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**JOINT EXERCISE OF POWERS AGREEMENT**

**by and between**

**SANITARY DISTRICT NO. 5 OF MARIN COUNTY**

**and**

**CALIFORNIA MUNICIPAL FINANCE AUTHORITY**

**creating the**

**TIBURON/BELVEDERE WASTEWATER FINANCING AUTHORITY**

**August 16, 2011**

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## JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated August 16, 2011, by and between SANITARY DISTRICT NO. 5 OF MARIN COUNTY, a sanitary district organized and existing under and by virtue of the laws of the State of California (the "District"), and CALIFORNIA MUNICIPAL FINANCE AUTHORITY, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California ("CMFA").

### DECLARATION OF PURPOSE

A. Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Act") authorizes the District and CMFA to create a joint exercise of powers entity which has the power to exercise any powers common to the District and CMFA and to exercise additional powers granted to it under the Act. This Agreement creates such an entity, which shall be known as the Tiburon/Belvedere Wastewater Financing Authority (the "Authority") for the purposes and to exercise the powers described herein.

B. The District is authorized to buy, sell, lease and use property and to incur indebtedness for public purposes pursuant to the California Health and Safety Code and other laws of the State of California.

C. CMFA is authorized to buy, sell and lease property and to issue bonds, expend bond proceeds, and borrow and loan money for any of its corporate purposes pursuant to the Act and a Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004, as amended, by and among the cities, counties, districts and other political subdivisions that are parties to that agreement.

D. Article 4 of the Act (known as the "Marks-Roos Local Bond Pooling Act of 1985") authorizes and empowers the Authority to issue bonds and to purchase bonds issued by, or to make loans to, the District or CMFA for financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the District or CMFA. The Marks-Roos Local Bond Pooling Act of 1985 further authorizes and empowers the Authority to sell bonds so issued or purchased to public or private purchasers at public or negotiated sale.

### TERMS OF AGREEMENT

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings herein specified.

"Act" shall mean Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code, as amended.

"Agreement" shall mean this Joint Exercise of Powers Agreement, as it may be amended from time to time, creating the Authority.

"Authority" shall mean the Tiburon/Belvedere Wastewater Financing Authority created by this Agreement.

"Board" or "Board of Directors" shall mean the governing board of the Authority.

“*Bonds*” shall mean bonds and any other evidence of indebtedness of the Authority authorized and issued pursuant to the Act.

“*CMFA*” shall mean California Municipal Finance Authority, a joint exercise of powers authority, duly organized and existing under and by virtue of the laws of the State.

“*District*” shall mean Sanitary District No. 5 of Marin County, a sanitary district duly organized and existing under and by virtue of the laws of the State.

“*Indenture*” shall mean each indenture, trust agreement or other such instrument pursuant to which Bonds are issued or other obligations are incurred.

“*Member*” or “*Members*” shall mean the District or CMFA, as appropriate.

“*State*” shall mean the State of California.

Section 2. Purpose. This Agreement is made pursuant to the Act for the purpose of assisting the financing and refinancing of capital improvement projects of the District by exercising the powers referred to in this agreement and shall benefit no other entity. Any Bonds issued by the Authority shall be solely for projects benefiting the District.

Section 3. Term. This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by a supplemental agreement of CMFA and the District; *provided, however*, that in no event shall this Agreement terminate while any Bonds remain outstanding under the terms of any Indenture.

#### Section 4. The Authority.

(a) *Creation of the Authority*. There is hereby created pursuant to the Act an authority and public entity to be known as the “Tiburon/Belvedere Wastewater Financing Authority.” As provided in the Act, the Authority shall be a public entity separate from the District and CMFA. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the District or CMFA.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State in the manner set forth in sections 6503.5 of the Act. Such notice shall also be filed with the office of the State Controller.

(b) *Governing Board*. The Authority shall be administered by the Board which shall consist of the five members of the board of directors of the District. The term of office as a member of the Board shall terminate when such member of the Board ceases to hold its respective office at the District and the successor to such officer or director of the District shall become a member of the Board, upon assuming such office.

Members of the Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board determines that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

(c) *Meetings of Board.*

(1) *Time and Place.* The Board shall conduct a regular meeting on September 20, 2011, at the hour of 7:00 p.m. at 2001 Paradise Drive, Tiburon, California. Thereafter, the Board shall provide for its regular meetings. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be filed with each of the Members. Unless otherwise provided, regular meetings shall be held on the same date and time as regular meetings of the Board of Directors of the District. If the Secretary does not post an agenda for a regular meeting pursuant to Government Code Section 54954.21, then such failure to post shall be deemed to be a determination by the President that no items required discussion and, therefore, that the regular meeting should be cancelled, except as otherwise provided in Section 54954.2.

(2) *Legal Notice.* All regular and special meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the California Government Code), or any successor legislation hereafter enacted.

(3) *Minutes.* The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the District and CMFA.

(4) *Quorum.* A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time. Any action or decision of the Authority shall be on motion duly approved by a majority of a quorum of the Board at a lawfully held meeting.

(5) *Bylaws.* The Board may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary for the purposes hereof.

(d) *Officers; Duties; Bonds.*

(1) The officers of the Authority shall be the President, Vice President, Executive Director, Secretary and Treasurer. The officers of the Authority shall be the persons specified in the By-Laws and shall have the powers vested in them pursuant to such By-Laws and such other powers as may be granted by the Board from time to time by resolution. Such officers may be directors or officers of the District serving *ex officio*.

(2) The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond in the amount of \$25,000 as required by section 6505.1 of the Act; provided, that such bond shall not be required if the Authority does not possess or own property or funds with an aggregate value of greater than \$500 (excluding amounts held by a trustee or other fiduciary in connection with any Bonds). The cost of the bond shall be paid by the District.

(3) So long as required by section 6505 and section 6505.5 of the Act, the Treasurer of the Authority shall prepare or cause to be prepared: (a) a special audit as required pursuant to section 6505 of the Act every year during the term of this

Agreement; and (b) a report in writing on the first day of July, October, January and April of each year to the Board, the District and CMFA, which shall describe the amount of money held by the Treasurer of the Authority for the Board, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee of other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provides regular reports covering such amounts).

(4) The services of the officers shall be without compensation by the Authority. the District will provide such other administrative services as required by the Authority, and shall not receive economic remuneration from the Authority for the provision of such services.

(5) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

(6) All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activities of officers, agents or employees of the Members when performing their respective functions within the territorial limits of their respective Member, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Agreement.

(7) None of the officers, agents or employees, if any, directly employed by the Authority shall be deemed, by reason of their employment by the Authority, to be employed by any Member or, by reason of their employment by the Authority, to be subject to any of the requirements of any Member.

(8) The Members hereby confirm their intent and agree that, as provided in Section 4(A) hereof and in the Act, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the District or CMFA, and they do not intend by the following sentence to impair this provision. To the extent that liability is imposed or a claim is made on CMFA, for any reason whatsoever notwithstanding Section 4(A) hereof and the Act, directly or indirectly arising out of a transaction or series of transactions undertaken by or for the benefit of the District in connection with the activities of the Authority, the District shall indemnify, defend and hold harmless CMFA and each of CMFA's officers, directors, employees, members and agents from and against any and all costs, expenses, losses, claims, damages and liabilities arising out of or in connection with the activities of the Authority. CMFA may elect to defend itself in any such action with counsel of its choice, the reasonable fees of such counsel to be paid by the District. The Authority and the District shall be jointly and severally liable for any indemnity obligation owed to CMFA. Notwithstanding the provisions of section 895.6 of the Government Code of the State, the District shall not have any right to contribution from CMFA.

(9) The Authority or the District shall cause all records regarding the Authority's formation, existence, operations, any Bonds issued by the Authority, obligations incurred by it and proceedings pertaining to its termination to be retained for at least 6 years

following termination of the Authority or final payment of any Bonds issued by the Authority, whichever is later.

Section 5. Powers. The Authority shall have any and all powers which are common powers of the District and CMFA, and the powers separately conferred by law upon the Authority. All such powers, whether common to the Members or separately conferred by law upon the Authority, are specified as powers of the Authority except any such powers which are specifically prohibited to the Authority by applicable law. The Authority's exercise of its powers is subject to the restrictions upon the manner of exercising the powers of the District.

The Authority is hereby authorized, in its own name, to do all acts necessary or convenient for the exercise of its powers, including, but not limited to, any or all of the following: to sue and be sued; to make and enter into contracts; to employ agents, consultants, attorneys, accountants, and employees; to acquire, hold or dispose of property, whether real or personal, tangible or intangible, wherever located; to issue Bonds or otherwise incur debts, liabilities or obligations to the extent authorized by the Act or any other applicable provision of law and to pledge any property or revenues or the rights thereto as security for such Bonds and other indebtedness.

Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Act or under applicable law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof.

Section 6. Termination of Powers. The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement in accordance with Section 3 hereof.

Section 7. Fiscal Year. Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to June 30, 2012.

Section 8. Disposition of Assets. Upon termination of this Agreement pursuant to Section 3 hereof, any surplus money in possession of the Authority or on deposit in any fund or account of the Authority shall be returned in proportion to any contributions made as required by Section 6512 of the Act. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. After rescission or termination of this Agreement pursuant to Section 3 hereof, all property of the Authority, both real and personal, shall be distributed to the District, subject to Section 9 hereof.

Section 9. Contributions and Advances. Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the District and CMFA for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance made in respect of a revenue-producing facility shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the District or CMFA, as the case may be, and the Authority at the time of making such advance as provided by section 6512.1 of the Act. It is mutually understood and agreed that neither the District nor CMFA has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either may do so. The District or CMFA may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

Section 10. Bonds.

(a) *Authority To Issue Bonds*. When authorized by the Act or other applicable provisions of law and by resolution of the Board, the Authority may issue Bonds for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement, under such terms and conditions as may be authorized by the Board.

(b) *Bonds Are Limited Obligations*. The Bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable Indenture(s) and shall not constitute a charge against the general credit of the Authority. The Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Bonds shall not constitute a debt, liability or obligation of the State or any public agency thereof, including CMFA and the District, other than the special obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State or any public agency thereof, including CMFA and the District, shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Bonds nor shall the State or any public agency or instrumentality thereof, including CMFA and the District, in any manner be obligated to make any appropriation for such payment. The Authority has no taxing power.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any director, officer, agent or employee of the Authority, in his or her individual capacity and no director or officer of the Authority executing a Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance of such Bond.

Section 11. Agreement not Exclusive. This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the District and CMFA, except as the terms of this Agreement may conflict therewith, in which case the terms of this Agreement shall prevail.

Section 12. Accounts and Reports. All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles and by each Indenture for outstanding Bonds (to the extent such duties are not assigned to a trustee for owners of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by the District and CMFA and their representatives.

The Authority shall require that each Indenture provide that the trustee appointed thereunder shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of such Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out the requirements of this Section 12.

(a) *Audits*. The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the

requirements of the Act. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section 12, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

(b) *Audit Reports.* The Treasurer of the Authority, as soon as practicable after the close of each Fiscal Year but in any event within the time necessary to comply with the requirements of the Act shall file a report of the audit performed pursuant to Subsection B of this Section 12 as required by the Act and shall send a copy of such report to public entities and persons in accordance with the requirements of the Act.

Section 13. Funds. Subject to the provisions of each Indenture for outstanding Bonds providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to accounting procedures approved by the Board and shall make the disbursements required by this Agreement or otherwise necessary to carry out the provisions and purposes of this Agreement.

Section 14. Conflict of Interest Code. The Authority shall at all times be governed by the Conflict of Interest Code adopted by and applicable to the District.

Section 15. Breach. If default is made by the District or CMFA in any covenant contained in this Agreement, such default shall not excuse either the District or CMFA from fulfilling its obligations under this Agreement and the District and CMFA shall continue to be liable for the payment of contributions and the performance of all conditions herein contained. The District and CMFA hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the District and CMFA hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the Members. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

Section 16. Withdrawal. Neither CMFA nor the District may withdraw from this Agreement prior to the end of the term of this Agreement determined in accordance with Section 3.

Section 17. Effectiveness. This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of CMFA and the District when each party has executed a counterpart of this Agreement.

Section 18. Severability. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

Section 19. Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.



Section 20. Amendment of Agreement. This Agreement may be amended by supplemental agreement executed by the Members at any time; provided, however, that this Agreement may be terminated only in accordance with Section 3 hereof and, provided further, that such supplemental agreement shall be subject to any restrictions contained in any Bonds or documents related to any Bonds to which the Authority is a party.

Section 21. Form of Approvals. Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of CMFA, by resolution duly adopted by the board of directors of CMFA, and, in the case of the District, by resolution duly adopted by the Board of Directors of the District, and, in the case of the Authority, by resolution duly adopted by the Board. Any consent or approval required under this Agreement shall not be unreasonably withheld.

Section 22. Waiver of Personal Liability. No member, officer or employee of the Authority, the District or CMFA shall be individually or personally liable for any claims, losses, damages, costs, injury and liability of any kind, nature or description arising from the actions of the Authority or the actions undertaken pursuant to this Agreement, and the District shall defend such members, officers or employees against any such claims, losses, damages, costs, injury and liability. Without limiting the generality of the foregoing, no member, officer or employee of the Authority or of any Member shall be personally liable on any Bonds or be subject to any personal liability or accountability by reason of the issuance of Bonds pursuant to the Act and this Agreement. To the full extent permitted by law, the Board shall provide for indemnification by the Authority of any person who is or was a member of the Board, or an officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of the Board, or an officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in the course and scope of his or her office, employment or agency. In the case of a criminal proceeding, the Board may provide for indemnification and defense of a member of the Board, or an officer, employee or other agent of the Authority to the extent permitted by law.

Section 23. Notices. Notices to the District hereunder shall be sufficient if delivered to the General Manager of the District, and notices to CMFA hereunder shall be sufficient if delivered to the financial advisor of CMFA at 2111 Palomar Airport Road, Suite 320, Carlsbad, CA 92011.

Section 24. Miscellaneous.

(a) *Section Headings*. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(b) *Execution in Counterparts*. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(c) *Exercise of Duties and Actions.* Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by CMFA or the District, such action may be exercised through the officers, staff or employees of CMFA or the District, as the case may be, in the manner provided by law.

(d) *Governing Law.* This Agreement is made in the State, under the Constitution and laws of the state and is to be construed as a contract made and to be performed in the State.

(e) *Entire Agreement.* This Agreement is the complete and exclusive statement of the agreement among the Members with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the day and year first above written.

SANITARY DISTRICT NO. 5 OF MARIN  
COUNTY

By   
President of the Board of Directors

Attest:

  
Secretary

CALIFORNIA MUNICIPAL FINANCE  
AUTHORITY

By \_\_\_\_\_  
Member of the Board of Directors

(c) *Exercise of Duties and Actions.* Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by CMFA or the District, such action may be exercised through the officers, staff or employees of CMFA or the District, as the case may be, in the manner provided by law.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the day and year first above written.

SANITARY DISTRICT NO. 5 OF MARIN  
COUNTY

By \_\_\_\_\_  
President of the Board of Directors

Attest:

\_\_\_\_\_  
Secretary

CALIFORNIA MUNICIPAL FINANCE  
AUTHORITY

By  \_\_\_\_\_  
Member of the Board of Directors