

JOINT EXERCISE OF POWERS AGREEMENT REGIONAL WATER AUTHORITY

This Agreement is made and entered into as of this 1st day of July 2001, by and between the parties to this Agreement (listed in Exhibit A).

INTRODUCTION

This Agreement changes the name of the Sacramento Metropolitan Water Authority ("SMWA") to the Regional Water Authority (the "Regional Authority"), and supersedes the agreement under which SMWA was formed and operated. SMWA will continue to operate, but as the Regional Authority. This amendment shall not affect any contracts entered into by SMWA, except for the change of name from SMWA to Regional Authority. The parties to this Agreement intend that the Regional Authority may, at some future time, provide the types of services that are currently being provided by other existing industry associations in the region, including, but not limited to, all or portions of the Sacramento Area Water Works Association ("SAWWA"), the Sacramento Maintenance and Regional Technology group ("SMART"), and the American River Basin Cooperating Agencies ("ARBCA"), subject to the approval of those entities and the Regional Authority.

Recitals

- A.** This Agreement amends and supersedes in its entirety that certain joint exercise of powers agreement, as amended, that was entered into as of March 20, 1990 (the "SMWA JPA") to form the SMWA.
- B.** The mission of the Regional Authority is to serve and represent the regional water supply interests, and to assist the Members of the Regional Authority in protecting and enhancing the reliability, availability, affordability and quality of water resources.
- C.** The goals of the Regional Authority are to:
 - 1.** Assist, where appropriate, in the voluntary consolidation of the services provided by existing industry/trade associations and water utility support groups within the Regional Authority.
 - 2.** Develop and provide subscription-based (i.e., that are paid for by participating Members) support services, projects and programs of mutual interest for Members, or groups of Members, and certain other subscribers.
 - 3.** Facilitate discussion of and action on matters of regional priority and interest.

4. Coordinate and implement regional water master planning, grant-funding acquisition, and related planning efforts.
 5. Provide a unified voice to advocate and respond to legislative, regulatory and policy matters of importance to the region's water supply.
- D. The guiding principles of the Regional Authority shall be:
1. To operate without exercising governing or regulatory authority over Members.
 2. To operate without competing with Members for the development, treatment or delivery of water supplies.
 3. To ensure that the positive traditions and essential functions of SMWA, SAWWA, SMART and ARBCA (if the Regional Authority provides the same types of services that those associations currently provide) be continued.
 4. To operate in a manner that allows each Member to retain its ability to make business and policy decisions.
- E. The Members desire to meet their mutual goals effectively and efficiently through the formation of the Regional Authority.

AGREEMENT

In consideration of the promises, terms, conditions and covenants contained herein, the parties to this Agreement hereby agree as follows:

GENERAL

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.
2. **Members.** Each Member certifies and declares that it is a public agency (as defined in Government Code section 6500) or mutual water company (as defined in Government Code section 6525) that is authorized to be a party to this joint exercise of powers Agreement, and to contract with each other for the joint exercise of common powers in accordance with Article 1, Chapter 5, Division 7, Title 1 of the Government Code (the "JPA Act", commencing with section 6500).

DEFINITIONS

3. **Definitions.** When used in this Agreement, the following terms shall have the meanings set forth below:
- a. “Agreement” means this Joint Exercise of Powers Agreement.
 - b. “Board of Directors” or “Board” means the governing body of the Regional Authority as established in this Agreement. The Board of Directors shall include representatives of Members and Contracting Entities as provided in this agreement.
 - c. “Budget” means the approved budget applicable to the expenses of the Regional Authority.
 - d. “Contracting Entity” or “Contracting Entities” means an entity providing retail water service to 1,000 or more retail connections that enters into a written agreement with the Regional Authority that has been approved by two-thirds of the membership of the Board (not just two-thirds of the representatives present at a meeting of the Board) to (1) contribute to the costs of the Regional Authority as specified in the agreement, (2) be represented on the Board of Directors, and (3) have the rights and duties set forth in the agreement.
 - e. “Director” means a member of the Board of Directors.
 - f. “Executive Director” means the chief administrative officer of the Regional Authority.
 - g. “External Policy Issues” means legislation, regulatory or land use planning issues, or projects proposed by other entities.
 - h. “Fiscal Year” means an accounting period running from July 1 through June 30 of each year.
 - i. “Member” means each entity that is or becomes a party to this Agreement.
 - j. “Project or Program Agreement” means an agreement between the Regional Authority and two or more of its Members or Contracting Entities, to provide for carrying out a project or program that is within the authorized purposes of the Regional Authority, and sharing in the costs and benefits by the parties to the Project or Program Agreement.
 - k. “Regional Water Authority” or “Regional Authority” means the changed name for SMWA.

- I. "SMWA" means the Sacramento Metropolitan Water Authority, a joint powers authority that was formed by a joint exercise of powers agreement, as amended, that was entered into as of March 20, 1990, which, by virtue of this Agreement, is changed to the Regional Water Authority.

- m. "SMWA JPA" means the joint exercise of powers agreement that formed SMWA.

CREATION OF JOINT POWERS AUTHORITY; POWERS AND PURPOSES

- 4. **Regional Authority Created.** The Regional Authority is hereby created pursuant to the JPA Act and this Agreement, reflecting the revisions of the SMWA JPA. The Regional Authority shall be a public entity separate from its Members.

- 5. **Boundaries of the Regional Authority.** The geographic boundaries of the Regional Authority shall be coextensive with those of the Members.

- 6. **Common Powers To Be Exercised.** In fulfillment of the stated mission and goals, the Regional Authority shall exercise the foregoing common powers and such additional powers as may be authorized by law in the manner hereinafter set forth.

- 7. **Powers and Limitations:**
 - a. **Powers.** The Regional Authority shall have the power in its own name to do any of the following:
 - 1. Exercise jointly the common powers of its Members in studying, planning and implementing ways and means to provide reasonable and financially-feasible projects, programs and cooperative operations activities for Members.

 - 2. Develop and provide voluntary support services and programs by subscription, including but not limited to: educational and training programs, water conservation programs, public education and outreach programs, water quality protection and laboratory testing programs, technical review and analysis programs, multi-Member regional planning activities, and coordinate the planning, design, financing, debt management, grant fund applications, construction and operation of physical assets on behalf of Members pursuant to the terms of this Agreement.

 - 3. Make and enter into contracts.

 - 4. Cooperate, act in conjunction and contract with the United States, the State of California, or any agency thereof, counties, municipalities, public and private corporations of any kind (including, without limitation, investor-owned

utilities), and persons, or any of them, for any and all purposes necessary or convenient for the full exercise of the powers of the Regional Authority.

5. Contract for consultant services and to employ such other persons or employees, as it deems necessary.
 6. Incur debts, liabilities and obligations, and enter into leases, installment sale and installment purchase contracts, subject to limitations herein set forth.
 7. Apply for, accept, receive and administer state, federal or local grants, loans or other forms of aid or subvention from any agency of the United States of America, the State of California or other public or private entity compatible with the Regional Authority's full exercise of its powers.
 8. Obtain any governmental authorizations or approvals required for the administration of the Regional Authority
 9. Sue and be sued in its own name.
 10. Acquire and dispose of real and personal property.
 11. Perform all acts necessary or proper to carry out fully the purposes of this Agreement.
 12. To the extent not specifically provided for herein, to exercise any powers in the manner and according to methods provided under the laws applicable to a Community Services District (Division 3 of Title 6 of the Government Code, commencing with section 61000).
- b. **Limitations.** To ensure that the Regional Authority does not take a position on legislation, regulatory, or land use planning issues or projects proposed by other entities, the written consent of all Members (i.e., the unanimous consent of the entire membership, not just those present at a meeting, or a quorum of the membership) shall be required before the Regional Authority adopts formal positions on External Policy Issues.

BOARD OF DIRECTORS

8. **Membership on the Board of Directors.** The Board of Directors shall consist of the following representatives:
 - a. Each Member shall appoint two representatives, who shall be either a representative from the governing board, executive staff representatives or a combination thereof, either of whom may cast a single vote on behalf of their

Member. The Authority prefers that one representative be from the Member's governing body, and that one representative be from the Member's executive staff.

- b. Each Contracting Entity shall appoint two representatives, who shall be either a representative from the governing board of the Contracting Entity, executive staff representatives, or a combination thereof, either of whom may cast a single vote on behalf of the Contracting Entity.

- 9. **Notification of Appointment to the Board of Directors.** A Member and a Contracting Entity shall notify the Regional Authority in writing from time to time of its designated representatives to the Board of Directors, including alternates who may act in the absence of a representative.

10. **Committees.**

- a. Executive Committee. The Board shall create from its membership an Executive Committee consisting of not more than nine members of the Board of Directors. The representatives to the Executive Committee shall serve at the pleasure of the Board of Directors. The Executive Committee shall have the decision-making authority delegated to it by the Board, and shall coordinate and monitor the activities of Regional Authority staff and consultants, review and approve routine business decisions, and serve as a sounding board for ideas and issues on behalf of the Board of Directors. Executive Committee meetings will be open to the public (except for authorized closed sessions), noticed and conducted in accordance with applicable law.

- b. Ad hoc and Standing Committees. From time to time, specific issues may arise that may require, in the view of the Chairman of the Board, specialized or detailed efforts outside the routine activities of the Board of Directors meetings or Executive Committee meetings. At such times, the Board Chairman may establish an ad hoc or standing committee to address those issues, appoint representatives to that committee and provide that committee with a specific mission or charter. Such committees shall meet as necessary at locations and times determined by their membership.

- 11. **Principal Office.** The Board of Directors shall establish the principal office of the Regional Authority. The Board is hereby granted full power and authority to change its principal office from one location to another within the boundaries of the Regional Authority. Any change shall be noted by the Secretary, but shall not be considered an amendment to this Agreement.

12. **Meetings**. The Board shall generally meet at the Regional Authority's principal office or at such other place as may be designated by the Board. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board. A copy of such resolution shall be furnished to each Member and Contracting Entity. All meetings shall be called and held in the manner as provided in Chapter 9, Division 2, Title 5 of the Government Code of the State of California (the "Brown Act," commencing at Section 54950).
13. **Quorum/Board Action**. A majority of all of the Board shall (a) constitute a quorum for the purposes of transacting the Regional Authority's business, and (b) be required for an affirmative vote for the Board to take action, except where different voting requirements are provided for in this Agreement.
14. **Powers and Limitations**. All the power and authority of the Regional Authority will be exercised by the Board, subject however, to the rights reserved by the Members as herein set forth, provided, that the Board may delegate its powers and authority to the Executive Committee or the Executive Director.
15. **New Members**. The Board shall have authority, upon the approval of two-thirds of the membership of the Board (not just two-thirds of the representatives present at a meeting of the Board), to (a) approve new Members to the Regional Authority, (b) remove a Member, in which case the Board may amend Exhibit A to this Agreement for those purposes, and (c) approve agreements with Contracting Entities. The Board of Directors may provide that a new Member shall be liable only for obligations of the Regional Authority that existed from or after the effective date of the action approving the new Member.
16. **Minutes**. The Secretary of the Regional Authority shall cause to be kept minutes of all meetings of the Board and the Executive Committee. A copy of the approved minutes shall be forwarded to each Member and Contracting Entity.
17. **Rules of Procedure**. The Board will adopt Rules of Procedure within twelve months of the formation of the Regional Authority. The rules of procedure shall supplement but not be in conflict with this Agreement, and may contain policies and procedures for the efficient operation of the Regional Authority. In the event of conflict between this Agreement and other rules or procedures, the provisions of this Agreement shall govern.
18. **Officers**. A Board Chairman, and Vice-Chairman shall be elected from the membership of the Board, and shall hold office for a period of one year commencing on or about January 1 of each year, provided however, that the first Chairman and Vice-Chairman shall hold office from the date of their appointment to December 31 of the ensuing year, or until their successors take office, whichever is

later.

The Board shall appoint a Secretary upon recommendation of the Executive Director. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and the Executive Committee, and all other official records of the Regional Authority.

The Board shall appoint a Treasurer of the Regional Authority, upon recommendation of the Executive Director, from among the officers or employees of the Regional Authority, who shall be the depository of funds and shall have custody of all money of the Regional Authority, from whatever source. The Treasurer shall perform the duties specified in Government Code Section 6505.5, shall draw all warrants and pay demands against the Regional Authority approved by the Board.

The Board may appoint legal counsel to the authority. The Regional Authority's legal counsel shall work cooperatively, and at the direction of the Executive Director. However, legal counsel shall ultimately report to the Board of Directors and the Executive Committee.

In addition, the Board shall have the power to appoint such additional officers, as it deems necessary.

The public officer or officers or employees of the Regional Authority who have charge of any funds or securities of the Regional Authority shall be bonded and the Board shall designate the amount of their bond. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits that apply to the activity of officers, agents or employees of any of the Members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the Members or by reason of their employment by the Board to be subject to any of the requirements of such Members.

EXECUTIVE DIRECTOR

19. **Executive Director.** The Executive Director of the Regional Authority shall be the chief administrative officer of the Regional Authority, shall serve at the pleasure of the Board of Directors, and shall be responsible to the Board for the proper and efficient administration of the Regional Authority pursuant to the provisions of this Agreement, or of any resolution or order of the Board. In addition to other powers and duties herein provided, the Executive Director shall have the power:

- a. Under policy direction of the Executive Committee, to plan, organize and direct all Regional Authority activities;
- b. To appoint and to remove all Regional Authority employees, all of whom shall serve at the pleasure of the Executive Director, except as is otherwise provided by law or by this Agreement;
- c. To authorize expenditures within the designations and limitations of the approved Budget; and
- d. To make recommendations to and requests of the Board of Directors, or Executive Committee, concerning all of the matters and things that are to be performed, done or carried out by the Regional Authority.

PLANNING AND PROGRAMS

20. **Planning Activities**. In keeping with the purpose of this Agreement, the Members hereby authorize and direct the Regional Authority to undertake and/or participate in such studies and planning as necessary to provide for the purposes set forth in the recitals hereto.

PROJECTS

21. **Projects**. The Regional Authority's projects are intended to facilitate and coordinate the development, design, construction, rehabilitation, acquisition, or financing of water-related facilities (including sharing in the cost of federal, State or local projects) on behalf of Members and/or Contracting Entities. The Regional Authority may undertake the development, design, construction, rehabilitation, acquisition or funding of all or any portion of such projects on behalf of Members and/or Contracting Entities in the manner and to the extent authorized by such Members and/or Contracting Entities as provided in this Agreement, but shall not accomplish these functions, nor acquire or own water related facilities in its own name.
22. **Project or Program Agreement**. Prior to undertaking a project or program, the Members and/or Contracting Entities who elect to participate in a project or program shall enter into a Project or Program Agreement. Thereafter, all assets, benefits and obligations attributable to the project shall be assets, benefits and obligations of those Members and/or Contracting Entities that have entered into the Project or Program Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Regional Authority in regard to a particular project or program, including startup costs advanced by the Regional Authority, shall be obligations of the participating Members and/or Contracting Entities, and shall not be the debts, liabilities,

obligations and indebtedness of those Members and/or Contracting Entities who have not executed the Project or Program Agreement.

BUDGETS AND PAYMENTS

23. **Budget**. Each fiscal year, the Board shall adopt a Budget for the Regional Authority for the ensuing fiscal year.

24. **Contributions and Expenses**:

- a. Members and Contracting Entities (consistent with the terms of their agreements with the Regional Authority) shall share in the general operating and administrative cost of operating the Regional Authority, as outlined in the annual budget documents. The Board of Directors may approve, from time to time, an advance or contribution to proposed projects or program specific activities (start-up costs). The reimbursement of these start-up costs or contributions from subscribing Members and/or Contracting Entities will be required once the contemplated project or program is implemented as contained in the Project or Program Agreement, unless the Board of Directors determines otherwise by unanimous vote.
- b. Project or program-specific expenses, performed at the request of, or on behalf of Members and/or Contracting Entities shall have dedicated funding sources as described and contained in the Project or Program Agreement.
- c. The Board may arrange for the payment of the expenses of the Regional Authority through some other source, including but not limited to State or federal grants or loans.
- d. In accordance with Government Code Section 6512.1, repayment or return to the Members and/or Contracting Entities of all or part of any contributions made by the Members and/or Contracting Entities may be directed by the Board at such time, and upon such terms as may be consistent with any indebtedness incurred by the Regional Authority. The Regional Authority shall hold title to all funds and property acquired by it during the term of this Agreement.

FINANCING

25. **Capital Indebtedness**. The Regional Authority shall not issue, execute or otherwise participate in debt instruments for the purpose of acquiring, developing, licensing, permitting, treating, diverting, pumping or delivering water supplies.

26. **Other Indebtedness**. Subject to the provisions of Article 25, the Regional Authority shall have the power and authority to issue bonds, notes and other indebtedness,

and to execute leases, installment sale contracts or installment purchase contracts for the purposes and in accordance with procedures and requirements as permitted by law.

ACCOUNTING AND AUDITS

27. **Accounting Procedures**. Full books and accounts shall be maintained for the Regional Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Regional Authority's Treasurer shall comply strictly with requirements of the JPA Act.
28. **Audit**. A qualified firm, serving in the capacity of auditor, shall audit the records and the accounts of the Regional Authority annually in accordance with the provisions of section 6505 of the JPA Act. Copies of such audit reports shall be filed with the State Controller, each Member and each Contracting Entity within six months of the end of the fiscal year under examination.

PROPERTY RIGHTS

29. **Property**. All property owned or acquired by the Regional Authority shall be held in the name of the Regional Authority for the benefit of the Members and/or Contracting Entities of the Regional Authority in accordance with the terms of this Agreement, unless a Project or Program Agreement provides otherwise.
30. **Liabilities**. The debts, liabilities and obligations of the Regional Authority shall be the debts, liabilities or obligations of the Regional Authority alone and not of the Members to this Agreement, except as may otherwise be expressly set forth in a Project or Program Agreement.

LIABILITY OF BOARD

31. **Indemnification of Board**. Except as otherwise provided in this Agreement, the funds of the Regional Authority shall be used to defend, indemnify and hold harmless the Regional Authority and Directors for their actions taken within the scope of the authority of the Regional Authority. Nothing herein shall limit the right of the Regional Authority to purchase insurance to provide such coverage, as is herein above set forth.

RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT

32. **Term**. The Regional Authority shall continue until this Agreement is terminated as herein provided.

33. **Rescission or Termination.** This Agreement and the Regional Authority may be terminated by two-thirds written consent of the Members except during the outstanding term of any Regional Authority indebtedness. Nothing in this Agreement shall prevent the Members from withdrawing as provided in this Agreement, or from entering into other joint exercise of power agreements.
34. **Disposition of Property Upon Termination.** Upon termination of this Agreement, any surplus funds on hand shall be returned to the then Members and Contracting Entities (consistent with the terms of their agreements with the Regional Authority) in proportion to the contributions made. The Regional Authority shall first offer any property, rights or interests of the Regional Authority for sale to the Members and Contracting Entities for good and adequate consideration. If no such sale is consummated, the Regional Authority shall offer such property, rights and interests for sale to any governmental agency, or other entity for good and adequate consideration. The net proceeds from any sale shall be distributed among the Members and Contracting Entities (consistent with the terms of their agreements with the Regional Authority) in proportion to the contributions made. If no such sale is consummated, then the property, rights and interests of the Regional Authority shall be allocated to the Members and Contracting Entities in the same manner as the allocation of the net proceeds from a sale, unless otherwise agreed to by the Members and Contracting Entities.
35. **Withdrawal.**
- a. A Member may unilaterally withdraw from this Agreement without requiring termination of this Agreement, effective upon ninety days' written notice to the Regional Authority, provided that the withdrawing Member shall remain responsible for any indebtedness incurred by the Member under any Project or Program Agreement to which the Member is a party, and further provided that the withdrawing Member pays or agrees to pay its share of debts, liabilities and obligations of the Regional Authority incurred by the Member under this Agreement prior to the effective date of such withdrawal. A Contracting Entity may withdraw under the terms and conditions of its agreement with the Regional Authority.
 - b. In the event the withdrawing Member has any rights in any property or has incurred obligations to the Regional Authority, the Member cannot sell, lease or transfer such rights or be relieved of its obligations, except in accordance with a written agreement executed by it and the Regional Authority. The Regional Authority may not sell, lease, transfer or use any rights of a Member who has withdrawn without first obtaining the written consent of the withdrawing Member.

- c. No refund or repayment of the initial commitment of funds (as determined by the Board of Directors) shall be made to a Member ceasing to be a Member to this Agreement whether pursuant to this Section or any other Section of this Agreement. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made, or other agreement of the Regional Authority and withdrawing Member.
 - d. A Member may be involuntarily removed as a Member by two-thirds vote of the Board of Directors in the manner provided for in Article 15.
- 36. **Amendments**. This Agreement may be amended from time to time by unanimous vote of the Members, except that Exhibit A may be amended to add a new member by vote of the Board of Directors in accordance with the provisions of Article 15.
- 37. **Assignment: Binding on Successors**. Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Regional Authority then in effect. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto. The agreement between a Contracting Entity and the Regional Authority shall set forth provisions concerning assignment of the rights under that agreement.
- 38. **Notice**. Any notice or instrument required to be given or delivered under this Agreement may be made by: (a) depositing the same in any United States Post Office, postage prepaid, and shall be deemed to have been received at the expiration of 72 hours after its deposit in the United States Post Office; (b) transmission by facsimile copy to the addressee; (c) transmission by electronic mail; or (d) personal delivery.
- 39. **Counterparts**. This Agreement may be executed by the Members in separate counterparts, each of which when so executed and delivered shall be an original. All such counterparts shall together constitute but one and the same instrument.
- 40. **Choice of Law**. This Agreement shall be governed by the laws of the State of California.
- 41. **Severability**. If one or more clauses, sentences, paragraphs or provisions of this Agreement is held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby.

The foregoing is hereby agreed to by the Members.