JOINT POWERS AGREEMENT
CREATING THE
CALIFORNIA STORMWATER AUTHORITY

This JOINT POWERS AGREEMENT CREATING THE CALIFORNIA STORMWATER AUTHORITY (the "Agreement") is made and entered into this 1st day of June, 2018, by and between the State Water Resources Control Board, the Fresno Metropolitan Flood Control District, and the Alameda County Flood Control and Water Conservation District, hereinafter "Parties" (collectively) or "Party" (individually).

RECITALS

WHEREAS, each of the Parties to the Agreement is a public agency as defined in California Government Code section 6500;

WHEREAS, each of the Parties is either directly or indirectly authorized to implement measures that would regulate stormwater quantity and quality;

WHEREAS, the Parties desire to create the California Stormwater Authority ("Authority") on behalf of its Party agencies;

WHEREAS, the Parties 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 and enhancing water supplies in California; and

WHEREAS, the Parties anticipate that the California Stormwater Quality Association ("CASQA"), a California nonprofit corporation, will serve as the initial Administering Entity for the California Stormwater Authority, as defined in Section 9(c) below, by, among other things, partially funding the activities and appointing an individual to handle the day-to-day affairs of the California Stormwater Authority; and

WHEREAS, if appointed to serve as the initial Administering Entity, CASQA has agreed to partially fund the activities of the California Stormwater Authority in an amount not to exceed $40,000 in actual cash or in-kind services for its first Fiscal Year, as defined in Section 11 below, and for subsequent Fiscal Years in amounts determined by the Authority's Board of Directors ("Board") and agreed to by CASQA.

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

1. Creation of Authority

(a) The California Stormwater 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 Parties. Pursuant

to Government Code section 6509, the Fresno Metropolitan Flood Control District formed pursuant to Water Code Appendix Chapter 73 is the designated agency with respect to the Authority's exercise of power.

(b) Upon the Effective Date of this Agreement, 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 Parties 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 and enhancing water supplies 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 California's Construction, Industrial, and Municipal separate storm sewer system ("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 Party 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 Parties and from other sources. Where applicable, the Authority's Board of Directors may permit one or more of the Parties to provide in-kind services, including the use of property.

Pursuant to Government Code section 6505.1, the Authority's Administering Entity, as defined in Section 9(c) below, shall be the person designated to have charge of, handle, and have access to any property of the Authority and is required to file an official bond in an amount to be fixed by the Parties.

5. Term, Termination, Addition or Withdrawal of Parties, Disposition of Assets

(a) The Authority shall be formed and come into existence on the Effective Date and shall continue in existence unless terminated by the governing body of each of the Parties then a party to this Agreement or at any point in time at which there ceases to be at least two parties to this Agreement, at which point in time this Agreement shall be automatically terminated; 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 public agency as defined in California Government Code section 6500 that is directly or indirectly authorized to implement measures that would regulate stormwater quality and quantity may seek to become a party to this Agreement

upon authorization by its governing body, amendment to this Agreement in accordance with Section 18 below, and execution of this Agreement by the public agency.

(c) Any Party 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 Party shall not in any way discharge, impair, or modify the voluntarily assumed obligations of the withdrawn Party in existence as of the effective date of its withdrawal. A withdrawn Party shall not be entitled to the return of any Authority Assets until the effective date of the termination of this Agreement.

(d) Upon termination of this Agreement, after the payment and fulfillment of all obligations of the Authority, any Authority Assets remaining shall be distributed to the Parties in proportion to the contribution made by the Parties 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 Authority shall be governed by a Board of Directors, which shall consist of one director appointed by the governing body of each Party. A Party may change its director from time-to-time by notifying the other Parties and the Administering Entity in writing.

(b) 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 Administering Entity.

(c) Within Six Months after the Effective Date, the Board shall consider and adopt Bylaws for the Authority.

(d) A simple majority of the directors of the Board shall constitute a quorum. A majority of a quorum of the Board is empowered to act for the Board.

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, Secretary, and a Treasurer.

(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 the Directors. The Vice-Chair shall assume the responsibilities of the Chair in the absence of both the Chair and the Chair's alternate.

(ii) 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.

(iii) The Board shall designate a qualified person to act as the Treasurer of the Authority. 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. In the event that the person designated by the Board is not a Director, the person serving as Treasurer may be reasonably compensated for performing such work. In the event that the person designated by the Board to perform such services is an employee of a Party, the governing body of that Party shall determine the reasonable charges to be made against the Authority for the services of Treasurer.

(b) Officers may delegate certain duties and responsibilities to the Administering Entity described below in accordance with the Bylaws and/or Board resolutions, and in compliance with all applicable laws.

(c) The Board shall appoint an Administering Entity for the Authority that will start serving on the Effective Date of this Agreement.

The Administering Entity shall be responsible for the general supervision and control of the activities of the Authority, subject to oversight by the Authority's Board. The Administering Entity will also appoint an individual, acceptable to the Authority's Board, to handle the day-to-day affairs of the Authority. The Authority shall enter into a contract with the Administering Entity that, among

other things, memorializes the Administering Entity's responsibilities and requires the Administering Entity to covenant that the Administering Entity will comply with all relevant laws. Specifically, the Administering Entity shall covenant that it does not and shall not have any interest, direct or indirect, that would conflict in any manner with the performance of its responsibilities as Administering Entity. The Administering Entity shall have such other powers and duties as may be prescribed by the Board or the Bylaws. The Board may terminate the Administering Entity or the individual appointed to handle the Authority's day-to-day affairs without cause with thirty (30) days' written notice. The Board may immediately relieve the Administering Entity or the individual appointed to handle the Authority's day-to-day affairs, if, in the reasonable judgment of the Board, there is cause to do so.

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, 2018.

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 Parties of the Authority or otherwise as an officer, agent, Director, 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 Parties 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 Parties, 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 Parties, 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 Party, 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 Parties, Limitation on Authority

(a) Each of the Parties hereby acknowledges that the State Water Resources Control Board and the California regional water quality control boards serve in regulatory capacities over many of the Parties and subsequent parties to this Agreement, including (without limitation) as the permittees 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.

(b) To the extent that the Authority provides input to any public agency in any rulemaking or permitting proceeding, that input will be limited exclusively to providing technical information, and shall not include any advice or recommendations of a policy or legal nature.

16. Entire Agreement

It is understood and agreed that the entire Agreement between the Parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the Parties 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 all of the Parties. Any amendment shall become effective upon the execution of the amendment by each Party, unless specified otherwise.

19. Effective Date

The effective date ("Effective Date") of this Agreement shall be the first day of the first month following the execution of this Agreement by the State Water Resources Control Board, the Fresno Metropolitan Flood Control District, and the Alameda County Flood Control and Water Conservation District.

20. Successors

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

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 by and among any of the Parties related to this Agreement shall be in the Superior Court of any County in which a Party is located.

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

The Alameda County Flood Control and Water Conservation District

By: _____
Daniel Wondesenbet, Ph.D., P.E.
General Manager

Date: 5/21/18

Attest: _____

Approved as to Form,
DONNA R. ZIEGLER, County Counsel

By: _____
Kathy Lee, Deputy

Fresno Metropolitan Flood Control District

By: Alan Hofmann, General Manager-Secretary
[Name/Title]

Date: 4/12/18

Attest: Alan Hofmann

APPROVED AS TO FORM:

By:

State Water Resources Control Board

By: _____
Eileen Sobeck, Executive Director

Date: 5/31/18

Attest: _____

APPROVED AS TO FORM:

By: _____