

CHAPTER 8

AN ORDINANCE AUTHORIZING CONTRACTUAL ASSESSMENT BETWEEN THE DISTRICT AND PRIVATE PROPERTY OWNERS TO ADD THE COSTS OF REPAIRS OF SEWER LATERALS TO THE PROPERTY TAX ROLL FOR EACH INDIVIDUAL PROPERTY FOR WHICH THE CURRENT PROPERTY OWNER ENTERS INTO A CONTRACTUAL ASSESSMENT AGREEMENT WITH THE DISTRICT.

ARTICLE 1. FINDINGS & DETERMINATIONS:

Section 101. The Las Gallinas Valley Sanitary District (“District”) finds and determines that Infiltration and Inflow (“I&I”) is a serious problem for the District in that during heavy rains a significant amount of water is introduced into the District’s system as a result of I&I from breaches in the entire pipeline system that leads to the District’s sanitary treatment facility. To a great extent much of this I&I is introduced into the District’s pipelines and sewer mains from the sewer laterals leading from a property to the District’s sewers mains. As a result of I&I the District’s sewer treatment facilities have and will become overburdened during periods of heavy rains leading to sewage overflows, ground water contamination and spills into the waters of San Pablo Bay. Such overflows and spills can lead not only to significant fines and penalties against the District by State and Federal water regulatory agencies, but poses a significant risk to the environment, and the health and safety of the public at large.

Section 102. In the of interest addressing the I&I problem, the District has undertaken a Sewer Repair Program and has replaced portions of the existing sewer mains located within its jurisdiction and has an ongoing rehabilitation program. In addition, the District has studied numerous private sewer laterals and has found a significant portion of them are of such an age that a significant amount of I&I from rainwater occurs during heavy rains. Furthermore, most private property owners are unaware of the condition of their sewer laterals unless there has been a need for a repair.

Section 103. The District has determined that it is in the public interest that the private sewer laterals I&I problem be addressed and that it become the policy of the District that the upgrade and repair of private sewer laterals become a priority of the District. Therefore, with

such a policy in mind District staff has developed a program for the repair and upgrade of private sewer laterals in conjunction with the District's program of sewer main rehabilitation.

Section 104. As part of the overall Sewer Rehabilitation Plan the District has allocated "Contractual Assessment Funds" from its budget. It is the intention of the District to have these Contractual Assessment Funds available to front the costs of private sewer lateral repairs and rehabilitation, and thereby act as an incentive to private property owners to repair and upgrade their sewer laterals where needed. However, the implementation of this program had been delayed due to the lack of legislation allowing the District to move forward with such an incentive plan.

Section 105. Recent legislation by the California Legislature (AB 741) has amended various sections of the Health and Safety Code thereby allowing public entities to enter into Contractual Assessment agreements with private property owners under which the costs of repairs to an owner's laterals can be financed and collected by use of the local county tax rolls. Under this statutory authority the District can pay for the costs of repairs to an owner's sewer laterals and then, by agreement with the property owner, add the costs of such repairs to the County Tax Rolls as an assessment.

ARTICLE 2. PRIVATE SEWER LATERAL REHABILITATION PROGRAM:

Section 201. Beginning on January 1, 2012, and each fiscal year, thereafter, beginning July 1, 2012, the District shall make available a set amount of Contractual Assessment Funds for use by the District to conduct repairs on private property owners sewer laterals. The Contractual Assessment Funds available for such use shall be set by the Board. These Contractual Assessment Funds shall be first made available to those property owners whose property(ies) are affected by the current year's Sewer Improvement Project. If there are Contractual Assessment Funds remaining, then those Contractual Assessment Funds may be used for sewer lateral repairs that are not part of the current Sewer Improvement Project.

Section 202. Criteria for participation in the Private Sewer Lateral Rehabilitation Program:

- a. Property Owners must submit an application (and any additional documentation required by the District) for inclusion in the Private Sewer Lateral Rehabilitation Program. All applications and documents must be

completed, received and approved by the District before any work may commence. A "Contractual Assessment Agreement" (a copy of which is attached hereto as Exhibit "A") shall be executed and submitted to the District and approved by the District.

- b. Sewer laterals in the worst condition shall be given priority.
- c. Property owners must have a video inspection of their sewer laterals and have the laterals rated under the Pipeline Assessment Certification Program (PACP) guidelines.
- d. The sewer lateral must have least one (1) PACP rated defect.
- e. The property shall not be encumbered with delinquent property taxes, special assessments or other assessment loans. If delinquencies exist, the property owner must provide documents of special payment arrangements to eliminate the delinquency, and related payment histories.

Section 203. Criteria for participation in the Private Sewer Lateral Rehabilitation Program for property owners whose property(ies) are not part of the current year's Sewer Improvement Project.

- a. Applications will be taken on a first-come, first-served basis.
- b. A video inspection of the sewer lateral may be observed by District personnel.
- c. The property owner must obtain three (3) quotes from a licensed contractor. If the owner is a licensed contractor or plumber they may elect to complete the work themselves and finance the costs of materials and equipment.
 - 1) District has the discretion to provide Contractual Assessment Funds in an amount not to exceed either a) the lowest of the qualified bids submitted to the District by the property owner, or b) the actual cost of construction of the work performed, whichever is less.
- d. All applications and documents must be completed, received and approved by the District before any work may commence.
- e. The property owner is responsible for managing the work, including the activities of the contractor, District permitting and inspection, restoration

work, repairs and claims for damages incurred. The property owner shall retain all receipts, permits, inspection reports and other documents.

- f. The District may authorize payment once the property owner has presented documentation, including all necessary permits and inspections, an itemized statement of costs, and Conditional Release executed by the contractor, and a Notice of Completion, executed by the property owner, accepting the improvements and authorizing payment. A “Contractual Assessment Agreement” (a copy of which is attached hereto as Exhibit “A”) shall be executed and submitted to the District and approved by the District prior to payment. The District will pay the contractor directly for the work performed.
- g. For any extra work, the property owner may present a written request for additional Contractual Assessment Funds for said extra work. However, the District shall have sole discretion to approve/disapprove any additional Contractual Assessment Funds for any extra work. The contractor shall not be paid any additional Contractual Assessment Funds for extra work, unless a written change order or extra work order is executed by the property owner, contractor and the District prior to the extra work being commenced.

Section 204. Late Applications/Administrative Relief: In the event that a property owner fails to timely submit an application for inclusion or participation in the Private Sewer Lateral Rehabilitation Program, as outlined above in Sections 202 and 203, the property owner may seek administrative relief from the District to be allowed to submit a “Late Application.”

The granting of relief by the District to allow a property owner leave to file a “Late Application” shall not be construed to guarantee, represent or warranty that a property owner will be allowed to participate in the Private Sewer Lateral Rehabilitation Program. It is solely within the District’s discretion whether to allow a property owner to participate in the Program. Any work performed that is sought to be included in the Private Sewer Lateral Rehabilitation Program pursuant to the submission of a “Late Application” is at the owner’s risk and cost.

In no case may a "Late Application" be filed with the District greater than ninety (90) days from the substantial completion of the work or after a Notice of Completion has been recorded, whichever is earlier. "Late Applications" filed after ninety (90) days shall be rejected and are not subject to further request for relief or appeal.

Section 205. All work must be completed prior to the end of the District's fiscal year to be eligible for payment by the District. Contractual Assessment Funds will be obligated for a period not to exceed Ninety (90) days from approval. The obligation period shall include all work, inspections, and submission of receipts for payment.

Section 206. A permit is required from the District and a final inspection by the District. No fee shall be charged to the property owner for the permit or the final inspection.

Section 207. Contractual Assessment Principal and Interest Rate:

- a. The principal sum of cost of repairs to each property owner's sewer lateral shall constitute a lien against Owner(s) property, not unlike that of a regular assessment against said property for the District's regular annual assessment for sewer charges related to sewer service for purposes of collection of said principal sum and interest.
- b. Said principal sum to accrue interest at the rate of two percent (2%) per annum.
- c. The maximum amount of the initial Contractual Assessment Principal allowed per property shall be \$10,000.
- d. The term of each Contractual Assessment shall be ten (10) years.
- e. There shall be no prepayment penalty. Nor shall the payment schedule be accelerated upon the sale or transfer of the property.

Section. 208. Each property owner shall be responsible for any additional fees or charges, to include but not limited to title search fees and recording fees, related to the preparation, execution and/or recording of the Contractual Assessment Agreement. These fees may be added to the principal amount of the lien against the property which is to be added to the County Tax Rolls at the District's discretion.

Section 209. Pursuant to Health & Safety Code §§ 5470 – 5474.10 and 6940 – 6941.9, Owners(s) and the District shall enter into a “Contractual Assessment Agreement” whereby it is agreed that the above-referenced semi-annual principal and interest installment amounts shall be collected pursuant to the procedures for regular lien(s)/assessment(s) by addition of said installment payments to the County of Marin Tax Rolls, to be collected at the same time and in the same manner as county taxes are collected.

Section 210. Said lien/assessment shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for the enforcement for liens for county taxes.

Section 211. The “Contractual Assessment Agreement” executed by each Property Owner and approved by the District shall be recorded with the Marin County Recorder’s office. A copy shall also be provided to the Marin Tax Collector if necessary.

Section 212. Pursuant to Health & Safety Code Section 6487 the District’s General Manager or designee is hereby authorized, on behalf of and in the name of the District, to execute each “Contractual Assessment Agreement” entered into with a Property Owner.

ARTICLE 3. DESIGN, CONSTRUCTION AND MAINTENANCE OF SEWER LATERALS:

Section 301. Unless specifically stated herein, the design, construction and maintenance of a sewer lateral are governed by “The Ordinance Code of the Las Gallinas Valley Sanitary District” (“the Code”), and more specifically, but not limited to, Title 2 Chapter 1, “The Sanitary Code of Las Gallinas Valley Sanitary District of Marin County” and, Title 2 Chapter 3, “Regulating the Construction and Installation of Sanitary Sewer Facilities in Areas Underlain By Bay Mud.”

Section 302. The work done on the lateral sewers shall not grant the District, its agents, employees and/or contractors the power to exercise dominion or control over the subject property, and shall not be construed as creating a public project or substantial participation in the planning, approval, construction or operation of the lateral sewers for any purposes. The work does not constitute a grant of any permanent real property rights to the District. Nor is the District’s participation in this program to be construed as an acceptance of any permanent real property

rights or obligations without express approval of the District's Board and conveyance by a separate written instrument executed by the appropriate party(ies).

Section. 303. The Owner of the lateral sewers shall be solely responsible for all future maintenance and repairs to the sewer lateral or everything required to install and maintain said laterals, including cleanouts or any wyes or tees attached or "cut-in" to the main sewer lines. Any warranty(ies) provided for materials supplied or work performed shall remain with the property owner and it shall be the property owner's responsibility to maintain and/or make any claims thereunder.

RECORDING REQUESTED BY:
Las Gallinas Valley Sanitary District
300 Smith Ranch Rd.
San Rafael, CA 94903

WHEN RECORDED MAIL TO:
Susan McGuire
Las Gallinas Valley Sanitary District
300 Smith Ranch Rd.
San Rafael, CA 94903

THIS SPACE FOR RECORDER'S USE ONLY

CONTRACTUAL ASSESSMENT AGREEMENT
[Health & Safety Code §§ 5464, 5465, 5474 & 5474.6]

THIS CONTRACTUAL ASSESSMENT AGREEMENT made this _____ day of _____, between _____ (the "Owner(s)"), whose address is _____, San Rafael, CA, _____, A.P.N. _____, and the LAS GALLINAS VALLEY SANITARY DISTRICT, (the "LGVSD"), a sanitary district, created pursuant to The Sanitary District Act of 1923, Health & Safety Code §§ 6400 et seq., whose address is 300 Smith Ranch Road, San Rafael, CA 94903; and

WHEREAS, the Owner(s) and LGVSD did agree, pursuant to Health & Safety Code §§ 5465 and 5465, to the replacement and repair of existing sewer laterals on Owner(s)' property and that said cost of the lateral replacement or repair shall constitute the cost of an improvement for connection to a sewer system pursuant to Health & Safety Code §§ 5464 AND 5474; and

WHEREAS, LGVSD did fund said cost of the lateral replacement or repair in the sum of \$ _____; and

WHEREAS, IN CONSIDERATION for the construction and repair of Owner(s)
Check all that apply: ___ **Upper** ___ **Lower** ___ **Entire** Sewer Laterals and for LGVSD's having funded the costs of construction and repair of Owners(s) Upper Sewer Laterals for the principal sum of \$ _____;

OWNER(S) AND LGVSD DO HEREBY AGREE AS FOLLOWS:

1. Said principal sum of \$ _____, shall constitute a lien against Owner(s) property, whose address is _____, San Rafael, CA, _____, A.P.N. _____, not unlike that of a regular assessment against said property for the LGVSD's regular annual assessment for sewer charges related to sewer service for purposes of collection of said principal sum and interest; and
2. Said principal sum of \$ _____ to accrue interest at the rate of _____ percent per annum; and
3. Said lien/assessment amount plus interest shall be payable to LGVSD in semi-annual installments

EXHIBIT A

of \$ _____ ; commencing on _____ and ending on _____ ; Attached is a amortization schedule which shows the installment amounts and due dates;

4. Pursuant to Health & Safety Code §§ 5470 – 5474.10 and 6940 – 6941.9, Owners(s) and LGVSD agree that said semi-annual principal and interest installment amounts shall be collected pursuant to the procedures for regular assessment by addition of said installment payment to the County of Marin Tax Rolls, to be collected at the same time and in the same manner as county taxes are collected; and
5. Said lien/assessment shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for the enforcement for liens for county taxes.

OWNER(S): _____ Signature _____ Print Name Dated: _____	OWNER(S): _____ Signature _____ Print Name Dated: _____
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ACKNOWLEDGMENT

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LAS GALLINAS VALLEY SANITARY DISTRICT
(Seal)

Date: _____

Mark R. Williams, General Manager