
JOINT EXERCISE OF POWERS AGREEMENT

METRO SEWER PUBLIC FINANCING AUTHORITY

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THIS JOINT POWERS AGREEMENT (the "Agreement"), dated _____, is entered into by and between the CITY OF CHULA VISTA, a municipal corporation; the CITY OF CORONADO, a municipal corporation; the CITY OF DEL MAR, a municipal corporation; the CITY OF EL CAJON, a municipal corporation; the CITY OF IMPERIAL BEACH, a municipal corporation; the CITY OF LA MESA, a municipal corporation; the CITY OF LEMON GROVE, a municipal corporation, the CITY OF NATIONAL CITY, a municipal corporation; the CITY OF POWAY, a municipal corporation; the OTAY WATER DISTRICT, a political subdivision of the State of California; PADRE DAM MUNICIPAL WATER DISTRICT, a political subdivision of the State of California; and the COUNTY OF SAN DIEGO on behalf of Winter Gardens Sewer Maintenance District, a maintenance district established pursuant to California Streets & Hwys. Code section 5820 et seq.; Alpine Sanitation District, a political subdivision of the State of California; the Lakeside Sanitation District, a political subdivision of the State of California; and Spring Valley Sanitation District, a political subdivision of the State of California (the "Participating Agencies").

WITNESSETH:

WHEREAS, the Participating Agencies are all authorized to own, lease, purchase, receive and hold property and contract rights necessary or convenient for their governmental operations; and

WHEREAS, the Participating Agencies receive sewer treatment services as part of the Metropolitan Sewerage System pursuant to the Regional Wastewater Disposal Agreement entered into by and among the City of San Diego and the Participating Agencies dated June 25, 1998; and

WHEREAS, the Regional Wastewater Disposal Agreement requires the Participating Agencies to pay for capital improvements required by the Metropolitan Sewerage System; and

WHEREAS, the Marks-Roos Local Bond Pooling Act of 1985, Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Bond Law"), authorizes agencies formed under the Act (as hereinafter defined) to assist in the financing of public capital improvements to be used by the public agencies which are parties to the agreements creating such agencies; and

WHEREAS, in enacting the Bond Law, the Legislature of the State of California declared, in Section 6584.5 of the Government Code of the State of California, that (a) there is a critical need within the State of California to expand, upgrade and otherwise improve the public capital facilities of local government necessary to support the rehabilitation and construction of residential and economic development; and (b) that it is (was) the intent of the Legislature to assist in the reduction improvements and promote greater use of existing and new financial instruments and mechanisms such as bond pooling by local agencies; and

WHEREAS, the Participating Agencies have determined that it is in the best interest of the communities which they serve that an Authority be formed pursuant to the Act for the purposes of financing needed public capital improvements and reducing local borrowing costs for financing such improvements as authorized therein, and that the formation of such an authority will be consistent with and in furtherance of the intent and purposes of the Bond Law; and

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Participating Agencies agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meanings herein specified:

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

“Agreement” means this agreement.

“Authority” means the Metro Sewer Public Financing Authority established pursuant to this Agreement.

“Bond Law” means the Marks-Roos Local Bond Pooling Act of 1985, being Article 4 of the Act (commencing with Section 6584 of the Government Code), as now in effect or hereafter amended, as now in effect or hereafter amended, or any other law available for use by the Authority in the authorization and issuance of certificates of participation, bonds or other evidence of indebtedness to provide for the financing of Obligations and/or Public Capital Improvements.

“Bond Purchase Agreement” means an agreement between the Authority and a Participating Agency, pursuant to which the Authority agrees to purchase Obligations from said Participating Agency.

“Board” means the Board of Directors referred to in Section 2.04, which shall be the governing body of the Authority.

“Bonds” means the bonds of the Authority issued pursuant to the Bond Law.

“Directors” means the members of the Board appointed to the Board pursuant to Section 2.03.

“Fiscal Year” means the period from July 1st to and including the following June 30th.

"Government Code" means the Government Code of the State of California.

"Members" and "Participating Agencies" means the City of Chula Vista, the City of Coronado, the City of Del Mar, the City of El Cajon, the City of Imperial Beach, the City of La Mesa, the City of Lemon Grove, the City of National City, the City of Poway, the Otay Water District, the Padre Dam Municipal Water District, and the County of San Diego on behalf of the Winter Gardens Sewer Maintenance District, the Alpine Sanitation District, the Lakeside Sanitation District and the Spring Valley Sanitation District.

"Metropolitan Sewerage System or Metro System" shall mean and consist of those facilities and contract rights to facilities which are shown and/or described in Exhibit "A" attached to and incorporated to the Regional Wastewater Disposal Agreement.

"Obligations" has the meaning given to the term "Bonds" in Section 6585(c) of the Government Code, as in effect on the date hereof, and as hereafter amended.

"Public Capital Improvement" has the meaning given to such term in Section 6585(g) of the Government Code, as in effect on the date hereof, and as hereafter amended.

"Regional Wastewater Disposal Agreement" shall mean that certain agreement dated June 25, 1998 by and between the City of San Diego and all of the Participating Agencies relating to the Metropolitan Sewerage System.

"Secretary" means the Secretary of the Authority appointed pursuant to Section 3.01.

"Treasurer" means the Auditor and Treasurer of the Authority appointed pursuant to Section 3.02.

ARTICLE II

GENERAL PROVISIONS

Section 2.01. Purpose. This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the Participating Agencies, and for other purposes as permitted under the Act, the Bond Law and as agreed by one or more of the Participating Agencies. The purpose of this Agreement is to provide for the financing of Public Capital Improvements for the Metropolitan Sewerage System which are constructed pursuant to the Regional Wastewater Disposal Agreement and are obligations of the Participating Agencies.

Section 2.02. Creation of Authority. Pursuant to the Act, there is hereby created a public entity to be known as the "Metro Sewer Public Financing Authority." The Authority shall be a public entity separate and apart from the Participating Agencies, and shall administer this Agreement.

Section 2.03. Board. The Authority shall be administered by a Board of twelve (12) Directors, unless and until changed by amendment of this Agreement. The Board shall be composed of one appointee from each of the Participating Agencies. The Board shall be called the "Board of Directors of the Metro Sewer Public Financing Authority." All voting power of the Authority shall reside in the Board.

Section 2.04. Meetings of the Board.

(a) Regular Meetings. The Board shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each year. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be filed with each Participating Agency.

(b) Special Meetings. Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code.

(c) Call, Notice and Conduct of Meetings. 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 Sections 54950 *et seq.* of the Government Code.

Section 2.05. Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to each Participating Agency.

Section 2.06. Voting. Each Director shall have one vote.

Section 2.07. Quorum; Required Votes; Approvals. Directors holding a majority of the votes shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative votes of at least a majority of the Directors present at any meeting at which a quorum is present shall be required to take any action by the Board.

Section 2.08. Bylaws. The Board may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary for the purposes this Agreement.

ARTICLE III

OFFICERS AND EMPLOYEES

Section 3.01. Chair, Vice Chair and Secretary. The Board shall elect a Chair and Vice Chair from among the Directors, and shall appoint a Secretary who may, but need not, be a Director. The officers shall perform the duties normal to said offices. The Chair shall sign all contracts on behalf of the Authority, or shall appoint in writing a designee to sign contracts on behalf of the Authority, and shall perform such other duties as may be imposed by the Board. The Vice Chair shall act, sign contracts and perform all of the Chair's duties in the absence of the Chair. The Secretary

shall countersign all contracts signed by the Chair or Vice Chair on behalf of the Authority, perform such other duties as may be imposed by the Board and cause a copy of this Agreement to be filed with the Secretary of State within thirty (30) days of the effective date hereof pursuant to the Act.

Section 3.02. Treasurer. Pursuant to Section 6505.6 of the Government Code, the finance manager or director of one of the Participating Agencies shall be designated as the Auditor and Treasurer of the Authority. The Auditor and Treasurer shall be the depository, shall have custody of all of the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in Sections 6505 and 6505.5 of the Government Code and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority.

Section 3.03. Officers in Charge of Records, Funds and Accounts. Pursuant to Section 6505.1 of the Government Code, the Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 3.04. Bonding Persons Having Access to Authority Records, Funds and Accounts. From time to time, the Board may designate persons, in addition to the Secretary and the Treasurer, having charge of, handling or having access to any records, funds or accounts and the respective amounts of the official bonds of the Secretary and the Treasurer and such other persons pursuant to Section 6505.1 of the Government Code.

Section 3.05. Legal Advisor. The Board shall have the power to appoint the legal advisor of the Authority who shall perform such duties as may be prescribed by the Board. Such legal advisor shall be legal counsel to one of the Participating Agencies.

Section 3.06. Other Employees. The Board shall have the power to appoint and employ such other consultants and independent contractors as may be necessary for the purposes of this Agreement.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents or employees of the Participating Agencies 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 directly employed by the Board shall be deemed, by reason of their employment by the Board, to be employed by the Participating Agencies or, by reason of their employment by the Board, to be subject to any of the requirements of the Participating Agencies.

Section 3.07. Assistant Officers. The Board may appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Director) as the Board shall from time to time deem appropriate.

ARTICLE IV

POWERS

Section 4.01. General Powers. The Authority shall exercise in the manner herein provided the powers common to the Participating Agencies, or as otherwise permitted under the Act, and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.04.

As provided in the Act, the Authority shall be a public entity separate from the Participating Agencies. The Authority shall have the power to finance or refinance the acquisition or construction of Public Capital Improvements which are acquired or constructed pursuant to the Regional Wastewater Disposal Agreement.

Section 4.02. Power to Issue Revenue Bonds. The Authority shall have all of the powers provided in the Act, including but not limited to the Bond Law and including the power to issue Bonds, certificates of participation and/or other evidences of indebtedness under the Bond Law.

Section 4.03. Specific Powers. The Authority is hereby authorized, in its own name, to do all the acts necessary for the exercise of the foregoing powers, including but not limited to, any or all of the following:

- (a) to make and enter into contracts;
- (b) to employ agents and employees;
- (c) to finance and refinance the acquisition or construction of Public Capital Improvements acquired or constructed pursuant to the Regional Wastewater Disposal Agreement;
- (d) to sue and be sued in its own name;
- (e) to issue Bonds and otherwise to incur debts, liabilities or obligations, provided that no such Bonds, debt, liability or obligation shall constitute a debt, liability or obligation of the Participating Agencies;
- (f) to apply for, accept, receive and disburse grants, loans and other aid from any agency of the United States of America or of the State of California;
- (g) to invest any money in the treasury of the Authority pursuant to Section 6505.5 of the Government Code that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code;

(h) to apply for letters of credit or other forms of financial guarantees in order to secure the repayment of Bonds, certificates of participation and/or other evidences of indebtedness and enter into agreements in connection therewith;

(i) to carry out and enforce all the provisions of this Agreement;

(j) to make and enter into Bond Purchase Agreements;

(k) to purchase Obligations of the Participating Agencies; and

(l) to exercise any and all powers which are provided for in the Act and in Section 6588 of the Government Code, as they exist on the date of this Agreement and as they may hereafter be amended.

Section 4.04. Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Act and in the Bond Law, and, except for those powers set forth in the Bond Law, shall be subject (in accordance with Section 6509 of the Government Code) to the restrictions upon the manner of exercising such powers that are imposed upon the Participating Agencies in the exercise of similar powers.

Section 4.05. Obligations of Authority. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the Participating Agencies or any of them.

ARTICLE V

METHODS OF PROCEDURE; CREDIT TO MEMBERS

Section 5.01. Assumption of Responsibilities by the Authority. As soon as practicable after the date of execution of this Agreement, the Directors shall give notice (in the manner required by Section 2.04) of the organizational meeting of the Board. At said meeting the Board shall provide for its regular meetings as required by Section 2.04 and elect a Chair and Vice Chair and appoint the Secretary.

Section 5.02. Credit to the Participating Agencies. All accounts or funds created and established pursuant to any instrument or agreement to which the Authority is a party, and any interest earned or accrued thereon, shall inure to the benefit of each of the Participating Agencies in their respective proportions for which such funds or accounts were created.

ARTICLE VI

ELECTION TO FINANCE; CONTRIBUTIONS; ACCOUNTS AND REPORTS; FUNDS

Section 6.01. Participating Agencies Election to Finance Public Capital Improvements. Each of the Participating Agencies may elect to have the Authority issue bonds to finance its share of Public Capital Improvements acquired or constructed pursuant to the Regional Wastewater Disposal Agreement. Each Participating Agency's share of the Public Capital Improvements acquired or constructed pursuant to the Regional Wastewater Disposal Agreement shall be determined by the procedure set forth in the Regional Wastewater Disposal Agreement.

Section 6.02. Contributions. The Participating Agencies may in the appropriate circumstance when required hereunder: (a) make contributions from their treasuries for the purposes set forth herein, (b) make payments of public funds to defray the cost of such purposes, (c) make advances of public funds for such purposes, such advances to be repaid as provided herein. The provisions of Section 6513 of the Government Code are incorporated into this Agreement.

Section 6.03. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any Bonds, certificates of participation and/or other evidences of indebtedness issued, created or incurred by the Authority. The books and records of the Authority in the possession of a trustee or the Treasurer shall be open to inspection at all reasonable times by representatives of each Participating Agency. The Treasurer, within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such fiscal year to each Participating Agency to the extent such activities are not covered by the report of such trustee. The trustee appointed under any trust agreement and/or indenture shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust agreement and/or indenture. Said trustee may be given such duties in said trust agreement and/or indenture as may be desirable or necessary to carry out the purposes of this Agreement.

Section 6.04. Funds. Subject to the applicable provisions of any instrument or agreement which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse funds of the Authority, the Treasurer shall receive, have custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, and shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

Section 6.05. Annual Budget and Administrative Expenses. The Board may adopt a budget for administrative expenses, which shall include all expenses not included in any financing transaction of the Authority, annually prior to July 1 of each year. These expenses shall be designated Administrative Expenses of the Authority and shall be allocated by the Board proportionately to each of the Participating Agencies based on its Proportionate Flow in the Metropolitan Sewerage System

and the strength of its wastewater as determined by the City of San Diego pursuant to the Regional Wastewater Disposal Agreement.

Section 6.06. Financing Expenses. The estimated annual expenses of the Authority to administer any financing transaction of the Authority shall be designated Financing Expenses and shall be allocated by the Board proportionately to each Participating Agency which is a participant in the financing being administered by the Authority proportionately to each Participating Agency's share of the amount of the bonds issued by the Authority.

ARTICLE VII

TERM

Section 7.01. Term. This Agreement shall become effective as of the date hereof and shall continue in full force and effect so long as any Bonds, certificates of participation and/or other evidences of indebtedness of the Authority remain outstanding.

Section 7.02. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the parties hereto in such manner as shall be agreed upon by the parties.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to the notice address of each party hereto for legal notices or as otherwise provided by a party hereto in writing to the other party.

Section 8.02. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 8.03. Consent. Whenever in this Agreement any consent or approval is required the same shall not be unreasonably withheld.

Section 8.04. Law Governing. This Agreement is made in the State of California under the Constitution and laws of the State of California and is to be so construed.

Section 8.05. Amendments. This Agreement may be amended at any time, or from time to time, except as limited by contract with the owners of Bonds issued by the Authority or certificates of participation in payments to be made by the Authority or the Participating Agencies or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental

agreements executed by both of the parties to this Agreement or for any other purpose including, without limitation, addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

Section 8.06. Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.

Section 8.07. Severability. Should any section or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining sections and provisions hereof shall not be affected thereby.

Section 8.08. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of each Participating Agency. None of the Participating Agencies may assign any right or obligation hereunder without the written consent of all of the others.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, on the day and year first set forth above.

- | | | |
|-----|-------------------------------|--------------------------------|
| 1. | CITY OF CHULA VISTA | ATTEST |
| | by _____ | _____ |
| 2. | CITY OF CORONADO | ATTEST |
| | by _____ | _____ |
| 3. | CITY OF DEL MAR | ATTEST |
| | by _____ | _____ |
| 4. | CITY OF EL CAJON | ATTEST |
| | by _____ | _____ |
| 5. | CITY OF IMPERIAL BEACH | ATTEST |
| | by <u><i>Diane Rose</i></u> | <u><i>Linda A. Troyan</i></u> |
| | Diane Rose, Mayor | Linda A. Troyan-CMC-City Clerk |
| 6. | CITY OF LA MESA | ATTEST |
| | by _____ | _____ |
| 7. | CITY OF LEMON GROVE | ATTEST |
| | by _____ | _____ |
| 8. | CITY OF NATIONAL CITY | ATTEST |
| | by _____ | _____ |
| 9. | CITY OF POWAY | ATTEST |
| | by _____ | _____ |
| 10. | OTAY MUNICIPAL WATER DISTRICT | ATTEST |
| | by _____ | _____ |

11. PADRE DAM MUNICIPAL
WATER DISTRICT

ATTEST

by _____

12. COUNTY OF SAN DIEGO on behalf of
WINTER GARDENS SEWER
MAINTENANCE DISTRICT
LAKESIDE/ALPINE SANITATION
DISTRICT AND
SPRING VALLEY SANITATION
DISTRICT

ATTEST

by _____
