

JOINT EXERCISE OF POWERS AGREEMENT

Relating to the

**MARIN COUNTY STORMWATER
POLLUTION PREVENTION PROGRAM**

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JOINT EXERCISE OF POWERS AGREEMENT**

This Joint Exercise of Powers Agreement is dated as of _____, 2009, and is made by and among the Marin County Flood Control and Water Conservation District, the County of Marin, the Cities of Belvedere, Mill Valley, Novato, San Rafael and Sausalito, the Towns of Corte Madera, Fairfax, Larkspur, Ross, San Anselmo, Tiburon, and such other Local Agencies within the County of Marin as may hereafter become signatories hereto (the “Member Agencies”).

RECITALS

- A. The Joint Powers Act provides that public agencies by agreement may jointly exercise any power common to them.
- B. The parties hereto are “public agencies” within the meaning of that term under Section 6502 of the Joint Powers Act and possess in common the power to develop and maintain mapping and other informational data to meet the informational needs of the public and each of the Member Agencies.
- C. The parties desire to enter into this Agreement in furtherance of the Joint Powers Act.

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01. Definitions. As used herein, the following terms shall have the meaning ascribed thereto, unless the context requires otherwise.

“Agreement” means this Joint Exercise of Powers Agreement.

“Board of Supervisors” means Board of Supervisors of the Marin County Flood Control and Water Conservation District.

“District” means the Marin County Flood Control and Water Conservation District

“Joint Powers Act” means Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as amended from time to time.

“Local Agency” has the meaning set forth in Section 53600 of the Government Code of the State, as amended from time to time.

“Member Agency” means each of the original signatories to this Agreement and any Local Agency, which hereafter becomes a signatory to this Agreement pursuant to Section 6.12.

“MCSTOPPP” means the Marin County Stormwater Pollution Prevention Program.

“State” means the State of California.

“Steering Committee” means the committee established pursuant to Section 5.01.

ARTICLE II THE MCSTOPPP PROJECT

Section 2.01. Purpose of Agreement. The purpose of this Agreement is to develop, implement and administer a stormwater pollution control program to reduce the discharge of pollutants in stormwater to the maximum extent practicable per the requirements of the General Permit for the Discharge of Stormwater from Small MS4s (WQ Order No. 2003-0005-DWQ) and subsequent permits.

Section 2.02. Program Structure. Countywide Program activities are conducted for the benefit of all MCSTOPPP agencies. In addition to participating in Countywide Program planning activities, each MCSTOPPP agency must also implement a Local Program. The roles of the Countywide Program and Local Programs for each task are described in the MCSTOPPP stormwater management plan (Action Plan), attached as Exhibit A to this Agreement. Local Programs must also implement performance standards described in Appendix A of the action plan. The Action Plan may be amended from time to time in response to permitting requirements.

Section 2.03. Program Activity

(a) Caring for Our Creeks and Waterways

This activity describes watershed surveys, assessments, and monitoring to identify impacts to water quality and habitat, integral to MCSTOPPP’s watershed approach. This activity also contains two important elements of Federally mandated municipal stormwater programs: activities to prevent pollutant discharge from municipal maintenance activities, and activities to effectively eliminate non-stormwater discharges.

(b) Building and Renewing

This activity describes good site planning and development review practices to ensure new projects are designed with watershed protection in mind. This activity also describes control to minimize erosion and

sedimentation from construction activities. An important element of this activity is continuing education for municipal staff, contractors, and engineers.

(c) Educating Ourselves at Work

This activity describes how MCSTOPPP controls pollutant discharges from business activities through inspection and outreach. Continuing education for municipal staff, business owners, and their customers is also an important element in this activity

(d) Educating Ourselves at Home and School

This activity describes general public education and information dissemination, as well as targeted education efforts to residential neighborhoods and schools.

(e) Protecting Our Future

This activity describes how MCSTOPPP will work with the regulatory community to obtain coverage under a municipal stormwater permit and influence other regulatory programs, such as Total Maximum Daily Load (TMDL) development and allocation.

**ARTICLE III
ADMINISTRATION OF THE AGREEMENT**

Section 3.01. Marin County Flood Control and Water Conservation District (District) to Administer Agreement. The District shall administer this Agreement, and shall exercise in the manner herein provided the powers common to the Member Agencies and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 3.02.

Section 3.02. Restrictions on Exercise of Powers. Such powers shall be exercised in the manner provided in the Joint Powers Act and shall be subject (in accordance with Section 6509 of the Joint Powers Act) to the restrictions upon the manner of exercising such powers that are imposed upon the District in the exercise of similar powers.

Section 3.03 Specific Services. The Marin County Flood Control and Water Conservation District will oversee the implementation of the MCSTOPPP Program in accordance with Article II. The District has the authority to submit an annual report and 5-year stormwater management plans to the California Regional Water Quality Control Board on behalf of the member agencies.

Section 3.04. Compensation. In consideration for the services to be performed by

Marin County Flood Control and Water Conservation District an annual fee will be paid by each Member Agency to the District upon approval of this Agreement and on or before July 1 of each year thereafter while this Agreement is in effect. The fee shall be paid within 60 days of billing unless alternate arrangements are submitted to and authorized in writing by MCSTOPPP. The annual fee is in addition to any permit fees levied by the State.

The annual fee shall be based on the annual cost of the program as approved by the Board of Supervisors and allocated to member agencies in accordance with a land and population pro rata as described below:

$$\text{County Share} = \frac{\text{Population within Marin County (unincorporated areas)}}{\text{Total population within Marin Co.}}$$

$$\text{Each Cities Share} = (1.00 - \text{County Share}) \frac{0.5 (\text{Area})}{\Sigma \text{City areas}} + \frac{0.5 (\text{Population})}{\Sigma \text{City population}}$$

ARTICLE IV MEMBERSHIP

Section 4.01. Benefits of Membership. By participating in the MCSTOPPP Project, a Member Agency receives the following benefits: MCSTOPPP provides assistance with implementation of the technical and regulatory aspects of the National Pollutant Discharge Eliminations System (NPDES) Phase II stormwater program. MCSTOPPP assists municipalities with the implementation of their local program tasks.

Section 4.02. Obligations of Member Agencies. Membership in the MCSTOPPP Project obligates Member Agencies to: Share costs of the Countywide Program through annual contributions as calculated in Section 3.04 .

Section 4.03. Member Qualifications. Member Agencies shall be limited to Local Agencies located within Marin County.

Section 4.04. Indemnification.

- (a) Each Member Agency shall be solely liable for the negligent acts or omissions of its officers, representatives, agents or employees occurring in the performance of this Agreement. If any Member Agency becomes liable for damages, attorneys fees or any other costs or liabilities caused by its officers, representatives, agents or employees, it shall pay such damages, fees or costs without contribution by the other Member Agencies.

ARTICLE V
GOVERNING STRUCTURE

Section 5.01. The Marin General Services Authority. The Marin General Services Authority shall be advisory to Board of Supervisors on the MCSTOPPP program.

Section 5.02. Powers of the Marin General Services Authority.

- (a) The Marin General Services Authority or its successor shall make recommendations to the Board of Supervisors on the annual MCSTOPPP stormwater management plan (Action Plan).
- (b) The Marin General Services Authority or its successor shall recommend to the Board of Supervisors an annual budget no later than May 15 of each year.

**ARTICLE VI
MISCELLANEOUS**

Section 6.01. Funding.

The Marin General Services Authority shall recommend an annual budget for adoption by the Board of Supervisors no later than May 15 of each succeeding year. MCSTOPPP funds shall be maintained in a trust account and these funds shall not be interspersed with other funds held by the Treasurer.

- (a) Funds may not be disbursed by the District on behalf of the MCSTOPPP project without adoption of the approved budget, and all receipts and disbursements shall be in strict accordance with the approved budget. The budget shall identify the programs of the MCSTOPPP project and allocate funds by program. The budget and accounting system shall account for direct and overhead costs by program. The Marin General Services Authority shall recommend and the Board of Supervisors shall allocate these costs for each program with the adoption of the annual budget.

Section 6.02. Treasurer. The Auditor-Controller of the County shall serve as the Treasurer for the MCSTOPPP project.

The Treasurer shall serve as the depository, have custody of all funds and establish and maintain such books, records, funds and accounts as may be required by reasonable accounting practices, and in compliance with California Government Code Section 6505. The books and records pertaining to the MCSTOPPP project shall be open to inspection at all reasonable times to the Member Agencies and the public.

The Treasurer shall prepare such financial reports as may be requested by the Marin General Services Authority and/or as directed by the Board of Supervisors.

The Treasurer shall cause an independent annual audit of the accounts and records by a certified public accountant, in compliance with the requirements of Section 6505 of the California Government Code and generally accepted auditing standards.

MCSTOPPP funds shall be maintained in a trust account and these funds shall not be interspersed with other funds held by the Treasurer.

Section 6.03. Debts and Liabilities. Except as otherwise provided by Section 6.05(c), no debt, liability or obligation of the MCSTOPPP project shall constitute a debt, liability or obligation of any Member Agency, and each Member Agency's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as may be levied hereunder for services among the Member Agencies, or on a fee-for-service basis, or as the parties hereto may otherwise agree.

Section 6.04. Effective Date. This Agreement shall become effective when it has been executed by seven (7) Member Agencies.

Section 6.05. Termination. This Agreement may be terminated as follows:

- (a) By the Board of Supervisors upon thirty day written notice to the member agencies
- (b) By a majority of the Member agencies upon thirty day written notice to the Member agencies.
- (c) Upon termination, payment of the obligations and division of property of MCSTOPPP shall be made pursuant to Section 6.06

Section 6.06. Disposition of authority Funds Upon Termination.

- (a) In the event of termination of the MCSTOPPP project as organized and managed under this Agreement, all funds remaining after payment of all obligations of the MCSTOPPP project shall be transferred to any successor organization or agency designated by the Board of Supervisors to carry out the activities and operations of the MCSTOPPP project.
- (b) If there is no successor entity designated by the Board of Supervisors to carry on the activities of the MCSTOPPP project, or assume its obligations, all funds remaining after payment of all obligations shall be distributed to the Member Agencies in proportion to their contribution as approved by the Board of Supervisors after receiving the recommendation of the Marin General Services Authority.
- (c) If a successor organization or agency undertakes some of the functions of the MCSTOPPP project, and assumes some of its obligations, all funds remaining after payment of all obligations shall be allocated by the Board of Supervisors between the successor organization or agency and Member Agencies after receiving the recommendation of the Marin General Services Authority.
- (d) If the MCSTOPPP project is terminated due to circumstances falling within paragraph (b) or (c) above, the decisions of the Board of Supervisors shall be final.

Section 6.07. Amendments. This Agreement may be amended only upon the recommendation of a two-thirds affirmative vote of the Marin General Services Authority and subsequent approval by a majority of the Board of Supervisors.

Section 6.08. Withdrawal.

- (a) Any Member Agency may withdraw from the MCSTOPPP project effective July 1 of any year upon ninety (90) days written notice to the District.
- (b) If a Member Agency withdraws, its financial obligation shall be limited to its share of costs and liabilities incurred by the MCSTOPPP project prior to the date its written notice of withdrawal is effective as provided by Section 6.03.

Section 6.9. Default by Member Agency. Failure to adhere to the requirements of this Agreement may result in termination of Member Agency status effective July 1 of any year, upon ninety (90) days prior written notice to the defaulting Member Agency by MCSTOPPP, with subsequent approval by the Board of Supervisors.

Section 6.10. Disputes and Arbitration.

- (a) The Member Agencies agree that any dispute which arises between or among them involving the interpretation or application of this Agreement, or the rights and remedies of the Member Agencies, which cannot be resolved through discussion shall be subject to mandatory binding arbitration pursuant to California Code of Civil Procedure Section 1280, and shall not be subject to judicial determination except as expressly provided by law.
- (b) If a Member Agency wishes to submit a dispute to arbitration, it shall serve a demand for arbitration, setting forth the issues to be arbitrated and the general contentions of the Member Agency on the other Member Agencies. All demands for arbitration shall be served within one year of the event giving rise to the dispute.
- (c) The Member Agencies may mutually agree upon an arbitrator. If the Member Agencies cannot agree upon an arbitrator, the Member Agency demanding arbitration shall request a list of arbitrators with prior experience in similar disputes from the San Francisco Office of the American Arbitration Association. Each Member Agency (commencing in alphabetical order) shall alternately strike a name from the list until only one name remains.

Section 6.11. Additional Member Agencies. In addition to the original signatories to this Agreement, any Local Agency within Marin County may become a Member Agency. The addition of any new Member Agency shall become effective upon the execution on behalf of such Local Agency of a counterpart of this Agreement and the delivery of such executed counterpart to the District.

Section 6.12. Notices. Any notice, request, or other communication under this Agreement shall be given by first class mail or personal delivery to the party entitled

thereto, or by facsimile transmission or other form of telecommunication. Unless otherwise provided herein, notice shall be effective either: (i) upon transmission by facsimile transmission or other form of telecommunication, provided a telephonic communication of such transmission is provided; (ii) forty-eight (48) hours after deposit in the United States mail, postage prepaid; or (iii) in the case of personal delivery to any person, upon actual receipt.

Section 6.13. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 6.14. Law Governing. This Agreement is made in the State of California under the constitution and laws of the State, and is to be so construed.

Section 6.15. Severability. Should any portion of this Agreement be held by any court of competent jurisdiction to be invalid, unenforceable, void or voidable for any reason whatsoever, the validity and enforceability of the remaining portions shall not be affected thereby.

Section 6.16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 6.17. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective Member Agencies.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized on the respective dates shown below.

Date: _____, 2009

By: _____
President of the Board of Supervisors

MARIN COUNTY FLOOD CONTROL
AND WATER CONSERVATION
DISTRICT

County of Marin

By: _____

President of the Board of Supervisors

CITY OF BELVEDERE

By: approved on June 8, 2009, signed original on file
Mayor

CITY OF MILL VALLEY

By: approved on August 17, 2009, signed original on file
Mayor

CITY OF NOVATO

By: approved on July 14, 2009, signed original on file
Mayor

CITY OF SAN RAFAEL

By: approved on September 8, 2009, signed original on file
Mayor

CITY OF SAUSALITO

By: approved on September 15, 2009, signed original on file
Mayor

TOWN OF CORTE MADERA

By: approved on September 1, 2009, signed original on file
Mayor

TOWN OF FAIRFAX

By: approved on July 1, 2009, signed original on file
Mayor

TOWN OF LARKSPUR

By: approved on June 17, 2009, signed original on file

Mayor

TOWN OF ROSS

By: approved on July 9, 2009, signed original on file
Mayor

TOWN OF SAN ANSELMO

By: approved on May 26, 2009, signed original on file
Mayor

TOWN OF TIBURON

By: approved on July 15, 2009, signed original on file
Mayor

EXHIBIT A

MCSTOPPP ANNUAL ACTION PLAN