exercise of Powers. To that end, each of the parties hereto is a public agency duly authorized and empowered by law to contract for the joint exercise of powers under Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (Section 6500 et seq.), and the parties hereto further have and possess the common power and authorization to acquire, construct, maintain and operate facilities for the collection, transmission, treatment, disposal and reclamation of sewage and wastewater for the benefit of lands and inhabitants within their respective boundaries.

ARTICLE 2. CREATION OF AGENCY

2.01 Joint Powers Agency. In consideration of the mutual promises and covenants contained herein, there is hereby created by agreement of the parties hereto a Joint Powers Agency, with the powers and authority as hereinafter set forth.

2.02 Name of Agency. The Joint Powers Agency created hereby shall be known as and designated the "Monterey Regional Water Pollution Control Agency," hereinafter referred to as the "Agency."

2.03 Purpose; Successor to MPWPCA. The purpose of this Agreement is to create a separate public agency, as previously existed in the form of the MPWPCA, to undertake and implement the common power and authority of its members to study, plan for, design, construct and operate, to contract for same, regional wastewater treatment facilities for the area of North Monterey County, California. The Agency shall supersede and in all manner and respects be the legal successor in interest of the MPWPCA, and shall be legally entitled to all of the rights, entitlements and

assets of, and subject to all of the duties and obligations of, the MPWPCA. The Agency is to be construed as having been in continual existence since the inception of the MPWPCA, and no action taken by the MPWPCA is to be considered modified, amended or otherwise affected by this Agreement.

2.04 Powers. The Agency shall have all powers necessary to carry out the purpose of this Agreement, except the power to tax. The Agency shall have the power, in its own name, to do any and all of the following:

- a) To make and enter into contracts;
- b) To employ agents and employees and to contract for professional services;
- c) To acquire, convey, construct, manage, maintain and operate buildings, works and improvements;
- d) To acquire, hold and convey real and personal property;
- e) To sue and be sued in its own name;
- f) To incur debts, liabilities and obligations;
- g) To issue bonds, notes, warrants and other evidences of indebtedness to finance costs and expenses incidental to the projects of the Agency;
- h) To apply for and execute appropriate grants or contracts of financial assistance from state and federal agencies;
- i) To issue revenue bonds in accordance with the State of California statutes more specifically set forth in Article 5, Paragraph 5.01 hereinbelow;
- j) To levy and collect charges and fees for the use of and connection to the sewage and wastewater facilities owned or operated by the Agency, pursuant to the provisions of Article 4, Chapter 1, Part 3, Division 5 of the California Health and Safety Code (Section 5470 et seq.);
- k) To exercise the power of eminent domain and condemn any real property necessary to carry out the objects or purposes of the Agency; and
- l) To the extent not herein specifically provided for, to exercise any and all other powers common to the parties hereto.

To the extent not otherwise herein specifically provided for, the foregoing powers shall be exercised by the Agency in the manner and according to the methods provided in the laws applicable to a California county sanitation district, as set forth in the County Sanitation District Act (Health and Safety Code Section 4700 et seq.).

2.05 Separate Legal Entity. The Agency created hereby is a public entity duly formed and existing under the laws of the State of California, and is a legal entity separate and distinct from its member entities, the parties hereto. The debts, duties and obligations created pursuant to this Agreement shall be solely the obligation of the Agency and not those of its officers, employees, Board of Directors or the member agencies.

2.06 Eligible Public Agencies. The public agencies eligible to become parties to this Agreement and members of the Agency are specified as follows:

- a) The City of Del Rey Oaks;
- b) The City of Monterey;
- c) The City of Pacific Grove;
- d) The City of Salinas;
- e) The City of Sand City;
- f) The City of Seaside; and
- g) The County of Monterey.

An eligible public agency shall become a party hereto and a member of the Agency upon execution of this Agreement and any addenda, amendment or supplement thereto. The Agency may approve membership of other public agencies at any time, by a two-thirds (2/3) vote of the Board of Directors and upon such terms and conditions as the Agency may prescribe. Membership of the Agency shall be limited to the County of Monterey and incorporated cities and other public agencies within the county which have joined and been annexed to the MRCSD.

2.07 Service to Adjacent Territory. Unless otherwise determined by the Board of Directors, Agency services will be rendered only to sewered areas within its boundaries, connected through member entity systems (i.e., city, sanitation district, water district, county service area or military installation). Currently sewered unincorporated areas of Monterey County may be served through an interceptor or trunk constructed at the request of the County. Private agencies will only be connected to Agency facilities at their own expense and at the request of a member

public entity. Te Agency is intended to be a service agency only, having no role in the determination of land use or development, and the Agency will serve areas under the jurisdiction or sphere of influence (as determined by the Monterey County Local Agency Formation Commission) of a member entity only at the request of that entity.

2.08 Ex-Officio Members. The Board of Directors of the Agency, by a two-thirds (2/3) vote, may from time to time approve and permit ex-officio membership in the Agency. Such ex-officio members shall not be entitled to vote on Agency matters. Any references herein to a "member" of the Agency, shall, unless specifically designated otherwise, refer only to a regular, voting member of the Agency, and not to an ex-officio, non-voting member.

ARTICLE 3. ORGANIZATION

3.01 Board of Directors. The powers of the Agency shall be vested in and exercised by and through its governing body, known as the Board of Directors. The Board of Directors shall be composed of one representative from each member agency. Each member agency shall appoint one regular member and one alternate member to the Board of directors and shall notify the Agency in writing of their appointments or any change of representative. The representative shall be either an elected official or an officer or employee of the member agency, and shall serve solely at the pleasure of the governing body of the appointing member agency. All vacancies in the Board shall be filled in the same manner as the original appointment.

3.02 Meetings. The Board shall establish a time, place and date for its regular meetings. Regular meetings may be adjourned from time to time. Sspecial meetings may be called by the Chairman of the Board or by a majority of the members of the Board.

3.03 Quorum. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of Agency business.

3.04 Voting. Except as specifically otherwise provided herein, the vote of a majority of the members of the Board of Directors present at any regular, adjourned or special meeting shall be sufficient to pass and act upon any matter properly before the Agency, and each member of the Board shall have one vote; provided, however, that upon the call and request of any Board member, present and able to vote, and a quorum being present, a weighted voting formula shall apply for any vote to be taken by the Agency Board, with each member having one or more votes based upon the population of the city, district, agency or

unincorporated county area such member represents, as follows:

<u>Population</u>	<u>No. of Votes</u>
0 to 9,999	1
10,000 to 24,999	2
25,000 to 49,999	3
50,000 to 74,999	4
75,000 to 99,999	5
100,000 and above	6

For the purpose of determining the population of a city, district, agency or represented county area, the Agency shall consider the last official United States census or the California Finance Department population estimate, whichever is more recent for a particular area.

In determining such population basis, those portions of the population of a city, district, agency or represented county area which are attributable to and located on the U.S. Army Military Reservation at Fort Ord, California, shall not be included within the population computation of such city, district, agency or county area.

No action can be taken by the Agency Board to establish, incur or increase the financial obligation or liability of any member of the Agency without the unanimous vote of the Board members and the express ratification thereof by the legislative or governing body of each member entity whose financial obligation is so established or increased.

3.05 Officers. There shall be selected from the membership of the Board of Directors a chairman, a vice-chairman, who shall act in the absence of the chairman, and if the Agency has no manager as provided for in Section 3.06 hereinbelow, a secretary, and such other officers as the Board may deem necessary. Pursuant to Government Code Section 6505.5, the treasurer of the City of Monterey shall be the treasurer of the Agency, to be the depository and have custody of all money of the Agency from whatever source. Said treasurer shall have the powers and duties as set forth in said Section 6505.5, and the City of Monterey shall be compensated for said services. The auditor-controller of the City of Monterey shall be the auditor-controller of the Agency, and shall draw all warrants and pay demands against the Agency approved by the Agency Board or manager. The treasurer and auditor-controller hereby designated may be changed by consent of all board members. All officers shall serve for a term of one year from the date of their election or until their successors are elected. The chairman and vice-chairman are authorized to execute all documents in the name of the Agency, and the secretary is authorized to attest to the same.

3.06 Manager and Other Employees. The Board may employ a manager and such other employees and assistants as may be appropriate. Should the Board employ or appoint a manager, he shall be the chief administrative officer and shall assume such other duties and responsibilities as the Board may direct. The manager shall also serve as secretary to the Agency and shall have the power to certify Agency documents, as required by law. The manager and all other employees shall serve at the pleasure of the Board.

3.07 Public Meetings. All meetings of the Board shall be open to the public and shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, being Sections 54950 et seq. of the California Government Code.

3.08 Rules. The Board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

ARTICLE 4. FINANCIAL PROVISIONS

4.01 Costs of Operation. All costs of operation of the Agency shall be received from:

- a) Revenues from fees and charges for the use of and connection to the sewage and wastewater facilities owned or operated by the Agency;
- b) Revenues from fees and charges levied or collected by the MRCSD, pursuant to written agreement between said MRCSD and the Agency;
- c) Grant funds received from the Environmental Protection Agency, the State Water Resources Control Board or from any other state or federal agencies; and
- d) Funds from the sale of revenue bonds issued by the Agency.

For the purposes of any election held regarding the issuance of bonds by the Agency, the boundaries of the Agency shall be deemed to be the same as the service area of the Agency, which includes only those areas within the MRCSD.

4.02 Limitation on Agency. The Agency shall have no power to incur any indebtedness, nor to enter into any contract, which may be a charge payable by any member hereunder, without the express consent of the governing body of such member. The Agency shall have no power to borrow money or issue bonds which will in

any way be a charge or lien on any member or any member's property.

4.03 No Liability of Member. No member shall be liable for any indebtedness of the Agency except that which is expressly consented to by its governing body. All persons dealing with the Agency shall be hereby notified that no member shall be liable for the debts of the Agency.

4.04 Subsequent Members. If determined by the Agency Board to be appropriate under the circumstances, members who join the Agency after money, property or services shall have been contributed by existing members may be required to reimburse the Agency the amount or value existing members have contributed which would be in excess of its chargeable share hereunder, including administrative and financing costs, had the new member been a member from the effective date of this Agreement. The Agency's calculation under this section shall be conclusive, and any reimbursement required hereunder shall be a condition to membership.

4.05 No Power to Tax. The Agency shall have no power to raise money by taxation or assessment.

4.06 Fiscal Year. The fiscal year of the Agency shall be from July 1 to June 30, following.

4.07 Accounting Procedures. Full books and accounts shall be maintained for the Agency in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies (see Government Code Section 26909). In particular, the controller and treasurer of the Agency shall comply strictly with the requirements of the statutes governing joint powers agencies as set forth in Article 1, Chapter 5, Division 7, Title 1 of the Government Code (Section 16500 et seq.).

4.08 Audit. The auditor or controller of the Agency shall cause the accounts and records of the Agency to be audited annually in accordance with the provisions of California Government Code Section 6505, and copies of such audit report shall be filed with the Monterey County Auditor and each member of the Agency within six (6) months of the end of the fiscal year under examination.

4.09 Official Bonds. The manager and such other employees or agents as the Board may direct shall file an official bond in the amount determined by the Board. The cost of said bond(s) shall be borne by the Agency.

ARTICLE 5. BOND FINANCING

5.01 Revenue Bonds. The Agency shall have the power and authority to issue and sell revenue bonds in accordance with the procedures and requirements set forth in:

a) Article 2, Chapter 5, Division 7, title 1 of the California Government Code, commencing with Section 6540;

b) Chapter 6, Division 2, Title 5 of the California Government Code, commencing with Section 54300;

c) Chapter 5, Part 3, Division 5 of the California Health and Safety Code, commencing with Section 4950; and

d) Any other then-applicable law regarding or permitting the issuance of revenue bonds by a joint powers agency.

ARTICLE 6. PROPERTY RIGHTS

6.01 Agency Facilities. All facilities, assets and property acquired or constructed by the Agency shall be held in the name of the Agency for the benefit of its members in accordance with the terms of this Agreement; provided, however, that the Agency Board may determine, in its discretion, that such facilities, property or assets may more appropriately or beneficially be held in the name of the MRCSD, pursuant to written agreement with the Agency.

6.02 Collection Systems. Each member of the Agency reserves the right to retain ownership of, and responsibility for the operation and maintenance of, the sewer collection systems within their respective boundaries; provided, however, any member may enter into a contract with the Agency to have the Agency operate and/or own any portion or all of the member's collection system.

6.03 Transfer of Facilities Upon Dissolution. Upon termination of this Agreement and dissolution of the Agency as hereinafter provided for in Paragraph 7.02, the facilities, assets and property of the Agency shall be transferred and conveyed to the MRCSD or to such other successor entity as may be created hereafter by the members of the Agency to own and operate the regional wastewater sewerage facilities contemplated by this Agreement for the benefit of all lands and inhabitants within the boundaries of the Agency-MRCSD.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.01 Effective Date. This Agreement shall become effective and the Agency shall be created when the governing bodies of all seven (7) of the eligible public agencies listed in Paragraph 2.06 hereinabove shall have authorized execution of this Agreement.

7.02 Termination. This Agreement may be terminated and the Agency dissolved by a two-thirds (2/3) vote of the Board of Directors, ratified by two-thirds (2/3) of the member agencies; provided, however, that there shall be no termination and dissolution until any and all revenue bond debt incurred by the Agency for the construction or acquisition of its regional sewerage facilities has been fully amortized and retired or such debt is refinanced by the MRCSD or other successor entity.

7.03 Insurance for Tort Liability. Throughout the term of this Agreement the Agency shall maintain in force a comprehensive general and automobile liability insurance policy or policies, with minimum coverage of \$1,000,000, insuring the Agency, its employees and agents, from any loss, liability or claims arising out of or in any way connected with this Agreement or the operation of the Agency. In addition, in contemplation of the provisions of Government Code Section 895.2, imposing certain tort liability upon public entities which are parties to a joint powers agreement, such policies shall also name all parties to this Agreement as additional insureds, with such insurance coverage to be construed as primary insurance, and shall further provide that thirty (30) days' written notice be given to all additional insureds of cancellation or non-renewal of said policies.

7.04 Arbitration. If a dispute arises as to the construction, interpretation or implementation of any provision of this Agreement, the issues in dispute or matter requiring action shall be submitted to binding arbitration. For such purpose, an agreed arbitrator shall be selected by all members of the Board, or in the absence of such an agreement, the Board by majority vote shall select another arbitrator, and the two arbitrators so selected shall select a third arbitrator. The arbitrator or the three arbitrators acting as a panel, as the case may be, shall proceed to arbitrate the matter in accordance with the provisions of Title 9, Part 3, of the California Code of Civil Procedure.

7.05 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, agreements, appointments or designations hereunder shall be given in writing and addressed to the principal office of each member of the Agency.

7.06 Severability. If any one or more of the terms,

provisions, promises, covenants or conditions of this Agreement, or the application thereof to any member agency or circumstance, shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. Each of the parties hereto hereby declares that it would have entered into this Agreement, and each term, provision, promise, covenant and condition thereof, irrespective of the fact that one or more terms, provisions, promises, covenants, or conditions, or the application thereof to any member agency or circumstance, be held invalid, unenforceable, void or voidable.

7.07 Amendment. This Agreement may not be amended without the consent of all existing members of the Agency at the time of amendment.

7.08 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

7.09 Assignment. The parties hereto shall not assign any rights or obligations under this Agreement without written consent of all other parties.

7.10 Additional Documents. the parties hereto agree upon request to execute, acknowledge and deliver all additional papers and documents necessary or desirable to carry out the intent of this Agreement.

7.11 Captions. Captions of the articles, sections and paragraphs of this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision contained herein.

IN WITNESS WHEREOF, the parties hereto, by and through their respective duly authorized representatives, have executed this Joint Exercise of Powers Agreement for the Monterey Regional Water Pollution Control Agency on the date so indicated.

ATTEST:

Joyce A. Dettman
Joyce A. Dettman, City Clerk

ATTEST:

Beth C. Lyons
Beth C. Lyons, City Clerk

ATTEST:

William S. Pitt
William S. Pitt, City Clerk

ATTEST:

Evelyn Reynolds
Evelyn Reynolds, City Clerk

CITY OF DEL REY OAKS

By Charles W. Benson
Charles W. Benson, Mayor

Dated: June 26, 1979.

CITY OF MONTEREY

By Gerald T. Fry
Gerald T. Fry, Mayor

Dated: June 27, 1979.

CITY OF PACIFIC GROVE

By Florus C. Williams
Florus C. Williams, Mayor

Dated: June 28, 1979.

CITY OF SALINAS

By Henry Hibino
Henry Hibino, Mayor

Dated: June 27, 1979.

ATTEST:

Belle Smith
Belle Smith, City Clerk

ATTEST:

Stanley H. Hall
Stanley H. Hall, City Clerk

ATTEST:

Ernest A. Maggini
Ernest A. Maggini, County Clerk

CITY OF SAND CITY

By David K. Pendergrass
David K. Pendergrass, Mayor

Dated: June 27, 1979.

CITY OF SEASIDE

By Stephen E. Ross
Stephen E. Ross, Mayor

Dated: June 27, 1979.

COUNTY OF MONTEREY

By Sam Farr
Sam Farr, Chairman of
Board of Supervisors

CASTROVILLE COUNTY SANITATION DIST.

By Rich Don
Chairman of the Board of
Directors (Supervisors)

ATTEST:

Ernest A. Maggini
By: Nancy Lukensell,
Deputy

ATTEST:

Ernest A. Maggini
By: Nancy Lukensell,
Deputy

MOSS LANDING COUNTY SANITATION DIST.

By Rich Don
Chairman of the Board of
Directors (Supervisors)

FORT ORD MILITARY RESERVATION

By Frederick Meurer
Lt. Col. Frederick Meurer
Director of Engineering and Housing

Dated: April 22, 1985

BORONDA COUNTY SANITATION DISTRICT

By Kimi Strode Kaufman
Chair of the Board of Directors
(Supervisors)

Dated: ~~May~~ June 2, 1987

ATTEST:

Ernest K. Morishita, Clerk
By Anne Arii,
Deputy

MARINA COUNTY WATER DISTRICT

By James E. Perrine
Chairman of the Board

ATTEST:

Dated: April 27, 1989

Cornie Shroyer