



Public Works Agency  
Alameda County

October 3, 2014

*Daniel Woldesenbet, Ph.D., P.E., Director*

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Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Board Members:

**SUBJECT: AUTHORIZE THE GENERAL MANAGER OF THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT TO EXECUTE A JOINT POWERS AUTHORITY AGREEMENT FOR STORMWATER MANAGEMENT WITH THE STATE WATER RESOURCES CONTROL BOARD AND OTHER PUBLIC AGENCIES**

RECOMMENDATION:

It is recommended that your Board

- 1) Authorize the General Manager of the Alameda County Flood Control and Water Conservation District (District) to execute a Joint Power Authority (JPA) Agreement with the California State Water Resources Control Board (State Water Board), the Ventura County Watershed Protection District, and the Fresno Metropolitan Flood Control District and;
- 2) Appoint the District's stormwater program manager as the representative to serve on the JPA's Board of Directors and;
- 3) Authorize the General Manager to approve immaterial revisions to the agreement requested by the other initial signatories and/or the inclusion of additional members after review by County Counsel.

The estimated start time for the JPA is January, 2015 and will continue until such time as it is dissolved by the parties.

DISCUSSION/FINDINGS:

Over the last 20 years, the State Water Resources Control Board (State Water Board), the California Stormwater Quality Association (CASQA) and stormwater permittees, including the Alameda County Flood Control and Water Conservation District (District) have partnered on statewide projects including publishing and distributing statewide Best Management Practices (BMP) Handbooks and statewide stormwater trainings. State Water Board staff has recommended that CASQA consider forming a Joint Powers Authority (JPA) in order to facilitate funding such projects. This is because many governmental grants must be awarded to other governmental agencies rather than private entities, including public benefit corporations (501(c)(3)) such as

CASQA. A JPA is a public agency and, as such, would be a more viable recipient of grant program funds than CASQA or a third party. A JPA must comply with the same requirements as any other governmental agency such as open meetings laws, records requests, and conflicts of law. CASQA cannot be a signatory of the agreement forming the JPA because it is not a governmental agency.

Staff is recommending that your Board authorize the General Manger of the Alameda County Flood Control and Water Conservation District to execute a JPA between the State Water Board, the Ventura County Watershed Protection District, and the Fresno Metropolitan Flood Control District. It is anticipated that other municipalities that hold municipal stormwater permits may be interested in signing onto the JPA in the future. Under the Government Code, the JPA must designate an "exercising agency," which limits the powers of the new JPA to that of a public entity. The Fresno Metropolitan Flood Control District has agreed to serve as the exercising agency. The District's role will be to represent Alameda County on the JPA's Board of Directors

The CASQA Board of Directors retained Kenneth Price of Baker, Manock and Jensen, who helped establish CASQA as a 501(c)(3) non-profit, to develop a draft JPA agreement for consideration by potential signatories. The draft agreement has gone through significant review and refinement based on input from the CASQA Board of Directors and the potential signatories' staff and counsels. Staff from all four agencies have committed to recommending to their governing boards that their agencies become signatories. While staff does not anticipate changes to the JPA agreement, staff is recommending that the General Manager of the District be authorized to make immaterial revisions requested by the other initial signatories after review by District Counsel. Staff is also requesting that the General Manager be authorized to approve the inclusion of additional members as long as there are no material changes to the agreement. In the event one or more of the other signatories or a new member desires to make material changes, staff will bring those changes back to this Board for review and recommendations. Attached is a draft of the JPA.

CASQA expects that the JPA members will be able to benefit from statewide programs and projects that will create significant cost savings to participants through the leveraging of resources. Members will also be able to participate in statewide projects that benefit the local communities but would have been infeasible using only local assets.

FINANCING:

There is no financial obligation for Alameda from joining this JPA and no increase in increase in net District cost as a result of this action.

Yours truly,



Daniel Woldesenbet, Ph.D., P.E.  
Director of Public Works

DW/SG

cc: County Administrator  
County Counsel  
Auditor-Controller

**JOINT POWERS AGREEMENT  
CREATING THE  
CALIFORNIA STORMWATER QUALITY AUTHORITY**

This JOINT POWERS AGREEMENT CREATING THE CALIFORNIA STORMWATER QUALITY AUTHORITY (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the \_\_\_\_\_; \_\_\_\_\_ and the \_\_\_\_\_, hereinafter "Signatories" (collectively) or "Signatory" (individually).

**RECITALS**

WHEREAS, each of the Signatories to the Agreement is a public entity organized and operating under the laws of the State of California, and/or a public agency as defined in California Government Code section 6500; and

WHEREAS, each of the Signatories is either directly or indirectly charged with the power to implement measures that would regulate stormwater quantity and quality.

WHEREAS, the Signatories desire to create the California Stormwater Quality Authority on behalf of its member agencies.

WHEREAS, the Signatories desire to create a new public entity to administer the provisions of this Agreement, the purpose of which is to support research and other activities to develop tools and information to assist public and private entities in complying with stormwater National Pollutant Discharge Elimination System ("NPDES") permits and improving surface water quality in California.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, it is agreed by and among the Signatories hereto as follows:

**1. Creation of Authority**

- (a) The California Stormwater Quality Authority ("Authority") is hereby created as a joint powers agency pursuant to the provisions of the Government Code of the State of California relating to the joint exercise of powers common to public agencies. (Gov. Code § 6500, *et seq.*). The Authority is a public entity separate from its Signatories. Pursuant to Government Code section 6509, the Fresno Metropolitan Flood Control District is the designated agency with respect to the Authority's exercise of power.
- (b) Upon complete execution of this Agreement by and on behalf of each Signatory, and formation of the Authority, a Notice of Joint Powers Agreement shall be filed with the California Secretary of State in accordance with Government Code section 6503.5. The Authority shall comply with all other formation requirements provided under California law.

## **2. Purpose**

- (a) This Agreement provides for the creation of a public entity separate and apart from the Signatories to this Agreement to administer this Agreement, the purpose of which is to support research and other activities to develop tools and information to assist public and private entities in complying with stormwater NPDES permits and improving surface water quality in California.
- (b) The Authority's functions shall include but not be limited to:
  - (i) Improving the quality of receiving waters through the reduction of pollution sources in urban and rural watersheds;
  - (ii) Providing research for the development of source and treatment controls in support of complying with the State General Construction, Industrial, and Municipal separate storm sewer systems ("MS4") NPDES Permits;
  - (iii) Assessing monitoring data collected in California as well as nationwide, and improving the understanding of the most critical pollutants in California's receiving waters;
  - (iv) Improving public education and information regarding surface and stormwater quality through the development and distribution of information regarding pollution sources and pathways;
  - (v) Providing technical guidance, including handbooks, manuals, and training programs that support efforts to comply with stormwater NPDES permits, as well as improve stormwater quality professionals' ability to advance the effectiveness of stormwater programs statewide;
  - (vi) Providing technical guidance to develop and implement total maximum day loads ("TMDLs"); and
  - (vii) All ancillary activities related to the functions contained herein.

## **3. Powers of Authority**

The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of its authority to accomplish the purpose as set forth herein including, but not limited to, any or all of the following:

- (a) To make and enter into contracts;
- (b) To prepare reports and other documents for the purpose of applying for and accepting grants, advances, and contributions;
- (c) To employ or contract for services through an adopted procurement policy directly or indirectly related to its purposes;

- (d) To receive contributions and donations of property, funds, services, and other forms of assistance from any source, including Signatory agencies;
- (e) To sue and be sued in its own name; and
- (f) To incur debts, liabilities, or obligations, subject to limitations herein set forth.

#### **4. Use of Public Funds and Property**

The Authority shall be empowered to use for its purposes, public funds, property and other resources received from the Signatories and/or from other sources. Where applicable, the Authority Board of Directors (“Board”) may permit one or more of the Signatories to provide in-kind services, including the use of property.

Pursuant to Government Code section 6505.1, the Authority's Executive Director shall be the person designated to have charge of, handle, or have access to any property of the Authority and is required to file an official bond in the amount to be fixed by the Signatories.

#### **5. Term, Termination, Withdrawal of Signatory, Disposition of Assets**

- (a) The Authority designated pursuant to this Agreement shall commence on the Effective Date and shall continue in existence unless terminated by the governing board of each of the Signatories then a party to this Agreement; provided however, that the Authority and this Agreement shall continue to exist for the purpose of disposing of liabilities distributing funds, property and/or other assets (such funds, property and/or other assets, collectively, the “Authority Assets”), and all other functions necessary to conclude the business of the Authority.
- (b) Any Signatory may remove itself at any time from the Authority with no less than thirty (30) days’ written notice to the Board. The withdrawal of a Signatory shall not in any way discharge, impair, or modify the voluntarily-assumed obligations of the withdrawn Signatory in existence as of the effective date of its withdrawal. A withdrawn Signatory shall not be entitled to the return of any Authority Assets until the effective date of the termination of this Agreement.
- (c) Upon termination of this Agreement, after the payment of all obligations of the Authority, any Authority Assets remaining shall be distributed to the Signatories in proportion to the contribution made by the Signatories toward the funding of the Authority. The Authority shall cease to exist when the Authority Assets have been distributed according to the provisions contained in this Section, this Agreement generally, and the Joint Exercise of Powers Act (Gov. Code §6500 *et seq.*).

#### **6. Governance**

- (a) The governing board from each Signatory agency shall each appoint a director to serve on the Board, which shall consist of one representative of each Signatory

agency. The Executive Director and any person compensated as Treasurer, if any, shall be non-voting members of the Board.

- (b) Upon the vote of a majority of the Board, other public agencies may be added as Signatories to this Agreement, and each such Signatory shall acknowledge its agreement to the terms hereof by executing this Agreement upon authorization of its governing board.
- (c) An alternate may be designated by a director to act in place of that director during his or her absence. Such designation shall be in writing by the designating director and shall be delivered to the Authority Executive Director.
- (d) Within Six Months after the Effective Date, the Board shall consider and adopt Bylaws for the Authority.
- (e) A simple majority of the Board shall constitute a quorum. A simple majority vote of the voting members of the Board shall be required for action to be taken.

## **7. Meetings**

The Board shall fix the hour, date, and place for its regular meetings.

## **8. Application of Laws to Authority Functions**

The Authority shall comply with all applicable laws in the conduct of its affairs, including but not limited to the Joint Exercise of Powers Act (Gov. Code §6500 *et seq.*); Ralph M. Brown Act (Gov. Code § 54950, *et seq.*), and conflict of interest laws/regulations (such as Gov. Code § 1090, *et seq.* the requirements of the California Political Reform Act, Gov. Code § 87100, *et seq.*, and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification, 2 California Code of Regulations § 18700, *et seq.*), as amended.

## **9. Administration and Officers**

- (a) The officers of the Authority are the Chair, Vice-Chair, Executive Director, Secretary, and a non-compensated Treasurer, if any.
  - (i) The Board shall, at its first meeting and thereafter at its first meeting following January 1 of each succeeding year, elect a Chair and Vice-Chair from among its members. The Vice-Chair shall assume the responsibilities of the Chair in the absence of the Chair and the Chair's alternate.
  - (ii) The Board shall appoint an Executive Director under whose general supervision and control the activities of the Authority shall be conducted. The Executive Director has such other powers and duties as may be prescribed by the Board or the Bylaws.

- (iii) The Secretary will (1) keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of summary minutes of all meetings and actions of Directors and committees of the Authority, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings and the proceedings of such meetings; and (2) give, or cause to be given, notice of all meetings of the Board and committees of the Authority required by the Bylaws to be given. The Secretary has such other powers and may perform such other duties as may be prescribed by the Board.
- (iv) The Board shall designate a qualified person to act as the Treasurer of the Authority. In the event that the person designated by the Authority is not a member of the Board, the person serving as Treasurer may be reasonably compensated for performing such work. In the event that the person designated by the Authority to perform such services is an employee of a Signatory, the governing body of that Signatory shall determine the reasonable charges to be made against the Authority for the services of Treasurer. The person holding the position of Treasurer of the Authority shall have charge of the depositing and custody of all funds held by the Authority. The Treasurer shall perform such other duties as may be imposed by provisions of applicable law, including those duties described in Government Code section 6505.5, and that may be prescribed by the Board or the Bylaws.
- (b) Officers may delegate certain duties and responsibilities to staff in accordance with the Bylaws and/or Board resolutions, and in compliance with all applicable laws.

## **10. Accounting**

- (a) The Board shall establish and maintain such funds and accounts as may be required by Generally Accepted Accounting Principles and by Federal and State statute and regulation, as applicable.
- (b) The Authority shall comply with the accounting and auditing requirements contained in California Government Code sections 6505-6505.6.
- (c) The Board will appoint one of its officers to serve as auditor of the Authority. The auditor shall comply with the duties and responsibilities of the office as set forth in subdivisions (a) to (d), inclusive, of California Government Code section 6505.5.

## **11. Fiscal Year**

For the purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year as established from time to time by the Authority, being, at the date of this Agreement, the period

from January 1 to and including the following December 31, except for the first Fiscal Year, which shall be the period from the date of this Agreement to December 31, 2014.

## **12. Legal Counsel**

The Board shall retain independent legal counsel for the Authority, who shall be procured consistent with all applicable procurement laws.

## **13. Privileges and Immunities**

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits that may apply to the activities of officers, agents or employees of public agencies when performing their respective functions within their respective territorial limits, shall apply to them to the same degree and extent while engaged as Signatories of the Authority or otherwise as an officer, agent, Board Member, or other representative of the Authority or while engaged in the performance of any of their functions or duties extraterritorially under the provisions of this Agreement.

## **14. Liability**

- (a) The debts, liabilities, and obligations of the Authority shall be the debts, liabilities, or obligations of the Authority alone, and not any of the Signatories of this Agreement.
- (b) The Authority, and those persons, agencies and instrumentalities used by it to perform the functions authorized herein, whether by contract, employment or otherwise, shall be exclusively liable for any/all injuries, costs, claims, liabilities, damages of whatever kind to any person arising from or related to activities of the Authority.
- (c) The Authority shall hold harmless and indemnify Signatories, and each of them, including their officers and employees, from any claim or liability arising from acts or omissions of the Authority in pursuit of this Agreement, and in so doing, shall provide Signatories, and each of them, with legal defense of any and all claims or liabilities and shall pay reasonable attorney's fees and costs incurred in providing such defense.
- (d) Funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, each Signatory, and any officers, agents, and employees for their actions taken within the scope of their duties while acting on behalf of the Authority.

## **15. Acknowledgement by Signatories**

Each of the Signatories (and all subsequent parties to this Agreement) hereby acknowledge that the California State Water Resources Control Board and the Regional Water Quality Control Boards serve in regulatory capacities over many of the Signatories and subsequent parties to this agreement, including (without limitation) as the permitting authorities for the Municipal Separate



Storm Sewer System Program. Nothing in this Agreement is intended to alter the nature or scope of those regulatory relationships in any manner whatsoever.

## **16. Entire Agreement**

It is understood and agreed that the entire Agreement between the Signatories is contained herein and that this Agreement supersedes all oral agreements and negotiations between the Signatories relating to the subject matter hereof. All items and exhibits referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

## **17. 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 of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

## **18. Amendment**

This Agreement may be modified at any time by written amendment executed by the Signatories.

## **19. Effective Date**

The effective date (“Effective Date”) of this Agreement shall be the first day of the first month following the date on which the Signatories adopt and sign this Agreement.

## **20. Successors**

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Signatories hereto. Except to the extent expressly provided herein, no Signatory may assign any right or obligation hereunder without the consent of the other Signatory.

## **21. 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.

## **22. Headings**

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which referred.

## **23. Consent; Choice of Law; Venue**

Wherever in this agreement any consent or approval is required, the same shall not be unreasonably withheld. This Agreement is made in the State of California, under the

Constitution and laws of such state and is to be so construed. Venue for litigation related to this Agreement shall be in the Superior Court of any County in which a Signatory is located.

IN WITNESS THEREOF, the Signatories have executed this Agreement on the dates hereafter set forth.

(agency)

By: \_\_\_\_\_  
[Name/Title]

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

(other agency)

By: \_\_\_\_\_  
[Name/Title]

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

(other agency)

By: \_\_\_\_\_  
[Name/Title]

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

(other agency)

By: \_\_\_\_\_  
[Name/Title]

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

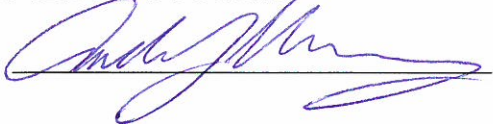
The Alameda County Flood Control and Water Conservation District

By: \_\_\_\_\_  
[Name/Title]

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

APPROVED AS TO FORM:

By:  \_\_\_\_\_