

**BAY AREA STORMWATER MANAGEMENT AGENCIES ASSOCIATION  
CONFLICT OF INTEREST POLICY**

**ARTICLE I Purpose**

The purpose of this Conflict of Interest Policy is to protect the interests of the BAY AREA STORMWATER MANAGEMENT AGENCIES ASSOCIATION, a California nonprofit public benefit corporation (“BASMAA”), when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Director of BASMAA or might result in a possible excess benefit transaction. This Policy is intended to supplement but not replace BASMAA Bylaws Article X, Conflicts of Interests (excerpt attached) or any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

**ARTICLE II Definitions**

When used in this Policy, the following terms shall have the meanings set forth below (all terms used in this Policy that are not defined in this Article II shall have the meanings set forth elsewhere in this Policy):

1. **Interested Person**. Any Director or officer who has a direct or indirect financial interest, as defined below, is an “interested person”.
2. **Financial Interest**. A person has a “financial interest” if the person has, directly or indirectly, through business, investment, or family:
  - a. An ownership or investment interest in any entity which BASMAA has a transaction or arrangement;
  - b. A compensation arrangement with BASMAA or with any entity or individual which BASMAA has a transaction or arrangement; or
  - c. An ownership or investment interest in, or compensation arrangement with, any entity or individual that is pursuing a transaction or arrangement with BASMAA.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the Board of Directors decides that a conflict of interest exists.

### **ARTICLE III Procedures**

1. **Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board of Directors when it is considering the proposed transaction or arrangement. Interested persons with financial interests shall make annual generic disclosures at the beginning of the fiscal year using the financial interests disclosure form (attached) and specific disclosures in every Board of Directors meeting in which a transaction or arrangement proposed for consideration by the Board of Directors has a connection with any actual or possible conflict of interest for the interested person(s). These disclosures shall be included in the meeting agenda packets provided to Directors before Board meetings. Following the procedures herein is consistent with BASMAA Bylaws sections 10.01 through 10.05.
2. **Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists.

#### **3. Procedures for Addressing the Conflict of Interest.**

- a. An interested person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the conflict of interest.
- b. The chairperson of the Board shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the Board shall determine whether BASMAA can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in BASMAA's best interest, for its own benefit, and whether it is fair and reasonable. The Board shall make its decision whether to enter into the transaction or arrangement in conformity with the above determination.

#### **3. Violations of the Conflicts of Interest Policy.**

- a. If the Board has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member

of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **ARTICLE IV Records of Proceedings**

The minutes of the Board shall contain the following:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

#### **ARTICLE V Compensation**

- a. A voting member of the Board who receives compensation, directly or indirectly, from BASMAA for services or goods is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from BASMAA for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from BASMAA, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**ARTICLE VI Annual Statements**

Each director or officer shall annually sign a statement that affirms such person:

- a. Has received a copy of this Policy,
- b. Has read and understands this Policy,
- c. Has agreed to comply with this Policy, and
- d. Understands that BASMAA is tax-exempt and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

**ARTICLE VII Periodic Reviews**

To ensure BASMAA operates in a manner consistent with tax-exempt purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining; and
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to BASMAA's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

**ARTICLE VIII Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, BASMAA may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

**ARTICLE X  
CONFLICTS OF INTERESTS**

Section 10.01 **Disqualifying Financial Interest**. Any member of the Board of Directors must obtain the Board of Directors' approval pursuant to Section 10.02 or Section 10.03 and disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the Board of Directors or a committee of the Board of Directors if it is reasonably foreseeable that the decision is one in which the Director has a material financial interest.

Section 10.02 **Prior Board of Directors Approval**. The Board of Directors may approve a proposed transaction in which a Director or Directors may have a material financial interest if after reasonable investigation and prior to consummating the transaction or any part thereof, with knowledge of the material facts concerning the transaction and the Director or Directors' interest in transaction, the Board of Directors determines in good faith by vote of a majority of Directors then in office without counting the vote of the interested Director or Directors, that:

- (a) The proposed transaction is for the Corporation's own benefit;
- (b) The proposed transaction is fair and reasonable as to the Corporation; and
- (c) The Corporation cannot obtain a more advantageous arrangement with reasonable efforts under the circumstances.

Section 10.03 **Board of Directors Ratification**. The Board or Directors may ratify a transaction entered into between the Corporation and a Director or Directors in which the Director or Directors had a material financial interest if at the next meeting of the Board of Directors, the Board of Directors determines in good faith by vote of a majority of Directors then in office without counting the vote of the interested Director or Directors, that:

- (a) A committee or person authorized by the Board of Directors approved the transaction;
- (b) The Corporation entered into the transaction for its own benefit;
- (c) The transaction was fair and reasonable as to the Corporation at the time the Corporation entered into the transaction; and
- (d) It was not reasonably practicable to obtain approval of the Board of Directors prior to entering into the transaction.

Section 10.04 **Disqualifying Non-Financial Interest**. Any member of the Board of Directors must likewise disqualify himself or herself when there exists a personal non-financial interest which will prevent the member for applying disinterested skill and undivided loyalty to the Corporation in making or participating in the making of decisions.

Section 10.05 **Procedure of Disqualification**. A Director required to disqualify himself or herself pursuant to Sections 10.01 or 10.04, above, shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence any other Director, and (4) refrain from voting. The Director may be counted in determining whether a quorum is present.

Section 10.06 **No Invalidation of Action**. No action or decision of the Board of Directors or committee of the Board of Directors shall be invalid because of the participation therein by a Director or Directors in violation of this policy.

