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11 Attorneys for Real Party In Interest Sewer Authority Mid-Coastside

12 SUPERIOR COURT OF CALIFORNIA

13 FOR THE COUNTY OF SAN MATEO

14 CITY OF HALF MOON BAY, a municipal corporation,)
15 Plaintiff,)
16 vs.)
17 GRANADA COMMUNITY SERVICES DISTRICT)
18 and MONTARA WATER AND SANITARY)
19 DISTRICT,)
20 Defendants.)
21 and)
22 SEWER AUTHORITY MID-COASTSIDE)
23 Real Party In Interest)

Case No. 17 CIV 03092

**STIPULATION AND ORDER
REGARDING EXPENSES
AND ASSESSMENTS OF
SEWER AUTHORITY MID-
COASTSIDE**

**Assigned for all purposes to
The Hon. _____
Dept.**

**[Exempt from filing fees]
(Gov. Code. §6103)**

24 IT IS HEREBY STIPULATED by and among Plaintiff CITY OF HALF MOON BAY,
25 Defendants GRANADA COMMUNITY SERVICES DISTRICT and MONTARA WATER
26 AND SANITARY DISTRICT, and Real Party In Interest SEWER AUTHORITY MID-
27 COASTSIDE, through their respective attorneys, as follows:

28 1. The above-captioned litigation is brought by Plaintiff CITY OF HALF MOON
BAY (“CITY”) against the defendants hereto and real party in interest herein to obtain a judicial
declaration of the parties’ respective rights and obligations under the February 3, 1976
Agreement Creating The Sewer Authority Mid-Coastside, as revised by Amendments 1 through
8, hereinafter called “the JEPA,” principally with respect to whether certain activities (*i.e.*, work

1 related to the “intertie pipeline and attendant pumping facilities”) are properly included within
2 “[t]he total expenses of operation and maintenance of all of the components of the Present
3 Project” to “be shared in a manner based on flows into the single consolidated treatment plant
4 facility” or separate “Projects” regarding which each Member Agency may choose whether or
5 not “to be a participant.” (Terms in quotes are from the JEPA as amended.)

6 2. Defendant GRANADA COMMUNITY SERVICES DISTRICT (“GCSD”) is and,
7 at all times relevant herein, was a local agency duly organized under the Sanitary District Law of
8 1923, and now is existing and authorized under the Community Services District Law, with its
9 principal place of business in El Granada, San Mateo County, California.

10 3. Defendant MONTARA WATER AND SANITARY DISTRICT (“MWSD”) is and,
11 at all times relevant herein, was a local agency duly organized under the Sanitary District Law of
12 1923 also exercising the powers of a county water district pursuant to Health and Safety Code
13 Section 6512.7, and now is existing and authorized as a Water and Sanitary District, with its
14 principal place of business in Montara, San Mateo County, California.

15 4. The Real Party In Interest, SEWER AUTHORITY MID-COASTSIDE (“SAM”),
16 is and, at all times relevant herein, was a joint powers agency duly organized under the JEPA,
17 pursuant to the Joint Exercise of Powers Law, Government Code section 6500 *et seq.* SAM’s
18 Member Agencies are CITY, GCSD and MWSD.

19 5. The JEPA provides that an annual General Budget shall be prepared by SAM and
20 submitted to the governing bodies of the Member Agencies for approval, and specifies that final
21 approval by SAM shall require the prior consent of all Member Agencies. On June 12, 2017, the
22 SAM Board submitted to each Member Agency for approval a General Budget for Fiscal Year
23 2017-2018. GCSD and MWSD approved the General Budget as presented, but CITY only
24 approved a portion of the General Budget, specifically declining to approve the portion of the
25 General Budget characterized as the “Infrastructure Division,” which includes the repair and
26 replacement of a segment of the Intertie Pipeline System (from Stations 51+50 to 73+50) and the
27 repair and replacement of a surge tank at the Portola Pump Station, as well as related costs for
28 the SAM Engineering & Construction Contracts Manager.

1 6. The JEPA requires unanimous Member Agency approval of the General Budget,
2 which did not occur. As a result, since the current fiscal year began on July 1, 2017, pursuant to
3 Resolution 8-2017, SAM has been drawing down its Operating Reserves to continue the
4 collection, transmission, treatment, and disposal of the wastewater generated within the
5 territories of the Member Agencies. At the rate SAM has been drawing down its Operating
6 Reserves it will need new funding by approximately August 18, 2017.

7 7. SAM has no funding mechanism of its own to continue operations other than
8 drawing upon its Reserves and relying upon Member Agency payments of their respective
9 budgeted obligations. Without an approved General Budget, SAM has no current authority to
10 issue invoices to the Member Agencies to cover expenses associated with the collection,
11 transmission, treatment, and disposal of the wastewater generated within the Member Agencies'
12 territories. Failure to continue SAM's operations not only threatens to, but will, seriously
13 endanger the public health, safety, and welfare.

14 8. The Parties desire that SAM continue the collection, transmission, treatment, and
15 disposal of the wastewater generated within the Member Agencies' territories to protect the
16 public health, safety, and welfare, and to enable this to continue, hereby stipulate as follows:

17 a. SAM shall operate pursuant to its Fiscal Year 2017-2018 General Budget
18 as approved by the SAM Board for submittal to each Member Agency for approval on
19 June 12, 2017 in the form heretofore presented to the Member Agencies,

20 b. SAM shall issue monthly invoices to the Member Agencies based on the
21 Fiscal Year 2017-2018 General Budget, each invoice comprising one-twelfth of the
22 Member Agency's respective annual obligation, and

23 c. By this stipulation CITY shall be deemed to have approved under protest
24 that part of SAM's 2017-18 General Budget characterized as the "Infrastructure
25 Division," and shall pay any amount for the repair and replacement of a segment of the
26 Intertie Pipeline System (from Stations 51+50 to 73+50) and the repair and replacement
27 of a surge tank at the Portola Pump Station, as well as related costs, including without
28 limitation those for the SAM Engineering & Construction Contracts Manager. The CITY
may specify that it is paying such amounts under protest.

1 d. The Member Agencies, including CITY, shall pay SAM within thirty (30)
2 days of receipt the invoices described in subparagraph 8.b; provided, that as to any
3 portion thereof specified pursuant to subparagraph 8.c to be paid under protest, the
4 payment of that portion shall be without prejudice to the position of any party to this
5 litigation. In other words, no waiver, estoppel or other legal or equitable bar as to any
6 party shall arise from the CITY's payment under protest pursuant to this stipulation or
7 any order arising from it. Any claim of any party as to any portion of the 2017-18
8 General Budget as referenced in Paragraph 5 (including but not limited to any payment
9 under protest) may be resolved by further agreement of the parties, which may result
10 from the parties' participation in "any ... mutually agreeable method of settlement" under
11 the JEPA as amended, or by a final ruling(s) of a court of competent jurisdiction in the
12 above-captioned litigation.

13 9. This stipulation is intended to enable SAM to continue its ongoing operations and
14 proceed with expenditures in accordance with the 2017-18 General Budget as referenced in
15 Paragraph 5, and no language herein is to be construed as a waiver of any claim, cause of action,
16 defense, objection to any procedural matter (including without limitation, objection to seeking an
17 alternative venue pursuant to section 394 of the Code of Civil Procedure), or otherwise to be
18 construed as a waiver of or consent to any matter not expressly contained herein, including but
19 not limited to any right(s) of any party contained in the JEPA. Notwithstanding the foregoing,
20 the parties further agree that SAM may, without further action by its Board (other than such
21 action(s) required to award construction contracts and supporting service contracts), expend the
22 funds shown appropriated by the "Infrastructure Division" of the FY 2017-2018 General Budget
23 as referenced in Paragraph 5 specifically related to the repair and replacement of a segment of
24 the Intertie Pipeline System (from Stations 51+50 to 73+50) and the repair and replacement of a
25 surge tank at the Portola Pump Station, as well as related costs, including without limitation
26 those for the SAM Engineering & Construction Contracts Manager (collectively, "Infrastructure
27 Division Costs"). The parties agree that expenditure of the Infrastructure Division Costs is
28 necessary to enable compliance with environmental and other laws governing SAM's operations

1 and they therefore agree to cooperate in good faith to see that said FY 2017–2018 General
2 Budget is implemented expeditiously and without further delay arising from the dispute which
3 gave rise to the above-captioned litigation.

4 10. This stipulation shall be effective and binding upon the parties as of the date of
5 the last signature hereon. Nevertheless, the parties jointly request the Court to order
6 implementation of this stipulation, as set forth below.

7 11. The parties further agree that the public interest provides that this stipulation may
8 be deemed to be SAM’s responsive pleading herein, which neither admits or denies the
9 allegations of the Complaint or any Cross-Complaint(s), and that SAM shall be among the
10 parties entitled to enforce the provisions of this stipulation in this action, and shall be a party
11 bound by the judgment rendered herein without the necessity to appear at conferences or trial,
12 provided that this stipulation is approved and ordered implemented by the Court.

13 Dated: Aug. 21, 2017 BOLD, POLISNER, MADDOW, NELSON & JUDSON

14 By: Carl P A Nelson
15 Carl P.A. Nelson, Attorneys for Real Party In Interest
16 SEWER AUTHORITY MID-COASTSIDE

17 Dated: _____ COLANTUONO, HIGHSMITH & WHATLEY, PC

18 By: _____
19 Michael G. Colantuono, Attorneys for Plaintiff
20 CITY OF HALF MOON BAY

21 Dated: _____ WITTWER PARKIN, LLP

22 By: _____
23 Jonathan Wittwer, Attorneys for Defendant
24 GRANADA COMMUNITY SERVICES DISTRICT

25 Dated: _____ LAW OFFICES OF DAVID E. SCHRICKER, P.C.

26 By: _____
27 David E. Schricker, Attorneys for Defendant
28 MONTARA WATER AND SANITARY DISTRICT

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14
15 By: _____
16 Carl P.A. Nelson, Attorneys for Real Party In Interest
SEWER AUTHORITY MID-COASTSIDE

17 Dated: _____ COLANTUONO, HIGHSMITH & WHATLEY, PC

18
19 By: _____
20 Michael G. Colantuono, Attorneys for Plaintiff
CITY OF HALF MOON BAY

21 Dated: _____ WITTWER PARKIN, LLP

22
23 By: _____
24 Jonathan Wittwer, Attorneys for Defendant
GRANADA COMMUNITY SERVICES DISTRICT

25 Dated: 8/18/17 LAW OFFICES OF DAVID E. SCHRICKER, P.C.

26
27 By: 
28 David E. Schricker, Attorneys for Defendant
MONTARA WATER AND SANITARY DISTRICT

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14
15 By: _____
16 Carl P.A. Nelson, Attorneys for Real Party In Interest
17 SEWER AUTHORITY MID-COASTSIDE

18 Dated: _____ COLANTUONO, HIGHSMITH & WHATLEY, PC

19 By: _____
20 Michael G. Colantuono, Attorneys for Plaintiff
21 CITY OF HALF MOON BAY

22 Dated: 8/21/2017 WITTWER PARKIN, LLP

23 By: *Jonathan Wittwer*
24 Jonathan Wittwer, Attorneys for Defendant
25 GRANADA COMMUNITY SERVICES DISTRICT

26 Dated: _____ LAW OFFICES OF DAVID E. SCHRICKER, P.C.

27 By: _____
28 David E. Schricker, Attorneys for Defendant
MONTARA WATER AND SANITARY DISTRICT

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12 provided that this stipulation is approved and ordered implemented by the Court.

13 Dated: _____ BOLD, POLISNER, MADDOW, NELSON & JUDSON

14
15 By: _____
16 Carl P.A. Nelson, Attorneys for Real Party In Interest
SEWER AUTHORITY MID-COASTSIDE

17 Dated: 2/21/17 COLANTUONO, HIGHSMITH & WHATLEY, PC

18
19 By: _____
20 Michael G. Colantuono, Attorneys for Plaintiff
CITY OF HALF MOON BAY

21 Dated: _____ WITTWER PARKIN, LLP

22
23 By: _____
24 Jonathan Wittwer, Attorneys for Defendant
GRANADA COMMUNITY SERVICES DISTRICT

25 Dated: 8/18/17 LAW OFFICES OF DAVID E. SCHRICKER, P.C.

26
27 By: _____
28 David E. Schricker, Attorneys for Defendant
MONTARA WATER AND SANITARY DISTRICT