

LOS VAQUEROS RESERVOIR JOINT EXERCISE OF POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT ("Agreement") is made and entered into as of the Effective Date defined below, by and between the parties listed on Exhibit A attached hereto, which is incorporated herein by this reference. Those parties are referred to in this Agreement individually as a "Member" and collectively as the "Members."

RECITALS

- A. Each Member is a public agency authorized and empowered to contract for the joint exercise of powers under Articles 1 through 4, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California; and
- B. Each Member has the power to plan for, design, construct, operate, maintain, repair, and replace water-related facilities, as contemplated in the Project, as defined in Section 1.1.23, below; and
- C. The Members desire to use any and every power common to them for the purpose of designing, constructing, operating, repairing and maintaining the Project, or taking such other actions that will make the use of the Project more efficient or effective providing the Members and their respective ratepayers a more reliable water supply;
- D. The Members desire, by means of this Agreement, to establish a new public agency that is separate and apart from each of the Members for the design, construction, operation, and administration of the Project, and for related purposes.

NOW THEREFORE, in consideration of the above Recitals and of the mutual promises and agreements contained herein, the Members agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 Definitions. Unless the context otherwise requires, the words and terms defined in this Section 1.1 shall, for the purposes of this Agreement, have the meanings herein specified.

1.1.1 Act means Articles 1 through 4, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) relating to the joint exercise of powers common to public agencies.

1.1.2 Administrative Agreement means the agreement between the Authority and the Administrator under which the Administrator will provide administrative services to the Authority and will be reimbursed for the costs of those services.

1.1.3 Administrator means the person or entity engaged by the Board of Directors to manage and administer the financial and administrative activities of the Authority in accordance with Section 4.5, below.

1.1.4 Agreement means this Joint Exercise of Powers Agreement.

1.1.5 Authority means the Los Vaqueros Reservoir Joint Powers Authority, which is created by this Agreement.

1.1.6 Board or Board of Directors means the Board of Directors referred to in ARTICLE 2 of this Agreement, which is the governing body of the Authority.

1.1.7 CCWD means Contra Costa Water District, a county water district formed under Division 12 of the Water Code, and the owner of the Los Vaqueros Reservoir.

1.1.8 CCWD-Provided Facility means an existing facility owned and operated by CCWD with excess capacity that has been made available for use by the Authority in accordance with the Facilities Usage Agreement between CCWD and the Authority. CCWD-Provided Facilities are listed and identified in Exhibit B, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below.

1.1.9 Costs of Service mean the costs of Services included in the payments, or other non-monetary benefits, the Authority will receive from Members pursuant to the Service Agreements. The Costs of Service include, but are not limited to, Project development costs; debt service, to the extent applicable under any agreed upon financing vehicle, including interest, on bonds the Authority will issue; amounts payable to CCWD and EBMUD under the Facilities Usage Agreements; operations and maintenance costs of the Project; Authority administrative expenses; capital reserve payments; and payments to a renewal and replacement fund the Authority will establish.

1.1.10 Design & Construction Agreement means the design and construction agreements the Authority will enter into with CCWD for the New Facilities and Modified Facilities for which CCWD is designated as the builder and operator on Exhibit B hereto; and with EBMUD for the New Facilities and Modified Facilities for which EBMUD is designated as the builder and operator on Exhibit B hereto. Those agreements will address the design and construction services to be provided by the contracting party in accordance with industry standards.

1.1.11 Director means a member of the Board appointed to the Board pursuant to Section 2.2 of this Agreement.

1.1.12 Early Funding Agreement means the agreement between the California Water Commission and CCWD, dated December 20, 2018, to provide advances of up to \$22.95 million to partially fund Project development activities.

1.1.13 EBMUD means East Bay Municipal Utility District, a municipal utility district formed under Division 6 of the Public Utilities Code.

1.1.14 EBMUD-Provided Facility means an existing facility owned and operated by EBMUD with excess capacity that has been made available for use by the Authority in accordance with the Facilities Usage Agreement between EBMUD and the Authority. EBMUD-Provided Facilities are listed and identified in Exhibit B as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below.

1.1.15 Effective Date means January 1, 2021.

1.1.16 Facilities Usage Agreement means the agreements entered into by the Authority and CCWD as to CCWD-Provided Facilities and by the Authority and EBMUD as to EBMUD-

Provided Facilities, pursuant to which the use of capacity in those facilities is made available to the Project and paid for by the Authority through payments to be specified in those agreements.

1.1.17 Fiscal Year means the period commencing on July 1 of each year and ending on and including the following June 30.

1.1.18 Interim Funding Agreement means the agreement entered into among CCWD and the Members, following formation of the Authority, to provide an interim source of funding for Project development costs, including the initial expenses related to the formation of the Authority, prior to the time where permanent sources of Authority revenues are in place.

1.1.19 Member means any of the members of the Authority, as listed on Exhibit A hereto, and any other entity added to this Agreement by a subsequent amendment.

1.1.20 Modified Facilities means existing facilities owned by CCWD or EBMUD that will be modified as part of the Project through financing of the Authority's proportional share of development, design, construction, operations and maintenance costs through Design & Construction Agreements and O & M Agreements between the Authority and CCWD and EBMUD, as applicable, which agreements shall set forth the Authority's rights and obligations with respect to any particular Modified Facility. The Modified Facilities are identified on Exhibit B hereto, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below.

1.1.21 New Facilities means facilities necessary for the Project that are expected to be financed by the Authority and designed, built, operated and maintained by CCWD or EBMUD through Design & Construction Agreements and O & M Agreements between the Authority and CCWD and EBMUD, as applicable, which agreements shall set forth the Authority's rights and obligations with respect to any particular New Facility. The Authority, including CCWD and EBMUD in their capacity as Members, is expected to be solely responsible for all costs and liabilities related to the New Facilities. The New Facilities are identified on Exhibit B hereto, as it may be subsequently amended to reflect changes to the Project in accordance with Section 8.2, below.

1.1.22 O & M Agreement means the operations and maintenance agreements the Authority will enter into with CCWD for the New Facilities and Modified Facilities for which CCWD is designated as the builder and operator on Exhibit B hereto; and with EBMUD for the New Facilities and Modified Facilities for which EBMUD is designated as the builder and operator on Exhibit B hereto. Those agreements will address operations and maintenance services to be provided by the contracting party in accordance with industry standards, and the payment for such services the Authority will make.

1.1.23 Project means the second phase of the efforts to expand existing conveyance facilities, and construct new conveyance facilities, at the Los Vaqueros Reservoir owned and operated by CCWD. The Project will expand Los Vaqueros Reservoir to a capacity up to 275,000 acre-feet and will interconnect CCWD's intake system to new and existing conveyance facilities that will serve the Members to create a regional system. The Project is expected to provide statewide public benefits, including ecosystem benefits to south-of-Delta wildlife refuges, drought and non-drought emergency water supply benefits for the Members, and recreation benefits. The Project is also expected to provide benefits to regional water supply agencies, integration with state and federal water systems, Central Valley Project operational flexibility, and enhanced opportunities for sustainable groundwater and recycled water management. The Project includes the components specified in Exhibit B hereto, including New Facilities, Modified Facilities, CCWD-Provided Facilities and EBMUD-Provided Facilities.

1.1.24 Services mean the services of the Project provided to the Members pursuant

to the respective Service Agreements, consisting, in general, of water storage and conveyance through the various facilities to which the Authority has contracted to have access and use in accordance with the Facilities Usage Agreements. Specific services to be provided to Members will depend on Members' requests, water delivery priorities specified in the Service Agreements, hydrological conditions and permit and regulatory conditions.

1.1.25 Service Agreement means an agreement entered into by a Member and the Authority pursuant to which the Authority provides Services to the Member and receives payment, or other non-monetary benefits, from that Member as consideration for those services. Service Agreements shall allocate the Costs of Service among the Members in proportion to their anticipated use of Project facilities and other benefits a Member derives from the Project in accordance with the "beneficiary pays" principle. The Service Agreements will also allocate costs in a manner to negate any cross-subsidy among Members (i.e., where any Member obtains an unreasonable financial benefit through financial contributions of another Member or other Members), taking into consideration any grant funding the Authority or any Member has received for Project-related costs.

1.2. Findings. The Members find and declare the following:

1.2.1. The Members represent a diverse group of government entities engaged in water management, conservation, and/or delivery in the San Francisco Bay-Delta and Central Valley region. This area's regional water systems are vulnerable to water shortages due to emergencies such as earthquakes, fire, or drought, and to dry year supply decreases due to insufficient regional storage.

1.2.2. The Project will improve Bay-Delta and Central Valley water supply reliability and water quality while providing additional habitat and Delta ecosystem benefits.

1.2.3. The Authority is created to enable local governments responsible for water distribution to work collaboratively with a regional focus to improve water supply reliability.

1.3 Purposes and Objectives. The purposes of this Agreement are to: (1) create the Authority; (2) provide for the administration of the Authority; (3) plan for, design, construct, operate, maintain, repair, and replace the Project for the benefit of the Members and the region; and (4) coordinate the performance of services related to the Project and approved by the Board of Directors. The primary objectives of the Authority are to:

1.3.1 Provide governance of the Project by the Members;

1.3.2 Ensure sufficient stable funding for the Project and related administrative and support activities to be provided through the Service Agreements and Administrative Agreement;

1.3.3 Ensure costs are reasonable and cost allocations are equitable and transparent, as provided through the Service Agreements; and

1.3.4 Ensure reliable delivery of water to the Members consistent with the terms of the Service Agreements.

1.4 Creation of Authority. Pursuant to the Act, there is hereby created a public entity known as the "Los Vaqueros Reservoir Joint Powers Authority." The Authority shall be a public entity separate and apart from the Members and shall administer this Agreement in accordance with the terms set forth herein.

1.5 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated by the Members as provided in ARTICLE 8 of this Agreement.

1.6 Powers of Authority.

1.6.1 General Powers. The Authority shall exercise, in the manner herein provided, the powers common to the Members, powers otherwise permitted under the Act, and powers necessary to accomplish the purposes of this Agreement.

1.6.2 Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary, convenient and appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:

- (a) To make and enter contracts;
- (b) To employ agents and employees;
- (c) To lease, acquire, construct, manage, maintain or operate any building, works or improvements;
- (d) To acquire, hold or dispose of property;
- (e) To supervise and manage the Project so as to deliver state, federal, and Member benefits commensurate with state, federal, and Member investment in the Project;
- (f) To incur debts, liabilities, or obligations, which, except as otherwise provided in Section 9.2, do not constitute a debt, liability, or obligation of any Member;
- (i) To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities, provided that the Authority consents to such gifts, contributions, and donations;
- (j) To prescribe the duties, compensation, and other terms and conditions of employment of other agents, officers, and employees;
- (k) To adopt reasonable rules and regulations for the conduct of the day-to-day operations of the Authority;
- (l) To apply for, accept, receive, and disburse grants and loans from local, state, or federal agencies or from individuals or businesses;
- (m) To sue and be sued in its own name;
- (n) To fund and maintain adequate reserve funds to support debt and operational requirements;
- (o) To invest money in its treasury, pursuant to Government Code Section 6505.5 et seq., that is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and on the same

conditions as local agencies, pursuant to Section 53601 of the Government Code;

- (p) To enter into state funding agreements and federal funding agreements relating to the Project, and assume rights and obligations pursuant to these agreements;
- (q) To finance Project development activities through a combination of early Water Storage Investment Program funding and pay-as-you-go contributions from the Members;
- (r) To enter into one or more Design & Construction Agreements and O & M Agreements with CCWD and EBMUD, as applicable;
- (s) To enter into the Facilities Usage Agreements with CCWD and EBMUD in connection with the Authority's use of CCWD-Provided Facilities and EBMUD-Provided Facilities, respectively;
- (t) To enter into the Administrative Agreement with CCWD;
- (u) To enter into agreements with individuals or entities providing program management, Watermaster, legal, financial, accounting, auditing, and other services as required;
- (v) To enter into agreements with the California Department of Water Resources, the California Department of Fish and Wildlife, the United States Department of Interior, the United States Bureau of Reclamation, and other local, state or federal entities as may be required to comply with the requirements of any state or federal funding agreements and to implement the Project, including the administration of public benefits;
- (w) To issue Project revenue bonds, secured by revenues of the Project and other Member financial commitments that may be required in connection with that issuance, to provide financing for the Project;
- (x) To deliver Services to the Members, and receive payment from the Members, pursuant to the Service Agreements;
- (y) To exercise any and all powers which are provided for in the Act and in Government Code Section 6584 *et seq.*, including, without limitation Government Code Section 6588, as they exist on the Effective Date of this Agreement or may hereafter be amended;
- (z) To take action by resolution, ordinance, or motion, as approved by the Board of Directors as specified herein;
- (aa) To carry out and enforce all provisions of this Agreement with respect to the activities necessary to undertake the development, construction, and operation of the Project;
- (bb) To conduct such other activities as are necessary and appropriate to the above; and

(cc) To exercise any power necessary or incidental to the foregoing powers.

1.7 Manner of Exercising Authority Powers. The Authority shall exercise its powers in the manner by which Contra Costa Water District exercises its powers, except to the extent this Agreement or the Act specifically provide otherwise.

ARTICLE 2 BOARD OF DIRECTORS

2.1 Creation. The Authority shall be governed by a Board of Directors consisting of one (1) Director for each Member, which is hereby established. The governing board shall be known as the "Board of Directors of the Los Vaqueros Reservoir Joint Powers Authority." All voting power shall reside in the Board and be exercised as specified in Section 3.3, below. By establishing the Authority and creating the Board of Directors, the Members do not intend to create any incompatibility between the service of a Member's governing body member on the Member's governing body, and his or her service as a Director of the Authority, and this Agreement shall be interpreted, if and where necessary, so that no such incompatible office exists.

2.2 Directors.

2.2.1 Directors Appointed; Term. Within thirty (30) days of the Effective Date of this Agreement, each Member shall designate and appoint, by a formal action of its governing body, either one (1) member of its governing body (provided that any Member which itself consists of one or more member agencies may appoint any member of one of its member agencies' governing bodies), or a management-level employee of the Member, or of any member agency of a Member, to act as its representative on the Board of Directors; and one (1) other governing body member or Member employee, either by name or position title, to act as an alternate to that Director so appointed. If a Director's or alternate's membership on the appointing Member's governing body ceases or that person ceases to be on the governing body of a Member's member agency, if applicable, or if the Director is an employee of the Member, or of a Member's member agency, and the Director's employment by the Member ceases, his or her membership on the Board shall also cease. If an alternate is an employee of a Member, and the alternate's employment by the Member ceases, his or her position as an alternate shall also cease. The alternate appointed by each Member shall have the authority to attend and participate in any meeting of the Board, but shall only be allowed to vote at any meeting of the Board when the regular Director is absent. At any meeting of the Board when the regular Director is absent, the alternate shall have the full authority of the Member to vote on any issue before the Board. Each Director shall hold office until his or her successor is selected by the appointing Member. Directors shall serve at the pleasure of the governing board of the appointing Member and may be removed at any time, with or without cause, in the sole discretion of the appointing Member's governing board. If a Director ceases to serve on the Board, the Member that appointed that Director shall select that Director's replacement, and may allow the alternate then serving to fill that Director's position on a temporary or permanent basis, in that Member's discretion.

2.2.2 Board Compensation. The Board shall serve without compensation from the Authority. Compensation may be provided as approved by the Member that appoints its representative Director and alternate, and any such compensation will be the responsibility of that Member.

2.3 Powers and Responsibilities of the Board. All of the power and authority vested in the Authority shall be exercised by the Board of Directors, which may delegate such power in its discretion. Notwithstanding the above, the Board shall not delegate its legislative powers. In exercising these powers, the Board shall undertake the following roles and responsibilities:

2.3.1 Fulfill the Authority's purposes;

2.3.2 Engage key Authority executives, including the Executive Director, as desired by the Board, and Legal Counsel;

2.3.3 Approve the engagement of a Financial Manager, Program Manager, Watermaster, and other consultants and advisors;

2.3.4 Approve annual budgets;

2.3.5 Approve agreements through which Project will be implemented;

2.3.6 Fund the Authority and Project through issuance of bonds and collections from Members; and

2.3.7 Establish committees for activities such as design, construction, and operations.

2.4 Provision for Bylaws. The Board may cause to be developed and may adopt, from time to time, such bylaws for the Authority to govern its day-to-day operations. Each Member shall receive a copy of any bylaws developed and adopted under this section.

ARTICLE 3 MEETINGS OF THE BOARD

3.1 Meetings. The Board shall meet as frequently as the Board deems necessary to conduct the Authority's business, but at least quarterly, and shall provide for the date, hour, and place of its regular meetings by Resolution of the Board filed with the governing body of each Member. The Board may meet by teleconference or by video conferencing, and in joint session with other public agencies and advisory bodies in accordance with California law.

3.2 Ralph M. Brown Act. All meetings of the Board, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act, commencing with Section 54950 of the Government Code.

3.3 Voting. ***[Consensus was reached to have super-majority voting, but any litigation to be commenced by the JPA must be unanimously approved by the JPA Board. Per discussion on September 14, weighted voting alternative (Alternative 2, below) was added back into the Agreement for further discussion purposes.]***

ALTERNATIVE 1 – SUPER-MAJORITY; NON-WEIGHTED

3.3.1 Simple Majority Votes. Subject to the veto rights provided in subdivision 3.3.5, below, and the provisions of Sections 3.4 and 3.5, below, each Member shall have one vote, to be exercised by that Member's Director. Except as otherwise provided by law or as set forth in subdivisions 3.3.2, 3.3.3 and 3.3.4, below, all actions of the Board shall be approved on the affirmative vote of a majority of the Board members present at the meeting at which the action is considered.

3.3.2 Items Requiring at Least Sixty Percent for Approval. Notwithstanding subdivision 3.3.1, above, the following actions of the Board must be approved by at least sixty percent (60%) of the total number of Directors, but subject to Sections 3.4 and 3.5, below:

3.3.2.1 Approval of Operating Budget and Non-Operating Budget;

3.3.2.2 Approval of Capital Improvement Budget whenever that budget exceeds \$5,000,000;

3.3.2.3 Approval of an increase to a change order that exceeds the lesser or \$500,000 or 10% of the original contract amount, or which would result in exceeding the total previously approved budget for the specific facility;

3.3.2.4 Approval of any additional funding contributions under Section 7.9.2, below;

3.3.2.5 Any decision subject to Section 3.3.5, below; and

3.3.2.6 Approval of any contract with Cal-PERS or any other public employee retirement system.

3.3.3 Items Requiring at Least Three-Quarters Votes for Approval. Notwithstanding subdivision 3.3.1, above, the following actions of the Board must be approved by at least three-quarters (seventy-five percent (75%)) of the total number of Directors, but subject to Sections 3.4 and 3.5, below:

3.3.3.1 Approval of the admission of a new Member;

3.3.3.2 Approval of an amendment to the Agreement; provided that if the proposed amendment is to change the requirement for unanimous approval of action as set forth in Section 3.3.4, then any such amendment must have unanimous Board approval; and

3.3.3.3 Termination of the Agreement.

3.3.4 Items Requiring Unanimous Approval. Notwithstanding subdivision 3.3.1, above, the following actions of the Board must be unanimously approved by the Board:

3.3.4.1 Commencement of litigation by the Authority against any local, state or federal agency relating to the funding or operation of the Project; or against any Member to interpret or enforce this Agreement or otherwise relating to the Member's obligations concerning the Project; provided that the Member against whom that litigation is contemplated shall not be included in that unanimous vote requirement.

3.3.4.2 Any disproportionate disbursement made upon termination of this Agreement pursuant to Section 8.5, below.

++++ ***Continue with Section 3.3.5, renumbering will be reflected in further draft, regarding CCWD and EBMUD Veto Rights (page 13, below).***

ALTERNATIVE 2 – WEIGHTED VOTING COMPONENT (redlined to show changes from Alternative 1)

3.3.1 Simple Majority Votes. Subject to the veto rights provided in subdivision 3.3.6, below, and the provisions of Sections 3.4 and 3.5, below, each Member shall have one vote

and the weighted votes determined in accordance with Section 3.3.2.1, below, where weighted voting is applicable in accordance with Section 3.3.2.2. A Member's votes shall be exercised by that Member's Director. Except as otherwise provided by law or as set forth in subdivisions 3.3.3, 3.3.4 and 3.3.5, below, all actions of the Board shall be approved on the affirmative vote of a majority of the Board members present at the meeting at which the action is considered and, where weighted voting is applicable in accordance with Section 3.3.2.2, by a majority of the weighted votes determined in accordance with Section 3.3.2.1, below. In the event of a tie in the number of votes cast, the Chair of the Board of Directors may cast a second vote to break that tie.

3.3.2 Weighted Voting.

3.3.2.1 For purposes of weighted voting under this Agreement, each Member's vote shall be allocated a weight determined by the Member's share of the total combined storage capacity and conveyance capacity of the Project, as set forth in that Member's Service Agreement, in proportion to the total combined storage capacity and conveyance capacity held by all of the Members, as allocated under all Members' Service Agreements. [weighted allocation provision subject to discussion if weighted voting is to be used]

3.3.2.2 Any Director may demand that approval of any matter presented for action by the Board of Directors be determined on the basis of weighted votes, as determined in Section 3.3.2.1, above. Such a demand must be made in writing and be conveyed to the Board at least seventy-two (72) hours before the meeting at which the vote will be considered. If a Director makes such a demand, then approval of the matter shall require the affirmative vote of Directors present at the meeting holding the percentage of votes required under this Section 3.3.

3.3.3 Items Requiring at Least Sixty Percent for Approval. Notwithstanding subdivision 3.3.1, above, the following actions of the Board must be approved by at least sixty percent (60%) of the total number of Directors, or if demand is made under Section 3.3.2.2, above, at least sixty percent (60%) of the total weighted votes, but subject to Sections 3.4 and 3.5, below:

3.3.3.1 Approval of Operating Budget and Non-Operating Budget;

3.3.3.2 Approval of Capital Improvement Budget whenever that budget exceeds \$5,000,000;

3.3.3.3 Approval of an increase to a change order that exceeds the lesser of \$500,000 or 10% of the original contract amount, or which would result in exceeding the total previously approved budget for the specific facility;

3.3.3.4 Approval of any additional funding contributions under Section 7.8.2, below;

3.3.3.5 Any decision subject to Section 3.3.6, below; and

3.3.3.6 Approval of any contract with Cal-PERS or any other public employee retirement system.

3.3.4 Items Requiring at Least Three-Quarters of Votes for Approval. Notwithstanding subdivision 3.3.1, above, the following actions of the Board must be approved by at least three-quarters (seventy-five percent (75%)) of the total number of Directors, or if demand is made under Section 3.3.2.2, above, at least three-quarters (seventy-five percent (75%)) of the total weighted votes, but subject to Sections 3.4 and 3.5, below:

3.3.4.1 Approval of the admission of a new Member;

3.3.4.2 Approval of an amendment to the Agreement; provided that if the proposed amendment is to change the requirement for unanimous approval of action as set forth in Section 3.3.5, then any such amendment must have unanimous Board approval; and

3.3.4.3 Termination of the Agreement; provided that termination of the Agreement shall not be subject to weighted voting.

3.3.5 Items Requiring Unanimous Approval. Notwithstanding subdivision 3.3.1, above, the following actions of the Board must be unanimously approved by the Board:

3.3.5.1 Commencement of litigation by the Authority against any local, state or federal agency relating to the funding or operation of the Project; or against any Member to interpret or enforce this Agreement or otherwise relating to the Member's obligations concerning the Project; provided that the Member against whom that litigation is contemplated shall not be included in that unanimous vote requirement.

3.3.5.2 Any disproportionate disbursement made upon termination of this Agreement pursuant to Section 8.5, below.

+++++ Continue with remainder of Article 3

3.3.6 [or 3.3.5 if no weighted voting] Veto Rights of CCWD and EBMUD. Notwithstanding subdivision 3.3.1, above, for any decisions by the Board of Directors that would adversely and materially affect a New Facility, a Modified Facility, a CCWD-Provided Facility or an EBMUD-Provided Facility, CCWD or EBMUD, as applicable in connection with the facility(ies) to be affected, shall have the right to veto that decision following an effort to meet and confer with other Members as follows: If CCWD or EBMUD declares its intention to veto an action during a meeting, the vote on that action may be delayed to a future meeting upon majority vote of the Board to allow the development of an alternative or modified recommended action, to be proposed at the next Board meeting, or as soon thereafter as Authority staff, the Administrator, the Executive Director (if one has been appointed), or the Members can obtain any further information or clarifying direction as needed to propose an alternative or modified recommended action. No proposed action shall be delayed pursuant to this section more than once, except with the consent of the Member which declared its intent to veto the action.

For purposes of this subdivision, an "adverse and material effect" includes the following: (a) a decision that would unreasonably increase operational costs of the subject facility by at least ten percent (10%) as compared to that facility's existing operational costs; (b) a decision that would decrease capacity of the subject facility; (c) a decision that would materially restrict CCWD or EBMUD,

as applicable, in their operation of the subject facility or in its ability to provide an adequate water supply within its service area; (d) a decision that would result in a material adverse impact on the quality of water conveyed from the Project; or (e) a decision that would cause the Project to fail to meet one or more of the conditions set forth in Resolution No. 03-24 adopted by CCWD's Board of Directors on June 18, 2003. In the event of such a veto, the Authority may not proceed with the action specified in that proposed decision. This subdivision shall be interpreted in a manner to protect CCWD's and EBMUD's interests in operating and managing the New Facilities, Modified Facilities, CCWD-Provided Facilities and EBMUD-Provided Facilities, respectively, while providing the other Members with the contemplated benefits from their investments in the Project.

3.4 Special Voting Rules regarding Contracts Entered into with a Member. Where the Authority is considering entering into an agreement with a Member, that Member shall not be entitled to vote in its capacity as a Member of the Authority on any such agreement to which that Member will be a party. In such a situation, for purposes of the determination of the vote needed for approval, that contracting Member shall not be counted as a voting Member of the Authority, such that the total number of voting Members is reduced by one in calculating total number of votes that may be cast and utilized in determining any applicable threshold for the Board's approval of any such action, and that Member's weighted voting allocation is removed from the total weighted voting calculation and the other Members' respective weighted voting amounts are recalculated without taking into account the contracting Member's proportionate storage capacity and conveyance capacity and that Member's storage capacity and conveyance capacity are removed from the Project's total for purposes of calculating any weighted vote. [last clauses would be deleted if weighted voting is not used]

3.5 Special Voting Rules Applicable to Grassland Water District. Due to the fact that Grassland Water District will not be making monetary contributions to the Authority, Grassland Water District will not be entitled to vote on financial matters impacting the Authority, including those items specified in Section 3.3.2, above; provided, however, that Grassland Water District shall be entitled to vote on financial matters concerning the administration of public benefits or the delivery of ecosystem benefits to south-of-Delta refuges. In any situation where Grassland Water District is not permitted to vote, for purposes of the determination of the vote needed for approval, Grassland Water District shall not be counted as a voting Member, such that the total number of voting Members is reduced by one in calculating total number of votes that may be cast and utilized in determining any applicable threshold for the Board's approval of any such action. [add provision similar to last clause in Section 3.4 if weighted voting is used]

3.6 Quorum. A majority of the Directors shall constitute a quorum for the transaction of business.

3.7 Board Action. The Board may act by resolution, ordinance, or motion. Unless otherwise provided in the bylaws or by law, ordinances shall not be required to be introduced and adopted at separate meetings of the Board.

3.8 Minutes. The Secretary of the Authority shall cause minutes of regular, adjourned regular, and special meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to each Member.

3.9 Rules. The Board may adopt from time to time such rules and regulations for the conduct of its and the Authority's affairs as may be required.

ARTICLE 4

OFFICERS AND EMPLOYEES OF THE AUTHORITY

4.1 Chair. At the Board of Directors' first meeting, and then in its January meeting of each year, it shall elect one of the Directors as Chair of the Board. The term of office for the Chair shall be one year. A Chair may not serve more than four (4) consecutive terms as Chair, and the foregoing term limit shall also apply to the Member on whose behalf the Chair is serving, such that no Member shall be allowed to have any Directors serving on its behalf serve more than a combined four (4) consecutive terms. The Chair of the Board shall preside at all meetings and shall perform such other duties as are specified by the Board of Directors. The position of Chair shall be elected on the basis of the individual Director and not on the basis of the underlying Member with which the Chair is affiliated.

4.2 Vice-Chair. At the Board of Directors' first meeting, and then in its January meeting of each year, it shall elect one of the Directors as Vice-Chair of the Board. The term of office for the Vice-Chair shall be one year. The Vice-Chair shall perform all the duties of the Chair in the absence of the Chair, or in the event the Chair of the Board is unable to perform such duties, and shall perform such other duties as are specified by the Board of Directors.

4.3 Secretary. The Board may appoint the Authority's Secretary or may delegate the appointment of the Authority's Secretary to the Administrator; provided that if the Administrator position has been removed, then the Board shall appoint the Authority's Secretary. If the Board does not elect to appoint an individual of its own choosing as the Secretary, the Secretary shall serve at the pleasure of the Administrator and may be removed at any time, with or without cause, in the sole discretion of the Administrator or, if the Administrator is an entity, the Administrator's governing board or a management-level employee of the Administrator. The Secretary shall be responsible for the minutes and other records of the proceedings of the Board of Directors and shall perform such other duties as specified by the Administrator pursuant to the Administrative Agreement, as applicable. If the Board elects to appoint another individual of its own choosing, the Secretary shall perform such other duties as the Board of Directors specifies.

4.4 Treasurer and Auditor/Controller. Pursuant to Government Code Sections 6505.5 and 6505.6, the Board may appoint the Authority's Treasurer and Auditor/Controller or may delegate the appointment of the Authority's Treasurer and Auditor/Controller to the Administrator; provided that if the Administrator position has been removed, then the Board shall appoint the Authority's Treasurer and Auditor/Controller. If the Administrator is an entity, it may appoint its senior financial officer (such as its chief financial officer, director of finance, or finance manager, as designated by the Administrator) as the Treasurer and Auditor/Controller. The Treasurer shall be the depository and have custody of all money of the Authority, from whatever source, and shall have all of the duties and obligations set forth in Sections 6505 and 6505.5 of the Government Code. The Treasurer shall also manage the Authority's billing and cash management, financial reporting and debt; engage the independent auditor to review the Authority's financial statements; and report to the Authority's Executive Director or to the Administrator if no Executive Director has been appointed. The offices of Treasurer and Auditor/Controller may be held by separate individuals, or combined and held by one individual as the Board may elect. If the Board does not elect to appoint another individual of its own choosing as the Treasurer and Auditor/Controller, the Treasurer and Auditor/Controller shall serve at the pleasure of the Administrator and may be removed at any time, with or without cause, in the sole discretion of the Administrator or, if the Administrator is an entity, the Administrator's governing board or a management-level employee of the Administrator.

4.5 Administrator.

4.5.1 Generally. The Board of Directors shall select the Administrator, which shall provide management and administrative services for the Authority, as more specifically described in Section 4.5.2, below. CCWD shall serve as the initial Administrator, as set forth in the Administrative Agreement. The Board may, in its discretion, upon the termination of the Administrative Agreement,

appoint a subsequent Administrator to replace CCWD, may transfer some or all of the Administrator's duties to the Executive Director hired under Section 4.6, below, or may combine the Administrator's position with the Executive Director; subject, however, to ensuring that any contractual obligations CCWD has undertaken with respect to the administration of the Project, including under the Early Funding Agreement, are met. Until such time as an Executive Director is hired, the Administrator shall report to the Board. After an Executive Director is hired, the Administrator shall report to the Executive Director and be subject to the Executive Director's supervision, subject to compliance with any existing contractual obligations of the Administrator.

4.5.2 Administrator Services. Subject to the Board's revision of duties of the Administrator, which may be transferred to the Executive Director in the Board's discretion, the Administrator shall perform all services reasonably necessary for the management and administration of the Authority including, but not limited to:

- (a) coordinating the planning, design, permitting (including compliance monitoring), operations modeling and analysis, and procurement activities necessary to construct and operate the Project, including through funds provided by the Early Funding Agreement, which CCWD shall continue to manage as the initial Administrator, and Interim Funding Agreement;
- (b) coordinating and preparing for Board meetings;
- (c) identifying and selecting key staff that will provide services to the Board and the Authority, including staff who may potentially serve as Secretary and Treasurer and Auditor/Controller, as the Board or Administrator may determine;
- (d) being responsible for the appointment, employment, management, and/or termination of any personnel (other than the Executive Director and Authority attorney), contractors, or consultants providing services to the Authority including, but not limited to, contractors and consultants necessary for the financing, planning, design, permitting and procurement of the Project;
- (e) performing administrative tasks related to the Board's selection and appointment of the Authority Attorney;
- (f) implementing the policies, decisions, and directions of the Board, as provided to the Administrator;
- (g) conducting communications and outreach support and website hosting;
- (h) coordinating and conferring with the Members' technical staffs relative to Project-related functions; and
- (i) such other duties as are determined by and assigned by the Board.

4.5.3 Compensation. The Administrator shall be compensated for the services it renders to the Authority as specified in the Administrative Agreement, or in any other contractual arrangement between the Administrator and the Authority.

4.5.4 Administrator Staff. If the Administrator is an entity, the Administrator shall identify key staff that shall provide services required of the Administrator, including one employee who shall serve as the main point of contact for the Authority. Such key staff identified by the Administrator shall be qualified to perform services required of the Administrator. Unless otherwise agreed in writing by the Authority, such key staff shall at all times remain under the exclusive direction and control of the Administrator and the Authority shall not have any right to discharge or discipline any member of the Administrator's staff. Subject to payment by the Authority as provided in the Administrative Agreement or other agreement, the Administrator shall be responsible for all compensation, supervision, and administrative costs relating to its staff. If the Administrator is an individual, the Administrator shall coordinate the retention of any outside staff with the Board and obtain approval of such staff positions from the Board before hiring or retaining any such staff.

4.5.5 Independent Contractor. Until such time, if any, as the Administrator is hired as an Authority employee, to the extent allowed by law, the Administrator shall be retained as an independent contractor and not an employee of Authority. No employee or agent of the Administrator shall become an employee of the Authority, except as may be agreed in writing. Any Administrator employees or agents assigned to provide services under this Agreement shall remain under the exclusive control of the Administrator.

4.6 Executive Director. The Board of Directors may hire an Executive Director to work with the Administrator in connection with the duties specified under Section 4.5.2, above. The Executive Director may be an employee of the Administrator. Upon the hiring of an Executive Director, the Board may transfer any of the Administrator's duties to the Executive Director, as may be feasible based on applicable contractual limitations set forth in the Early Funding Agreement. The Executive Director shall be an employee of the Authority, unless that position is also filled by an employee of the Administrator or of a Member. It is contemplated that the Executive Director would report directly to the Board and would manage Authority activities, ensure that the Board receives appropriate and timely information, supervise the Administrator, including coordinating Project activities with the Administrator, and ensure that the Authority provides services to the Members in accordance with the respective Service Agreements.

4.7 Authority Attorney.

4.7.1 Appointment. The Attorney for the Authority shall be appointed by the Board of Directors, provided that an individual, office, or firm providing general counsel services to one of the Members shall not serve as the Authority Attorney. Such individuals, offices, or firms may, however, provide special counsel services to the Authority. Notwithstanding the above, the general counsel to one of the Members may provide interim general counsel services until the Board appoints an Authority Attorney.

4.7.2 Duties. The Attorney for the Authority or a designated deputy shall attend all meetings of the Board of Directors; provided, however, that the absence of the Authority Attorney shall not affect the validity of any meeting. The Attorney shall perform such other duties as the Board of Directors specifies, including, but not limited to, obtaining specialized legal services.

4.8 Program Manager. The Board may authorize the hiring of a Program Manager, who shall report to the Executive Director. The Program Manager shall coordinate with the Administrator and/or Executive Director regarding various design and construction activities for the Project, including coordination with CCWD and EBMUD in accordance with the Design and Construction Agreement and O & M Agreements with respect to decisions likely to have a cost impact on the Authority and the Members. Such coordination shall include, but not be limited to, budget tracking, scheduling and quality control/quality assurance, with the understanding that CCWD and EBMUD have primary responsibility for the design and construction of their respective facilities, as will be

specified in the Design & Construction Agreements. The Program Manager, in consultation with the Executive Director and subject to Board approval in accordance with Authority policies, may contract for additional services that may be required.

4.9 Watermaster. The Board may authorize the hiring of a Watermaster, who shall report to the Executive Director. The Watermaster shall oversee the operations of the Project in coordination with CCWD as to CCWD-Provided Facilities and with EBMUD as to EBMUD-Provided Facilities. The Watermaster's duties shall include scheduling necessary diversions and deliveries of stored water in response to Members' requests on behalf of the Members, coordinating Members' storage and conveyance needs with CCWD's system operator, tracking the delivery of Services to the Members, and ensuring compliance with all reporting requirements and coordinated operations agreements with the United States Department of Interior, Bureau of Reclamation and the California Department of Water Resources. The Watermaster shall perform his or her duties in accordance with the Facilities Usage Agreements and operating protocols to be adopted by the Board of Directors, but such protocols shall not restrict CCWD's or EBMUD's ability to manage their respective facilities. Any Watermaster decision shall be subject to an appeals process to be established by the Board.

4.10 Official Bond. Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Authority shall file an official bond in an amount to be fixed by the Board of Directors of the Authority.

4.11 Additional Officers and Employees. The Board shall have the power to appoint such additional officers and to make modifications to the Authority's organization chart—and the Executive Director shall have the power to hire and terminate such employees, assistants, contractors, consultants, and others, as may be appropriate.

ARTICLE 5 COMMITTEES

5.1 Committees. The Board of Directors, by a majority vote, may form committees for any purpose. Such vote shall designate the method for appointing committee members, the scope of the duties and responsibility of the committee, whether the committee is a standing or ad hoc committee, and such other matters as the Board may deem appropriate. Standing committee meetings are subject to the Ralph M. Brown Act, commencing with Section 54950 of the Government Code. Such committees may include committees consisting solely of Members' staffs to provide technical review and input concerning Project-related issues.

ARTICLE 6 PROJECT OPERATIONS

6.1 Sub-Projects. Upon approval by a majority of the Board of Directors, some of the Members may establish a sub-project that such Members will undertake through the Authority for matters not deemed to be of general benefit to all Members, provided that no Member shall be involved in any such sub-project without the approval of its governing body. A specific written sub-project Agreement between the Members who consented to participate in the specific sub-project and the Authority shall be established for each sub-project to set forth the respective obligations, functions, and rights of the participating Members and of the Authority. A budget for each sub-project shall be established in accordance with Section 7.5, below. The Directors representing the Members who will be involved in financing and implementing the specific sub-project, or their respective designees, shall constitute a "Sub-Project Committee," for purposes of administration and implementation of the specific sub-project. Notwithstanding the foregoing, no debt shall be incurred by the Authority for a specific sub-project without the unanimous consent of the Board. Any contributions approved by the Sub-Project Committee and approved by the participating Members

shall be paid by the participating Members. To the extent allowed by law, the Members participating in any sub-project shall indemnify and hold harmless the Authority and the Members not participating in the sub-project from any and all claims, demands, damages, liabilities, fines, expenses and related costs and fees, including attorneys' and experts' fees, arising from or related to the particular sub-project, except to the extent of the Authority's or non-participating Member's negligent or intentional acts or omissions.

6.2 CCWD-Provided Facilities. In accordance with the voting provisions set forth in Section 3.3.4, above, CCWD will retain a veto right with respect to any decision by the Board of Directors that would adversely and materially affect a New Facility or Modified Facility for which CCWD is designated as the builder and operator on Exhibit B hereto, and CCWD-Provided Facilities. CCWD may authorize the Authority to take actions and/or make decisions with respect to those facilities in accordance with the applicable Design & Construction Agreements and O & M Agreements.

6.3 EBMUD-Provided Facilities. In accordance with the voting provisions set forth in Section 3.3.4, above, EBMUD will retain a veto right with respect to any decision by the Board of Directors that would adversely and materially affect a New Facility or Modified Facility for which EBMUD is designated as the builder and operator on Exhibit B hereto, and EBMUD-Provided Facilities. EBMUD may authorize the Authority to take actions and/or make decisions with respect to those facilities in accordance with the applicable Design & Construction Agreements and O & M Agreements.

ARTICLE 7 FINANCES

7.1 Fiscal Year. The Fiscal Year of the Authority shall be as defined in Section 1.1 of this Agreement.

7.2 Operating Budget. Prior to the start of each Fiscal Year, the Board shall adopt an Operating Budget (the "Operating Budget") for all expenditures to be made by the Authority during that Fiscal Year, based upon the total Costs of Service, excluding expenditures included in the Non-Operating Budget and Capital Project Budget (the "Operating Budget Costs of Service") set forth in the Service Agreements and related financial projections. For the Authority's initial year, the Operating Budget shall be based upon initial Operating Budget Costs of Service set forth in the Project's pro-forma financial model and as established by a CalSim simulation model, subject to adjustment based on actual circumstances. The Board shall allocate Operating Budget Costs of Service to each Member in proportion to the Member's use of Project facilities, operational priorities and other benefits, in accordance with the Member's Service Agreement, and shall take into account any non-monetary contributions being received from Grassland Water District. The Operating Budget shall take into consideration the amounts the Authority will receive under the Service Agreements, and shall be prepared in sufficient detail to constitute an operating outline for the purpose of establishing contributions to be billed to and paid by, or otherwise contributed with respect to any non-monetary contributions, the Members in accordance with their respective Service Agreements. The Operating Budget shall outline anticipated revenues and planned expenditures to be made during the Fiscal Year by functional category such as operations and maintenance, administration, projects, programs, planning, study and any applicable contributions to operate related reserves.

7.3 Non-Operating Budget. Prior to the start of each Fiscal Year, the Board shall adopt a non-operating budget (the "Non-Operating Budget") that sets forth revenue requirements to pay debt service on all bonds, loans or other indebtedness of the Authority and other anticipated revenues and planned expenditures for non-operating financial activities for the Fiscal Year. The Non-

Operating Budget shall take into consideration the amounts the Authority will receive under the Service Agreements, and shall be prepared in sufficient detail to constitute an operating outline for the purpose of establishing contributions to be billed to and paid by, or otherwise contributed with respect to any non-monetary contributions, the Members in accordance with their respective Service Agreements. The contributions approved by the Board shall be paid by the Members pursuant to Section 7.7, below. Any Member which has opted under Section 7.8, below, to pay its share of Project capital costs through a lump sum contribution, rather than financing that contribution through participating in the Authority's bond issuance(s), shall not be required to make further payments under any Non-Operating Budget until that lump sum contribution is exhausted and further contribution from that Member is necessary to meet that Member's share of costs of non-operating financial activities of the Authority.

7.4 Capital Project Budget. Prior to the start of each Fiscal Year, the Board shall adopt a capital project budget (the "Capital Project Budget") to assess contributions and expenditures to be paid by the Members during the Fiscal Year for capital projects needed for major repair, replacement, expansion and efficiency of Project facilities, as approved by the Board. The Capital Project Budget shall take into consideration the amounts the Authority will receive under the Service Agreements, and shall be prepared in sufficient detail to constitute an operating outline for the purpose of establishing contributions to be billed to and paid by, or otherwise contributed with respect to any non-monetary contributions, the Members in accordance with their respective Service Agreements. The Authority shall coordinate with CCWD regarding the establishment of that Capital Project Budget to ensure that costs are properly allocated as between the Authority and CCWD. The contributions approved by the Board shall be paid by the Member Agencies pursuant to Section 7.7, below. Any Member which has opted under Section 7.8, below, to pay its share of Project capital costs through a lump sum contribution, rather than financing that contribution through participating in the Authority's bond issuance(s), shall not be required to make further payments under any Capital Project Budget until that lump sum contribution is exhausted and further contribution from that Member is necessary to meet that Member's share of Authority capital costs that would be payable under any Capital Project Budget.

7.5 Specific Sub-Project Budgets. In addition to the foregoing Operating Budget, Non-Operating Budget and Capital Project Budget, Authority staff, in consultation with the applicable Sub-Project Committee, shall develop a budget for any sub-project established in accordance with Section 6.1, above. Any contributions approved by the Sub-Project Committee and approved by the participating Members shall be paid by the participating Member Agencies pursuant to Section 7.7, below.

Each sub-project budget shall include, without limitation, the following:

- (a) Administrative expenses;
- (b) Studies and planning costs;
- (c) Engineering and construction costs;
- (d) The allocation of costs, including debt service costs, if any, among participating Members;
- (e) Annual maintenance and operating expenses for the sub-project; and
- (f) A formula for allocating annual maintenance and operating expenses, if any.

7.6 Failure to Obtain Budget Approvals. In the event the Board does not approve one or

more budgets prior to the start of a Fiscal Year the Authority shall continue to operate at the level of expenditure as authorized below:

7.6.1. Operating Budget. The Operating Budget shall be at the expenditure level authorized by the last approved Operating Budget, and the allocation of Operating Budget Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Operating Budget. The CPI shall mean the change in CPI for Urban Wage Earners and Clerical Workers for San Francisco-Oakland-Hayward, California for the all items category for the 12-month period ending the February prior to the beginning of the Fiscal Year budgeted, as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or other mutually agreeable source if such a CPI is no longer available. This factor will be applied to the budget until such time as a new Operating Budget is approved by the Authority. Any shortfall in revenues will be made up from available reserves dedicated by the Board for such a purpose, and if those available reserves are insufficient to cover the shortfall, any other available reserve funds not designated by the Board for other purposes or otherwise legally restricted may be used to meet that shortfall. In the event that a shortfall in available funds exceeds available unrestricted reserves of the Authority, such resulting unfunded shortfall shall be carried forward into the subsequent Fiscal Year. Members shall have no obligation to cure such unfunded shortfall other than as may be provided in the applicable Service Agreement. As used herein, "reserves" shall mean any available cash or investments.

7.6.2. Non-Operating Budget. The Non-Operating Budget shall automatically be established at the required level necessary to meet annual debt service requirements including any revenue coverage covenants and the allocation of any applicable Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Operating Budget.

7.6.3. Capital Project Budget. The capital project budget shall automatically be established at the required level necessary to implement capital projects previously approved by the Authority and the allocation of any applicable Costs of Service to each Member shall be in proportion to the allocation of such costs in the last approved Operating Budget.

7.7 Payments of Amounts Due; True-Up of Costs. The payments owed for contributions from each Member to the Authority shall conform to amounts payable, or any non-monetary contributions to be provided to the Authority, under each Member's Service Agreement and in accordance with the budgets approved by the Board pursuant to Sections 7.2 through 7.5, inclusive. Amounts to be paid to the Authority may be divided into a fixed, annual component and a variable component payable on a monthly or other periodic basis. Any amounts to be paid to the Authority shall be due, payable, and delivered by the Members to the Authority within forty-five (45) days after receipt of a billing therefor from the Authority. To the extent permitted by state law, the Authority may impose interest at the rate of ten percent (10%) per annum on any unpaid and past due contributions, from the date due to the date payment is received by the Authority. At the end of each Fiscal Year, the Authority will compare the actual costs incurred as compared to the budgeted costs paid by Members. If a Member has paid in excess of its share of the Authority's actual costs, the Member shall have the option to either receive a refund of that excess or have that excess carry over as a credit to the benefit of that Member for the next Fiscal Year. If a Member's share of the Authority's actual costs exceeds what that Member has previously paid to the Authority, the Authority shall invoice that Member, which amount shall be due and payable as specified above.

7.8 Member Lump Sum Payments of Project Capital Costs. Notwithstanding any other provision of this Agreement, a Member may elect to pay its share of Project capital costs, as determined under its Service Agreement, in lieu of participating in any bonds the Authority will issue. Any such lump sum payments shall be used to offset that Member's share of Project capital costs or other non-operating costs included in any Non-Operating Budget or Capital Project Budget, as applicable, until such time as the lump sum payment amount has been exhausted. In the event the

lump sum payment amount is nearing exhaustion (that is, has reached a level of \$10,000 or less), the Authority shall provide written notice to the Member of the need to deposit additional amounts with the Authority, in such amount as the Authority, acting through its Administrator or Executive Director, shall determine in its reasonable discretion, and the Member shall deposit that amount within sixty (60) days of receipt of notice from the Authority.

7.9 Funds, Accounts and Reports. There shall be strict accountability of all funds and reporting of all receipts and disbursements.

7.9.1 Sources of Funds. The sources of funds available to the Authority may include, but are not limited to, the following:

- (a) Grants, donations, and loans received by the Authority from local, state, or federal agencies, including any amounts received under the Early Funding Agreement.
- (b) Funds collected from Members under the Service Agreements.
- (c) Funds collected from Members, including, but not limited to, funds paid pursuant to the Interim Funding Agreement.
- (d) Funds received from state and federal disaster relief agencies.
- (e) Funds obtained by issuing bonds, notes, warrants and other evidences of indebtedness.
- (f) "In kind" contributions from Members, include refuge resources provided by Grassland Water District; provided that the Board of Directors shall establish a procedure to ensure that any "in kind" contributions comply with any applicable contractual or regulatory requirements and are fair and reasonable in relation to the benefits provided to the contributing Member, and further the Authority's interests.
- (g) Funds from any other source derived.

7.9.2 Interim Funding Plans. The Members intend for the Authority to fund initial Authority costs through the Interim Funding Agreement, and other agreements and revenue sources available to the Authority for such purposes, including through the Service Agreements. Notwithstanding the foregoing, in the event the Board determines, by at least a two-thirds (2/3rds) vote in accordance with Article 3, above, which must include San Francisco Public Utilities Commission among the approving Members, that certain costs cannot be funded through such revenue sources, each Member agrees that it will contribute to a fund or budget approved by the Board in such proportion as the Board shall reasonably determine, as set forth in this article, taking into consideration any non-monetary contributions being received from Grassland Water District. Notwithstanding the foregoing, any financial obligation of San Francisco under this section is subject to Section 7.13.

7.9.3 Long-Term Funding Plans. The Members intend that all Authority activities will ultimately be funded through various Service Agreements under which the Members will pay or otherwise contribute for services provided by the Authority. The Members intend that the Service Agreements will, when taken together, be sufficient to fund all activities of the Authority, including, but not limited to, all administrative, capital expense, and operation and maintenance costs of the Authority and the Project.

7.9.4 Accounts. Revenues or funds received or made available to the Authority from any source whatsoever, shall be deposited into accounts that may be established by the Authority, and may be expended by the Authority in any legal manner, subject to such reservations as may be imposed by the Authority from time to time.

7.9.5 Reports. The Treasurer shall, within one hundred and eighty (180) days after the close of each Fiscal Year, give a complete written report of all financial activities for such Fiscal Year to the Board of Directors and to each Member. The Authority's books and records shall be open to inspection at all reasonable times by representatives of each Member. The Treasurer shall prepare and provide such additional reports, including audited financial statements and ongoing disclosure reports, as are required by separate agreements entered into by the Authority.

7.10 Payments and Advances. No expenditures in excess of those budgeted shall be made unless otherwise approved by the Authority's Board.

7.11 Audit. In accordance with Sections 6505 through 6505.6 of the Government Code, the Treasurer shall cause an annual audit of the accounts and records of the Authority to be made and reported. The audit shall be conducted by an independent certified public accountant or public accountant. The audit shall conform to generally accepted auditing standards. Such report shall be filed within twelve (12) months of the end of the Fiscal Year under examination.

7.12 Procurement Methods. The Board may adopt such policies relating to procurement of services, equipment, supplies, and other materials needed to accomplish the purposes of this Agreement.

7.13 San Francisco Certification of Funds; Budget and Fiscal Provisions. The financial obligations of the City and County of San Francisco (the "City," acting through the San Francisco Public Utilities Commission as a Member of the Authority) under this Agreement are subject to and contingent upon the budget and fiscal provisions of the City and County of San Francisco's Charter. Charges will accrue to San Francisco only after prior written authorization certified by the City's Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. San Francisco's funding obligations under this Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If

funds are appropriated for a portion of the fiscal year, San Francisco's funding obligations under this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. The Authority's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. This section controls against any and all other provisions of this Agreement. In the event the City fails to appropriate adequate funds in any fiscal year to meet the City's obligations under its Service Agreement or other financial obligations under this Agreement, the Authority may, in the sole discretion of the Authority's Board of Directors, suspend any benefits the City would receive from the Project under the City's Service Agreement with the Authority until such time as all financial obligations owed to the Authority are satisfied, provided that the Authority has first given the City a minimum of sixty (60) days' advance written notice of such suspension. If the City does not satisfy its financial obligations following receipt of the Authority's written notice for a period of one (1) year from the effective date of the suspension, the City shall be deemed to have withdrawn from the Authority for purposes of Section 8.4, below. The Authority shall not impose interest on the City's financial obligations during this one (1) year period.

ARTICLE 8 TERMINATION / AMENDMENT; WITHDRAWAL

8.1 Duration and Termination. This Agreement shall become effective as of the Effective Date and shall continue in full force and effect until terminated by action taken by at least three-quarters (3/4ths) of the Board and ratified by at least three-quarters (3/4ths) of the governing bodies of the Members. Notwithstanding any other provision of this Agreement, the decision to terminate this Agreement shall not be subject to weighted voting. If at any time there are only two (2) Members of the Authority and one (1) of those Members intends to withdraw, the other Member's written consent to terminate this Agreement shall not be unreasonably conditioned or delayed. Notwithstanding the prior provisions of this Section 8.1, this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.

8.2 Amendment. This Agreement may be amended at any time by action taken by at least three-quarters (3/4ths) of the Board (but subject to the provision of Section 3.3.3.2 [or 3.3.4.2], above), and if demand is made under Section 3.3.2.2, above, at least three-quarters (seventy-five percent (75%)) of the total weighted votes; and ratified by at least three-quarters (3/4ths) of the governing bodies of the Members; provided that Exhibit B to this Agreement may be amended by the Administrator or Executive Director, with majority vote of the Board approving such amendment to Exhibit B, to reflect changes to the Project's facilities approved by the Board of Directors.

8.3 Withdrawal. A Member may only withdraw from the Authority as follows:

8.3.1 Failure to Execute Interim Funding Agreement. In the event a Member does not execute the Interim Funding Agreement or other agreement provided under Section 7.9.2 to provide interim funding to the Authority on or before June 30, 2021, or such later date as the Board shall establish, that Member shall be deemed to have withdrawn from the Authority and shall have no further rights or obligations under this Agreement.

8.3.2 Failure to Execute Service Agreement. In the event a Member does not execute its Service Agreement on or before September 30, 2021, or such later date as the Board shall establish, that Member shall be deemed to have withdrawn from the Authority and shall have no further rights or obligations under this Agreement.

8.3.3. Additional Funding Contribution Required Under Section 7.9.2. Subject to Section 8.3.8, in the event a Member is required to make an additional monetary contribution pursuant to Section 7.9.2, above, which that Member does not desire to make or otherwise disagrees with, the Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members; provided that the Member desiring to withdraw shall meet and confer with the other Members during that notice period in an attempt to resolve any disputed issues. In the event of such a withdrawal, the withdrawing Member shall forego any funds previously contributed to the Authority, unless otherwise agreed in writing or as set forth under Section 8.4, below.

8.3.4 Engineer's Estimate is Too Expensive or Construction Bids are Too High. Subject to Section 8.3.8, in the event a Member concludes the engineer's estimate for any work on the Project is too expensive or where construction bids exceed the engineer's estimate by at least twenty percent (20%), then a Member may initiate a meet and confer process among the Members to discuss those cost issues, which meeting shall take place within thirty (30) days after the Member gives notice of its desire for that meeting. If upon conclusion of that meet and confer process the Member that initiated that process is not satisfied with the estimate or bids, then that Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.5 Withdrawal of Other Members. Subject to Section 8.3.8, in the event that at least two (2) Members have withdrawn from the Authority under this Section 8.3 and the result of such withdrawals has made remaining in the Authority cost prohibitive for a Member, then any other Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.6 Revocation or Unacceptable Conditioning of State or Federal Funding. In the event the State of California or the federal government withdraws any previously approved funding for the Project or conditions such funding in a manner a Member deems unacceptable prior to the time when the Authority has issued any revenue bonds for the Project, any Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.7 Unacceptable Permit Conditions. Subject to Section 8.3.8, in the event any entity or jurisdiction whose approval must be obtained to design, construct, or operate the Project conditions its approval in a manner a Member deems unacceptable, such Member may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.X Additional Terms for Withdrawal by San Francisco. In the event that San Francisco is unable to: (1) obtain agreements with the California Department of Water Resources and/or the South Bay Aqueduct (SBA) Contractors to allow for the conveyance of water supplies through the SBA for use by San Francisco and its wholesale customers, (2) secure approval of a permanent water supply source for storage in the Los Vaqueros Reservoir, and/or (3) obtain agreements necessary to convey that source water or its equivalent to the Los Vaqueros Reservoir, San Francisco may withdraw from the Authority upon at least sixty (60) days' written notice to the other Members.

8.3.8 Approval once Revenue Bonds are Issued. Notwithstanding the foregoing subsections in this Section 8.3, after such time as the Authority has issued revenue bonds for the Project, a Member may withdraw from the Authority only if some or all of the other Members have agreed to assume the withdrawing Member's obligations under such bonds, unless the withdrawing Member has prepaid its entire financial obligation to the Authority and accordingly has not pledged its revenues towards repayment of the bonds. The Authority shall not issue revenue bonds before all construction bids have been received and any meet and confer process undertaken pursuant to Section 8.3.4 has concluded.

8.4 Effect of Withdrawal.

8.4.1 A withdrawal from the Authority constitutes a withdrawal of that Member's representative Director from the Board of Directors, including in the event a Member's obligations under any revenue bonds have been assumed by another Member as stated in Section 8.3.8, above. If at any time there are only two (2) Members, any desired withdrawal shall be subject to the termination provisions of this Agreement. Unless otherwise agreed upon by all of the remaining Members, the withdrawal of a Member shall not terminate its responsibility to contribute its share of any obligation incurred by the Authority, as determined by the Board of Directors based upon that Member's obligations under the Interim Funding Agreement, its respective Services Agreement (if the Member has executed that agreement), or otherwise under this Agreement, or to perform any other obligation arising from a separate agreement or other legally binding obligation, including amounts determined by the Board for (1) liabilities and claims accrued during the time the agency was a Member (including any future obligations arising from retirement benefits for past and existing employees of the Authority, if any) or (2) budgeted expenses for the Fiscal Year in which notice of intent to withdraw is given. Except as the withdrawing Member may agree in writing with the Authority, the withdrawing Member shall automatically relinquish all rights as a Member under this Agreement, on the effective date of the withdrawal.

8.4.2 For any Member that has prepaid its entire financial obligation to the Authority and subsequently decided to withdraw from the Authority, the Board shall determine an equitable allocation of such monies previously paid to the Authority and return to that withdrawing Member any uncommitted funds, provided that any such refund may be structured to ensure it does not materially adversely impact the Authority's financial condition. The Board's determination of that equitable allocation shall take into consideration the amount of Project costs that have been paid through payment of principal under any revenue bonds the Authority has issued in the period since the withdrawing Member prepaid its financial obligation.

8.5 Disbursement Upon Termination; Post-Termination Liabilities. Upon termination of this Agreement and after payment of all liabilities, costs, expenses, and charges validly incurred under this Agreement, the Board may, in its discretion and by a unanimous vote of the then-current Directors, distribute all remaining assets of the Authority based on an apportionment the Board deems equitable. Any further liabilities that may accrue after termination of this Agreement shall be allocated among the former Members in the same proportion as the Authority's expenses are allocated under the Operating Budget at the time of the termination; provided that the Board shall take into consideration any non-monetary contributions Grassland Water District may provide with respect to its share of such liabilities.

ARTICLE 9 SPECIAL PROVISIONS

9.1 Insurance. The Authority shall maintain types and levels of insurance coverage for the Authority as the Board of Directors determines to be reasonably adequate.

9.2 Liability of Authority, Board, Officers, Employees. As allowed by Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority, with the exception of retirement liabilities of the Authority, if any, shall be the debts, liabilities, and obligations solely of the Authority and not the debts, liabilities, and obligations of any of the Members or any of their respective members, officers, directors, employees, or agents. The Authority, its Directors, officers, employees, staff, and agents shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Member, its officers, directors, or employees shall be responsible for any action taken or omitted by any other Member, or its members, officers, directors, or employees. To the extent allowed by law, the Members repudiate the provision

for joint and several liability provided under Government Code Section 895.2, and agree, pursuant to Government Code Section 895.4, that each Member shall fully indemnify and hold harmless each other Member and its agents, officers, employees, and contractors from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any action taken or omitted to be taken by such Member under this Agreement. The Members intend that each Member provide indemnity or contribution in proportion to that Member's responsibility for any such claim, damage, loss, judgment, liability, expense or other cost.

9.3 New Members. It is recognized that public agencies other than the original Members to this Agreement may wish to participate in the Authority. As determined by the Board of Directors, in its sole discretion, any such public agency must have the common powers specified in Recitals A and B, above, must be credit worthy, and must provide benefits to the Project and other Members. Any proposed new Member must meet all established principles or requirements adopted by any Member with respect to potential participation in the Project that are in effect at the time the proposed new Member applies to become a Member. Additional public agencies may become Members upon such terms and conditions as approved by at least three-quarters (3/4ths) of the Board, including establishment of an appropriate cost allocation for that new Member and payment by the new Member of an acceptable financial contribution to offset prior expenses incurred by the existing Members in developing and operating the Project. Any new Member must be approved by at least three-quarters (3/4ths) of the governing boards of the existing Members of the Authority, evidenced by the execution of a written amendment to this Agreement signed by the new Member.

9.4 Retirement System. The Authority shall not enter into a contract with the California Public Employees' Retirement System and/or any other public retirement system without the approval of two-thirds (2/3rds) of the Board and ratification by at least two-thirds (2/3rds) of the governing bodies of the Members. The Members acknowledge that if the Authority enters into any such contract, as referenced in Section 9.2., above, the Members may have responsibility under Government Code Section 6508.2 for the Authority's retirement liabilities in the event this Agreement is terminated or the Authority terminates that contract. In such a situation, the Members shall attempt to reach mutual agreement on the allocation of those liabilities among the Members, and understand that if they unable to reach such a mutual agreement, those liabilities shall be allocated among the Members in the same proportion as the Authority's expenses are allocated under the Operating Budget at the time of the termination of this Agreement or of the retirement system contract. .

9.5 Indemnity. The Authority shall indemnify, defend and hold harmless the Board of Directors, the individual Members, and their members, officers, directors, employees, and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement, except such loss or damage which was caused by the willful misconduct of any individual Member, or their members, officers, directors, employees, and agents. The Authority's duty to indemnify each Member pursuant to this Agreement shall survive that Member's withdrawal from the Agency.

9.6 Conflict of Interest Code. The Authority shall, by resolution, adopt a conflict of interest code as required by law.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 Severability. If any section, clause or phrase of this Agreement or the application thereof to any Member or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to any other Member or to other persons or circumstances shall not be affected thereby. In the event a provision is held to be invalid, the Members shall work in good faith to restore the intent of any provision that held to be invalid. Each Member hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.

10.2 Dispute Resolution. If a dispute arises as to the construction, interpretation or implementation of any portion of this Agreement or any matters that arise in connection with this Agreement, the Members in dispute (including the Authority if the dispute is between one or more Members and the Authority, in which case the Board shall determine who will represent the Authority in the meet and confer and mediation processes) shall meet and confer in person in an attempt to resolve that dispute within thirty (30) days of a Member or the Authority giving the other Members or the Authority notice of the dispute. If the Members or the Authority cannot resolve the dispute through that meet and confer process, the Members or the Authority in dispute shall proceed to mediation of the dispute in front of an independent, neutral mediator agreed to by those Members or the Authority, unless they both agree to waive that mediation. If the Members or the Authority in dispute cannot agree upon a mediator, the mediation service selected shall choose the mediator. The Members or the Authority in dispute shall equally divide and pay the mediation costs.

10.3 Notices. Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally, by registered or certified mail, postage prepaid, by nationally-recognized overnight courier, or by e-mail to the respective Members, at the addresses provided in Exhibit A attached hereto. With respect to delivery by e-mail, any such e-mail message shall be sent using a system that provides unmodifiable proof: (i) that the message was sent; (ii) that the message was delivered to the recipient's information processing system, and (iii) of the time and date the message was delivered to the recipient, along with a verifiable electronic record of the exact content of the message sent. The Members may from time to time change the address to which notice may be provided by providing notice of the change to the other Members.

10.4 Consent. Whenever in this Agreement or in any amendment thereto consent or approval is required, the same shall not be unreasonably withheld or delayed.

10.5 Other Agreements Not Prohibited. Other agreements by and between the Members or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.

10.6 Section Headings. The section headings herein are for convenience of the Members only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

10.7 Governing Law; Venue. Any judicial action or proceeding that relates to the Agreement, the Authority or the Project between or among any or all of the Members and/or the Authority shall be initially brought in Contra Costa County Superior Court and will be transferred to a neutral venue. The litigants shall attempt to stipulate to a mutually agreeable neutral venue, and if unable to agree will resolve any venue dispute through a motion to transfer brought pursuant to California Code of Civil Procedure section 394. The parties to any litigation will support transfer to a neutral venue and will not object to transfer to a neutral venue.

10.8 Construction of Language. It is the intention of the Members that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

10.9 Cooperation. The Members recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.

10.10 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members.

10.11 Enforcement. The Authority is hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Agreement.

10.12 Integration. This Agreement constitutes the full and complete Agreement of the Members.

10.13 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

SIGNATURES ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, the Members have caused this Joint Exercise of Powers Agreement to be executed and attested by their proper officers thereunto duly authorized on the day and year set forth below.

DRAFT

EXHIBIT A
AUTHORITY MEMBERS

- Alameda County Flood Control & Water Conservation District, Zone 7
- Alameda County Water District
- Contra Costa Water District (to include City of Brentwood)
- East Bay Municipal Utility District
- Grassland Water District
- Santa Clara Valley Water District
- San Francisco Public Utilities Commission (to include Bay Area Water Supply & Conservation Agency)
- San Luis & Delta-Mendota Water Authority, consisting of:
 - Byron-Bethany Irrigation District
 - Del Puerto Water District
 - Panoche Water District
 - Westlands Water District

EXHIBIT B
LIST OF FACILITIES

No.	Description	Type	Builder	Operator
1	Delta-Transfer Pipeline	New Facility	CCWD	CCWD
2	Los Vaqueros Dam Raise	New Facility	CCWD	CCWD
3	Neroly High-Lift Pump Station	New Facility	CCWD	CCWD
4	Transfer Facility Expansion	New Facility	CCWD	CCWD
5	Transfer-Bethany Pipeline	New Facility	CCWD	CCWD
6	Los Vaqueros Recreation Facilities	Modified Facility	CCWD	CCWD
7	Rock Slough PP#1 Replacement	Modified Facility	CCWD	CCWD
8	Transfer Facilities Improvements	Modified Facility	CCWD	CCWD
9	Mokelumne Aqueduct Lining	Modified Facility	EBMUD	EBMUD
10	Walnut Creek VFDs	New Facility	EBMUD	EBMUD
11	Mokelumne Aqueduct	EBMUD-Provided Facility	EBMUD is responsible for construction, operation, and maintenance and is compensated through the EBMUD Facilities Usage Agreement	
12	Freeport Intake	EBMUD-Provided Facility		
13	EBMUD-CCWD Intertie	CCWD-Provided Facility	CCWD is responsible for construction, operation, and maintenance and is compensated through the CCWD Facilities Usage Agreement	
14	Los Vaqueros Dam	CCWD-Provided Facility		
15	Los Vaqueros Pipeline	CCWD-Provided Facility		
16	Middle River Intake	CCWD-Provided Facility		
17	Middle River Pipeline	CCWD-Provided Facility		
18	Old River Intake	CCWD-Provided Facility		
19	Old River Pipeline	CCWD-Provided Facility		
20	Rock Slough Facilities	CCWD-Provided Facility		
21	Transfer Pipeline	CCWD-Provided Facility		