

BYLAWS

of

**BAY AREA STORMWATER MANAGEMENT
AGENCIES ASSOCIATION**

**January 1, 2009
Revised February 24, 2011**

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**BYLAWS
OF
BAY AREA STORMWATER MANAGEMENT AGENCIES ASSOCIATION,
a California Nonprofit Public Benefit Corporation**

**ARTICLE I
ORGANIZATION**

Section 1.01 **Name**. The name of the Corporation is BAY AREA STORMWATER MANAGEMENT AGENCIES ASSOCIATION (the ACorporation@).

Section 1.02 **Purposes and Limitations**. The Corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law. The Corporation is organized and operated exclusively for charitable, educational and/or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue law). The primary purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law relating to stormwater management.

The specific purposes for which the Corporation is formed are:

- (a) To promote the social welfare by facilitating information sharing, cooperation and education concerning stormwater management issues;
- (b) To promote the social welfare by facilitating the development of more efficient and effective stormwater products, programs and procedures.
- (c) To establish such committees, bureaus and offices as are necessary and incidental to the activities of the Corporation;
- (d) To conduct and carry on such other related activities as may be necessary, desirable or incidental to the attainment of its tax-exempt purposes;
- (e) To solicit and collect money for any of the exempt purposes of the Corporation, to expend, contribute and disburse any funds and otherwise to handle and deal with or dispose of any funds collected or monies received, for any or all of the purposes of the Corporation, and
- (f) To exercise all powers that are or may hereafter be conferred upon a corporation by the laws of the State of California, and to do any and all such other acts and things, including the making and performing of any contracts necessary, desirable or appropriate to carry out or accomplish any of the tax exempt objectives or purposes of the Corporation, except as prohibited by the Articles of Incorporation and the Bylaws of the Corporation.

Notwithstanding any of the above statements of purposes and powers, the Corporation shall not, except to an insubstantial degree, engage in any activities, or exercise any powers that are not in furtherance of the primary and specific purposes of the Corporation and the Corporation shall not carry on any other activities prohibited by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law).

Section 1.03 **Inurement of Net Earnings**. No part of the net earnings of the Corporation shall inure to the benefit of any director, officer or other private person, as defined for purposes of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law).

Section 1.04 **Distribution of Assets**. Upon the dissolution or winding up of the Corporation, the Corporation's assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law), or shall be distributed to the federal government or to a state or local government, for a public purpose.

ARTICLE II OFFICES

Section 2.01 **Principal Office**. The principal office for the transaction of the activities and affairs of the Corporation ("principal executive office") is fixed and located at 437 Encina Avenue, Menlo Park, California 94025. The Board of Directors may change the principal executive office from one location to another. Any change of this location shall be noted by the Secretary of the Corporation on these Bylaws opposite this section, or this section may be amended to state the new location.

Section 2.02 **Other Offices**. The Board of Directors may at any time establish branch or subordinate offices at any place or places, within or without the State of California, where the Corporation is qualified to conduct its activities.

ARTICLE III MEMBERSHIP

Section 3.01 **Members**. This Corporation shall have no members within the meaning of Section 5056 of the California Corporations Code. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board. All rights which would otherwise vest in the members shall vest in the Board of Directors.

Section 3.02 **Affiliated Persons**. Nothing in this Article III shall limit the right of the Corporation to refer to contributors, advisors, or other persons or entities

associated with the Corporation as “members” even though those contributors, advisors, or other persons or entities are not members, and no reference shall constitute that anyone is a member, within the meaning of Section 5056 of the California Corporations Code. The Corporation may confer by amendment of its Articles of Incorporation or of these Bylaws some or all of the rights of a member, as set forth in the California Nonprofit Corporation Law, upon any person or persons who do not have the right to vote for the election of directors or on a disposition of substantially all of the assets of the Corporation or on a merger or on a dissolution or on changes to the Corporation's Articles of Incorporation or Bylaws, but no such person shall be a member within the meaning of Section 5056 of the California Corporations Code.

ARTICLE IV DIRECTORS

Section 4.01 **Powers and Responsibilities.** Subject to the provisions and limitations of the California Nonprofit Public Benefit Corporation Law and any other applicable laws, and subject to any limitations in the Articles of Incorporation or these Bylaws, the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised by, or under the direction of, the Board of Directors. The Board of Directors shall be responsible for, among other things, adopting an annual budget, and adopting policies and positions concerning the affairs of the Corporation. The Board of Directors may delegate the management of the activities of the Corporation to an executive director, a management company, or management committees however composed, provided that the activities and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by, or under the ultimate direction of, the Board of Directors.

Without prejudice to these general powers and subject to the same limitations, the Board of Directors, in addition to the other powers enumerated in these Bylaws, shall have the power to:

- (a) Appoint and remove, subject to any employment agreement and, at the pleasure of the Board of Directors, all officers, agents, and employees of the Corporation; and prescribe powers and duties for them that are consistent with law, with the Articles of Incorporation, and with these Bylaws.
- (b) Change the principal executive office in the State of California from one location to another; cause the Corporation to conduct its activities within or without the State of California; and designate any place within or without the State of California for holding any meeting of Directors.
- (c) Adopt and use a corporate seal and to alter the form of such seal from time to time, as in their judgment they may deem best, provided such seal shall at all times comply with the provisions of law.

(d) To approve an annual operating budget and capital expenditure budget, to borrow money and incur indebtedness on behalf of the Corporation and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

(e) To conduct, manage and control the affairs and activities of the Corporation and to make such rules and regulations therefore not inconsistent with applicable federal and California law, the Articles of Incorporation or the Bylaws as they may deem best.

(f) Pursuant to authority hereinafter granted, to appoint committees and to delegate to such committees powers and authority of the Board of Directors in the management of the activities and affairs of the Corporation, except the power to adopt, amend or repeal Bylaws or Articles, and except as otherwise set forth herein.

Section 4.02 **Number and Qualification of Directors.** The authorized number of Directors shall be no less than seven (7) and no more than eleven (11) until changed by amendment to this Bylaw made pursuant to the provisions of Article X of these Bylaws. Directors need not be residents of the State of California.

Section 4.03 **Restriction on Interested Persons as Directors.** No more than forty-nine percent (49%) of the persons serving on the Board of Directors may be interested persons. An "interested person" is (a) any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of the provisions of this Bylaw shall not affect the validity or enforceability of any transaction entered into by the Corporation.

Section 4.04 **Election, Designation, and Term of Office of Director(s).** The Director(s) for the Corporation shall be elected at an annual meeting of the Director(s) by the majority vote of the member(s) of the Board then in office. Each such successor Director shall hold office for one (1) year or until the next annual meeting of Director(s); however, if any such successor Director(s) is/are not elected at an annual meeting, they may be elected at any special meeting of the Board held for that purpose or by unanimous written consent of the Board. Each such Director, including a Director appointed to fill a vacancy or elected at a special Board meeting or by unanimous written consent of the Board, shall hold office until expiration of the term for which appointed or elected and until a successor Director has been elected and qualified.

Section 4.05 **Vacancies; Removal; Resignation of Directors.** A vacancy or vacancies on the Board of Directors shall be deemed to exist on the occurrence of any of the following: (a) the death or resignation of any Director; (b) the declaration by resolution of the

Board of Directors of a vacancy in the office of a Director who has been declared of unsound mind by an order of court, convicted of a felony, or found by final order or judgment of any court to have breached a duty under Article 3 of Chapter 2 of the California Nonprofit Public Benefit Corporation Law; (c) the increase of the authorized number of Directors; or (d) the removal of a Director in accordance with these Bylaws.

A Director may be removed, either with or without cause, by a three-fourths (3/4) vote of all other Directors at the time in office at any regular meeting or special meeting of the Board of Directors. The Board of Directors may set specific attendance guidelines that may cause a Director to be removed for failure to attend Board of Directors' meetings.

Except as provided below, any Director may resign by giving written notice to the Chair of the Board of Directors, the Vice-Chair or the Secretary all defined in Article V below, or the Board of Directors of the Corporation. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If a Director's resignation is effective at a future time, the Board of Directors may elect a successor to take office as of the date when the resignation becomes effective. Except on notice to the Attorney General of State of California, no Director may resign if the Corporation would be left without a duly elected Director or Directors.

Vacancies on the Board of Directors may be filled by a majority of the Directors then in office, whether or not less than a quorum, or by a sole remaining Director.

No reduction of the authorized number of Directors shall have the effect of removing any Director from office before that Director's term of office has expired.

Section 4.06 **Place of Directors' Meetings.** Meetings of the Board shall be held at any place, within or without the State of California, that has been designated by resolution of the Board of Directors or in the notice of the meeting or, if not so designated, at the principal executive office of the Corporation. Any meeting may be held by conference telephone, or similar communication equipment, as long as all Directors participating in the meeting can hear one another. All such Directors shall be deemed to be present in person at such a meeting.

Section 4.07 **Annual Meeting of Directors.** The Board of Directors shall hold an annual meeting on the fourth Thursday of the month of January of each year. Each such annual meeting shall be held for purposes of organization, the election of officers, and the transaction of other business. Notice of the time and place of this meeting shall be required.

Section 4.08 **Other Regular Meetings.** Other regular meetings of the Board of Directors shall be held monthly at such time and place as the Board of Directors may fix from time to time. The time and place of such meetings will be stated in the minutes of the previous meeting of the Board of Directors.

Section 4.09 **Special Meetings.** Special meetings of the Board of Directors for any purpose may be called at any time by the Chair of the Board of Directors, the Vice-Chair or any two (2) Directors.

Notice of the time and place of special meetings shall be given to each Director by one of the following methods: (a) by personal delivery of written notice; (b) by first-class mail postage prepaid, (c) by telephone, either directly to the Director or to a person at such Director's office who would reasonably be expected to communicate that notice promptly to such Director; (d) by electronic mail (e-mail), either directly to the Director or to a person at such Director's office who would reasonably be expected to communicate that notice promptly to such Director; or (e) by fax, either directly to the Director or to a person at such Director's office who would reasonably be expected to communicate that notice promptly to such Director. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Corporation.

Notice sent by first-class mail shall be deposited in the United States mail at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, e-mail or fax shall be delivered, telephoned, e-mailed or faxed at least forty-eight (48) hours before the time set for the meeting.

The notice shall state the time of the meeting, and the place if the place is other than the principal executive office of the Corporation. The notice need not specify the purpose of the meeting.

Section 4.10 **Waiver of Notice.** Notice of a meeting need not be given to any Director who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. Notice of a meeting need not be given to any Director who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to that Director.

Section 4.11 **Quorum.** A majority of the authorized number of Directors shall constitute a quorum for the transaction of any business, except to adjourn. Every action taken or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be the act of the Board of Directors, subject to the provisions of the California Nonprofit Public Benefit Corporation Law, including, without limitation, those provisions relating to (a) approval of contracts or transactions in which a Director has a direct or indirect material financial interest; (b) approval of certain transactions between corporations having common directorships; (c) creation of, and appointments to, committees of the Board of Directors, and (d) indemnification of Directors. A meeting at which a quorum is initially present may continue to transact business, despite the withdrawal of Directors, if any action taken or decision made is approved by at least a majority of the required quorum for that meeting.

Section 4.12 **Adjournment.** A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

Section 4.13 **Notice of Adjourned Meeting.** Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than twenty-four (24) hours. If the original meeting is adjourned for more than twenty (24) hours, notice of any adjournment to another time and place shall be given, before the time of the adjourned meeting, to the Directors who were not present at the time of the adjournment.

Section 4.14 **Action Without a Meeting.** Pursuant to Section 5211(b) of the California Corporations Code, any action required or permitted to be taken by the Board of Directors may be taken without a meeting if each and every member of the Board of Directors consents in writing to the action; provided, however, that the consent of any Director who has a material financial interest in a transaction to which the Corporation is a party and who is an "interested director," as defined in Section 5233 of the California Corporations Code or any provision herein, shall not be required for approval of that transaction. Such action by written consent shall have the same force and effect as any other validly approved action of the Board of Directors. All such consents shall be filed with the minutes of the proceedings of the Board of Directors.

Section 4.15 **Reimbursement of Directors.** Directors and members of committees may receive such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors to be just and reasonable as to the Corporation at the time that such resolution is adopted.

ARTICLE V OFFICERS

Section 5.01 **Officers of the Corporation.** The officers of the Corporation shall consist of a Chair, a Vice-Chair, a Secretary, and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board of Directors, such other officers as may be appointed in accordance with Section 5.03 of these Bylaws. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer may serve concurrently as the Chair or Vice-Chair of the Board of Directors.

Section 5.02 **Election of Officers.** The officers of the Corporation, except such officers as may be appointed under Section 5.03 of these Bylaws, shall be chosen annually by the Board of Directors from among the Board members. Officers shall serve one (1) year terms. Officers may serve no more than three (3) consecutive one (1) year terms and may be elected to serve again after a one (1) year break in service.

Section 5.03 **Additional Officers.** The Board of Directors may appoint and may authorize the Chair of the Board of Directors, or other officer, to appoint any other

officers that the Corporation may require. Each officer so appointed shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined by the Board of Directors.

Section 5.04 **Removal and Resignation of Officers.** Without prejudice to any rights of an officer under any contract of employment, any officer may be removed with or without cause by the Board of Directors and also, if the officer was not chosen by the Board of Directors, by any officer on whom the Board may confer that power of removal.

Any officer may resign at any time by giving written notice to the Corporation. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice and, unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5.05 **Vacancies in Office.** A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office, provided, however, that vacancies need not be filled on an annual basis.

Section 5.06 **Chair of the Board.** Subject to the control of the Board of Directors, the Chair of the Board of Directors shall direct, and control the activities and affairs of the Board and its officers. The Chair of the Board of Directors shall have such other powers and duties as the Board of Directors or these Bylaws may prescribe. In the absence of an executive director, retained either as an employee of the Corporation or as an administrative services contractor of the Corporation, the Chair shall serve as the chief executive officer and direct and control the Corporation's activities and affairs. The Chair shall be given the necessary authority and held responsible for the administration of the Corporation in all its activities and subject only to such policies as may be adopted and such orders as may be issued by the Board of Directors or by any of its committees to which it has delegated power for such action. The Chair shall act as the "duly authorized representative" of the Board of Directors in all matters in which the Board of Directors has not formally designated some other person for that specific purpose. Without prejudice to such general powers as above described, but subject to the limitations, authority and duties of the Chair are hereby expressly declared to be:

- (1) To carry out all policies established by the Board of Directors, and to advise on the formation of those policies;
- (2) To attend meetings of the Board of Directors and its committees;
- (3) To prepare plans for the achievement of the Corporation's long-range objectives and goals as adopted by the Board of Directors;

- (4) To promote effective and economical working relationships with other organizations;
- (5) To represent the Corporation to the public; and
- (6) To perform any other duty that may be necessary in the best interest of the Corporation.

Section 5.07 **Vice-Chair**. If the Chair is absent or disabled, the Vice-Chair shall perform all duties of the Chair. When so acting, the Vice-Chair shall have all powers of, and be subject to, all restrictions on the Chair. The Vice-Chair shall have such other powers and perform such other duties as the Board of Directors or these Bylaws may prescribe.

Section 5.08 **Secretary**. The Secretary shall keep or cause to be kept, at the Corporation's principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings, proceedings, and actions of the Board of Directors. The minutes of meetings shall include the time and place that the meeting was held, whether the meeting was annual, regular, or special, and, if special, how authorized, the notice given, and the names of those present at Board and committee meetings. The Secretary shall keep or cause to be kept, at the principal executive office in the State of California, a copy of the Articles of Incorporation and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors and of committees of the Board of Directors required by these Bylaws to be given. The Secretary shall keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the Board of Directors of these Bylaws may prescribe.

Section 5.09 **Chief Financial Officer/Treasurer**. The Chief Financial Officer ("CFO") shall cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions. As part of this responsibility, the CFO may appoint a Treasurer who shall keep and maintain adequate and correct books and accounts of the Corporation's properties and transactions. If the CFO does not appoint a Treasurer, then the CFO shall have the responsibilities enumerated herein for the Treasurer. The Treasurer shall send or cause to be given to the Directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board of Directors. The books of account shall be open to inspection by any Director at all reasonable times.

The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name of, and to the credit of, the Corporation with such depositories as the Board of Directors may designate; shall disburse the Corporation's funds as the Board of Directors may order; shall render to the Chair of the Board of Directors, and the Board of Directors, when requested, an account of all transactions as Treasurer and of the financial condition of the Corporation; and shall have such other powers and perform such other duties as the Board of Directors, the CFO or these Bylaws may prescribe.

The Board of Directors may elect to secure in the name of the Corporation and the CFO and the Treasurer a bond in the amount and with the surety or sureties specified by the Board of Directors for faithful performance of the duties of the office and for restoration to the Corporation of all of its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the CFO and Treasurer upon their death, resignation, retirement, or removal from office.

ARTICLE VI COMMITTEES

Section 6.01 **Committees of the Board**. The Board of Directors, by motion adopted by a majority of the Directors then in office, provided a quorum is present, may create one or more committees, each consisting of two (2) or more Directors, and other persons that the Directors may appoint to serve at the pleasure of the Board of Directors. Appointments to committees of the Board shall be by majority vote of the Directors then in office. The Board of Directors may appoint one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting. Any such committee, to the extent provided in the Board motion, shall only have the authority delegated by the Board of Directors, except that no committee, regardless of Board motion, may:

- (1) Fill vacancies on the Board of Directors or on any committee that has the authority of the Board of Directors;
- (2) Fix compensation of the Directors for serving on the Board of Directors or on any committee;
- (3) Amend or repeal Bylaws or adopt new Bylaws;
- (4) Amend or repeal any resolution of the Board of Directors that by its express terms is not so amendable or repealable;
- (5) Create any other committees of the Board of Directors or appoint the members of committees of the Board of Directors;
- (6) Expend corporate funds to support a nominee for Director after more people have been nominated for Director than can be elected; or
- (7) Approve any contract or transaction to which the Corporation is a party and in which one or more of its Directors has a material financial interest, except as special approval is provided for in Section 5233(d)(3) of the California Corporations Code; or
- (8) Take any final action in violation of the California Nonprofit Public Benefit Corporation Law.

Section 6.02 **Meetings and Actions of Committees.** Meetings and actions of committees of the Board of Directors shall be governed by, held, and taken in accordance with, the provisions of these Bylaws concerning meetings and other Board actions, except that the time for regular meetings of such committees and the calling of special meetings of such committees may be determined either by Board motion or, if there is none, by motion of the committee of the Board of Directors. Minutes of each meeting of any committee of the Board of Directors shall be kept and shall be filed with the corporate records. The Board of Directors may adopt rules for the government of any committee, provided they are consistent with these Bylaws or, in the absence of rules adopted by the Board of Directors, the committee may adopt such rules.

**ARTICLE VII
INDEMNIFICATION OF DIRECTORS, OFFICERS,
EMPLOYEES AND OTHER AGENTS**

Section 7.01 **Agents, Proceedings, and Expenses.** For the purposes of this Article, "agent" means any person who is or was a Director, officer, employee, or other agent of the Corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expense" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under Sections 7.04 or 7.05(b) of this Article VII.

Section 7.02 **Actions Other Than By the Corporation.** The Corporation shall have the power to indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action by, or in the right of, the Corporation to procure a judgment in its favor, an action brought under Section 5233 of the California Corporations Code, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the Corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of the Corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of that person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

Section 7.03 **Actions By the Corporation.** The Corporation shall have the power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action by, or in the right of, the Corporation, or brought under Section 5233 of the California Corporations Code, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets

held in charitable trust, to procure a judgment in its favor by reason of the fact that person is or was an agent of the Corporation, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of that action if that person acted in good faith, in a manner that person believed to be in the best interests of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Section 7.03 for any of the following reasons:

- (a) In respect of any claim, issue or matter as to which that person shall have been adjudged to be liable to the Corporation in the performance of that person's duty to the Corporation, unless, and only to the extent that, the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, that person is fairly and reasonably entitled to indemnity for the expenses and then only to the extent that the court shall determine;
- (b) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or
- (c) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval unless it is settled with the approval of the Attorney General.

Section 7.04 **Successful Defense By Agent**. To the extent that an agent of the Corporation has been successful on the merits in defense of any proceeding referred to in Sections 7.02 or 7.03 of this Article VII, or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Section 7.05 **Required Approval**. Except as provided in Section 7.04 of this Article VII, any indemnification under this Article VII shall be made by the Corporation only if authorized in the specific case upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 7.02 or 7.03 of this Article VII, by any of the following:

- (a) A majority vote of a quorum consisting of Directors who are not parties to the proceeding; or
- (b) The court in which the proceeding is or was pending, upon application made by the Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Corporation.

Section 7.06 **Advance of Expenses**. Expenses incurred in defending any proceeding may be advanced by the Corporation before the final disposition of the proceeding upon receipt of an undertaking by, or on behalf of, the agent to repay the amount of the

advance unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Article VII.

Section 7.07 **Other Contractual Rights**. No provision made by a corporation to indemnify its Directors or officers for the defense of any proceeding, whether contained in the Corporation's Articles of Incorporation or Bylaws, a resolution of the Board of Directors, an agreement or otherwise, shall be valid unless consistent with this Article VII. Nothing contained in this Article VII shall affect any right to indemnification to which persons other than Directors and officers of the Corporation may be entitled by contract or otherwise.

Section 7.08 **Limitations**. No indemnification or advance shall be made under this Article VII, except as provided in Sections 7.04 or 7.05(b), in any circumstances where it appears:

(a) That it would be inconsistent with a provision of the Articles of Incorporation, Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 7.09 **Insurance**. The Corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees, and other agents, against any liability asserted against or incurred by any officer, Director, employee, or agent in such capacity or arising out of the officer's, Director's, employee's, or agent's status as such. The Corporation may also purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against, or incurred by, the agent in such capacity or arising out of the agent's status as such whether or not the Corporation would have the power to indemnify the agent against the liability under the provisions of this Article VII; provided, however, that the Corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the Corporation for a violation of Section 5233 of the California Corporations Code.

ARTICLE VIII EXECUTIVE DIRECTOR

Section 8.01 **Employment**. The Board may employ an Executive Director who shall be the administrative head of the Corporation.

Section 8.02 **Duties**. The Executive Director shall be responsible to the Board of Directors. The Executive Director shall be given the authority to carry out the policies established by the Board of Directors. The Executive Director shall have, but not be limited to, the following duties:

- (a) Serve as the administrator of all aspects of the day-to-day operations of the Corporation, including operating policies and procedures;
- (b) Make recommendations to the Board for its consideration regarding broad policies of the Corporation;
- (c) Develop the overall program and services to be provided by the Corporation and its clients;
- (d) Be present either personally or through an appointed representative at all Board meetings and be an ex-officio member of all committees; and
- (e) Designate, appoint, or remove employees in accordance with established policies and procedures of the Corporation.

ARTICLE IX RECORDS AND REPORTS

Section 9.01 **Records and Reports**. The Corporation shall keep:

- (1) Adequate and correct books and records of account;
- (2) Written minutes of the proceedings of its Board of Directors, and committees of the Board of Directors; and
- (3) A record of its members giving their names and addresses and the class of membership held by each.

Section 9.02 **Maintenance and Inspection of Articles and Bylaws**. The Corporation shall keep at its principal executive office the original or a copy of the Articles of Incorporation and Bylaws, as amended to date, which shall be open to inspection by the members of the Board of Directors at all reasonable times during office hours.

Section 9.03 **Inspection by Directors**. Every Director shall have the absolute right at any reasonable time to inspect the Corporation's books, records, documents of every kind and physical properties. The inspection may be made in person or by the Director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 9.04 **Annual Report**. The Board of Directors shall cause to be prepared and distributed to the membership an annual report, to be sent within one hundred twenty (120) days after the end of the Corporation's fiscal year. That report shall contain the following information, in appropriate detail, for the fiscal year:

- (1) The assets and liabilities of the Corporation as of the end of the fiscal year.
- (2) The principal changes in assets and liabilities.
- (3) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes.
- (4) The expenses or disbursements of the Corporation for both general and restricted purposes.
- (5) A statement of the place where the names and addresses of the current members, if any, are located.
- (6) Any information required by Section 9.05 of Article IX of these Bylaws.

The annual report shall be accompanied by any report on it of independent accountants or, if there is no such report, by the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the Corporation's books and records.

This requirement of an annual report shall not apply if the Corporation receives less than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished annually to all Directors who request it in writing.

Section 9.05 **Annual Statement of Certain Transactions and Indemnifications**. As part of the annual report to the Board of Directors of the Corporation, or as a separate document if no annual report is issued, the Corporation shall annually furnish to each member a statement of any transaction or indemnification of the following kind within one hundred twenty (120) days after the end of the Corporation's fiscal year:

- (1) Any transaction (i) which the Corporation, its parent, or its subsidiary was a party; (ii) in which an "interested person" had a direct or indirect material financial interest; and (iii) which involved more than Fifty Thousand and No/100 Dollars (\$50,000.00), or was one of a number of transactions with the same interested person involving, in the aggregate, more than Fifty Thousand and No/100 Dollars (\$50,000.00). For this purpose, an "interested person" is either of the following:
 - (a) Any Director or officer of the Corporation, its parent, or subsidiary (but mere common directorship shall not be considered such an interest); or

(b) Any holder of more than ten percent (10%) of the voting power of the Corporation, its parent, or its subsidiary. The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the Corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest, provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.

(2) Any indemnifications or advances aggregating more than Ten Thousand and No/100 Dollars (\$10,000.00) paid during the fiscal year to any officer or Director of the Corporation under Sections 7.01 through 7.03 of these Bylaws, unless that indemnification has already been approved by the Directors under Section 5238(e)(2) of the California Corporations Code.

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 from 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.

ARTICLE XI GENERAL CORPORATE MATTERS

Section 11.01 **Construction and Definitions**. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the preceding sentence, the masculine gender includes the feminine and neuter, the singular includes the plural, the plural includes the singular, and the term "person" includes both a legal entity and a natural person.

Section 11.02 **Amendment of Bylaws**. New bylaws may be adopted, or these Bylaws may be amended or repealed, in any manner authorized under Section 5150 of the California Corporations Code, or in any other manner permitted by applicable law. Notwithstanding the foregoing, no amendment may extend the term of a Director beyond that for which such Director was elected.

Section 11.03 **Authority to Bind Corporation.** The Board of Directors, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or to render it liable for any purpose in any amount.

Section 11.04 **Amendments of Articles.** The Articles of Incorporation of the Corporation may be amended, repealed or new Articles adopted in any manner authorized under Sections 5810 *et seq.* of the California Corporations Code, or in any manner permitted by applicable law.

CERTIFICATE OF ADOPTION

I certify that I am the duly elected and acting Secretary of BAY AREA STORMWATER MANAGEMENT AGENCIES ASSOCIATION, a California non-profit public benefit corporation, that the above Bylaws, consisting of nineteen (19) pages, are the Bylaws of the Corporation as adopted by the Board of Directors of the Corporation on February 24, 2011, and that said Bylaws have not been amended or modified since the date thereof.

Executed on February 24, 2011, at Oakland, California.

A handwritten signature in cursive script that reads "Matthew Fabry".

Matt Fabry, Secretary