

JOINT EXERCISE OF POWERS AGREEMENT  
BY AND BETWEEN  
OTAY WATER DISTRICT  
AND  
CALIFORNIA MUNICIPAL FINANCE AUTHORITY  
CREATING THE  
OTAY WATER DISTRICT FINANCING AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

THIS JOINT EXERCISE OF POWERS AGREEMENT, dated as of March 3, 2010 (herein called this "Agreement"), by and between the OTAY WATER DISTRICT, a municipal water district duly organized and existing under and by virtue of the laws of the State of California (herein called the "District"), and the CALIFORNIA MUNICIPAL FINANCE AUTHORITY, a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California (herein called "CMFA").

WITNESSETH:

WHEREAS, Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes the District and CMFA to create a joint exercise of powers entity (herein called the "Otay Water District Financing Authority" or the "Authority") which has the power to jointly exercise any powers common to the District and CMFA;

WHEREAS, the District is empowered by the laws of the State of California to own, purchase, lease, sell, exchange or dispose of any real or personal property or any interests in it for any of its public purposes and to enter into contracts for public capital improvements;

WHEREAS, CMFA is empowered by the laws of the State of California to own, purchase, lease, sell, exchange or dispose of any real or personal property or any interests in real or personal property for any of its public purposes;

WHEREAS, Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Marks-Roos Local Bond Pooling Act of 1985") authorizes and empowers the Authority to issue bonds and to purchase bonds issued by, or to make loans to the District or CMFA for financing public capital improvements, working capital, liability and other insurance needs, or projects;

WHEREAS, the Marks-Roos Local Bond Pooling Act of 1985 further authorizes and empowers the Authority to sell bonds so issued or purchased to public or private purchasers at public or negotiated sale; and

WHEREAS, by this Agreement, the District and CMFA desire to create and establish the Otay Water District Financing Authority for the purposes set forth herein and to exercise the powers described herein;

NOW, THEREFORE, the District and CMFA, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

**SECTION 1. DEFINITIONS**

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings herein specified.

**Authority**

The term "Authority" shall mean the Otay Water District Financing Authority created by this Agreement.

**Board**

The term "Board" shall mean the governing board of the Authority.

**Bonds**

The term "Bonds" shall mean bonds and any other evidences of indebtedness of the Authority authorized and issued pursuant to the Law.

**District**

The term "District" shall mean the Otay Water District, a municipal water district duly organized and existing under and by virtue of the laws of the State of California.

Law

The term "Law" shall mean Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (Sections 6500-6599), including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

Member

The term "Member" or "Members" shall mean Otay Water District and/or CMFA, as appropriate.

SECTION 2. PURPOSE

This Agreement is made pursuant to the Law to provide for the joint exercise of powers common to the District and CMFA and to provide for the exercise of additional powers given to a joint powers entity under the Law, including, for the purpose of assisting in financing and refinancing of public capital improvement projects of the District and to finance working capital for the District in accordance with the Law.

The Authority will fulfill the purposes of this Agreement by, among other things, undertaking the sale and issuance of Bonds in accordance with the Marks-Roos Local Bond Pooling Act of 1985. The District and CMFA hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be special obligations payable solely from the moneys pledged to the repayment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued. Such Bonds shall not constitute debts, liabilities or obligations of the District or CMFA.

SECTION 3. TERM

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until the later of fifty (50) years from the date hereof or until all bonds and

obligations issued or caused to be issued by the Authority are no longer outstanding, unless extended or earlier terminated by a supplemental written agreement of CMFA and the District; further provided that in no event shall this Agreement terminate while any bonds of the Authority remain outstanding under the terms of an indenture, trust agreement or other instrument pursuant to which such bonds are issued. In any event, the Authority and the District shall cause all records regarding the Authority's formation, existence, operations, any Bonds issued by it and proceedings pertaining to its termination to be retained for at least six years following termination of the Authority or final payment of any Bonds issued by the Authority, whichever is later.

#### SECTION 4. AUTHORITY

##### A. Creation of Authority

There is hereby created pursuant to the Law, an authority and public entity to be known as the "Otay Water District Financing Authority." As provided in the Law, the Authority shall be a public entity separate from the District and CMFA. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the District or CMFA.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Law. Such notice shall also be filed with the office of the Controller of the State of California.

##### B. Governing Board

The Authority shall be administered by the Board, which shall be comprised of the five members of the Board of Directors of the District (the "Board of Directors"). The term

of office as a member of the Board shall terminate when such member of the Board shall cease to be a member of the Board of Directors and the successor to such member of the Board of Directors shall become a member of the Board. Members of the Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Authority shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

### C. Meetings of Board

(1) Regular and Special Meetings. The Board shall hold regular meetings as provided in the bylaws of the Authority. The date upon which, and the hour and place at which, each such regular meeting shall be held shall be established in the bylaws. The Board may hold special meetings at any time and from time to time in accordance with the Law.

(2) Legal Notice. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California) or any successor legislation hereinafter enacted.

(3) Minutes. The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the District and CMFA.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time until a quorum is obtained.

### D. Officers; Duties

(1) The Officers of the Authority shall be a President, Vice President, Secretary, Treasurer/Auditor and Executive Director. The President of the Authority shall be the

President of the Board of Directors of the District. The Vice President of the Authority shall be the Vice President of the Board of Directors of the District. The Secretary of the Authority shall be the Secretary of the Board of Directors of the District. The Treasurer/Auditor of the Authority shall be the Chief Financial Officer of the District. The Executive Director of the Authority shall be the General Manager of the District. The Officers shall have the powers common to such office as provided by the Law and such other powers as may be granted by the Board from time to time by resolution.

(2) Subject to the applicable provisions of any indenture, trust agreement or resolution providing for a trustee or other fiscal agent, and except as may otherwise be specified by resolution of the Authority, the Treasurer of the Authority is designated as the depository of the Authority to have custody of all moneys of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Law; and the Treasurer/Auditor of the Authority shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(3) The Treasurer/Auditor of the Authority is designated as the public officer or person who has charge of, handles or has access to any property of the Authority, and such officer shall file an official bond in the amount of \$25,000 as required by Section 6505.1 of the Law; provided that such bond shall not be required if the Authority does not possess or own property or funds with an aggregate value greater than \$500.00 (excluding amounts held by a trustee or other fiduciary in connection with any evidences of indebtedness). The cost of the bond shall be paid by the District.

(4) The Treasurer/Auditor of the Authority is hereby authorized and directed to prepare or cause to be prepared a special audit as required pursuant to Section 6505 of the Government Code of the State of California every year (unless the Board, in accordance with the

Act, elects to replace the annual special audit with an audit covering a two-year period) during the term of this Agreement and the Auditor is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board, the District and CMFA which report shall describe the amount of money held by the Treasurer for the Board, the amount of receipts since the last such report, and the amount paid out since the first such report (which may exclude amounts held by a trustee or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provides regular reports covering such amounts).

(5) Counsel to the Authority shall be the General Counsel of the District or such other counsel as the Board shall appoint, subject to the Authority's obligation to pay for the cost of the legal services rendered to it.

(6) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

(7) All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, and all pension, relief, disability, worker's compensation and other benefits which apply to the activities of officers, agents or employees of the Members when performing their respective functions within the territorial limits of their respective Members shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Agreement.

(8) The Members hereby confirm their intent and agree that, as provided in Section 4(A) hereof and in the Law, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the District or CMFA, and they do not intend by the following sentence to impair this provision. To the extent that liability is imposed or a claim is made on CMFA, for any reason whatsoever notwithstanding Section 4(A) hereof and the Law,



directly or indirectly arising out of a transaction or series of transactions undertaken by or for the benefit of the District in connection with the activities of the Authority, the District shall indemnify, defend and hold harmless CMFA and each of CMFA officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities arising out of or in connection with the activities of the Authority. CMFA may elect to defend itself in any such action with counsel of its choice, the reasonable fees of such counsel to be paid by the District. The Authority and the District shall be jointly and severally liable for any indemnity obligation owed to CMFA. Notwithstanding the provisions of Section 895.6 of the Government Code of the State, the District shall not have any right to contribution from CMFA.

#### SECTION 5. POWERS

The Authority shall have any and all powers which are common powers of the District and CMFA, and the powers separately conferred by law upon the Authority. All such powers, whether common to the Parties or separately conferred by law upon the Authority, are specified as powers of the Authority except any such powers which are specifically prohibited to the Authority by applicable law. The Authority's exercise of its powers is subject to the restrictions upon the manner of exercising the powers of the District.

The Authority is hereby authorized, in its own name, to do all acts necessary or convenient for the exercise of its powers, including, but not limited to, any or all of the following: to sue and be sued; to make and enter into contracts; to employ agents, consultants, attorneys, accountants, and employees; to acquire, hold or dispose of property, whether real or personal, tangible or intangible, wherever located; to issue Bonds or otherwise incur debts, liabilities or obligations to the extent authorized by the Law or any other applicable provision of law and to pledge any property or revenues or the rights thereto as security for such Bonds and other indebtedness.

Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof.

#### **SECTION 6. TERMINATION OF POWERS**

The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement as provided in Section 3 hereof or until the District and CMFA shall have mutually rescinded this Agreement; provided, however, that in no event shall this Agreement be terminated or rescinded while any Bonds of the Authority remain outstanding under the terms of the trust agreement or other instrument pursuant to which the Bonds are issued.

#### **SECTION 7. FISCAL YEAR**

Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to June 30, 2010.

#### **SECTION 8. DISPOSITION OF ASSETS**

Upon termination of this Agreement pursuant to Section 3 hereof, any surplus money in possession of the Authority or on deposit in any fund or account of the Authority shall be returned in proportion to any contributions made as required by Section 6512 of the Act. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. After rescission or termination of this

Agreement pursuant to Section 3 hereof, all property of the Authority, both real and personal, shall be distributed to the District, subject to Section 9 hereof.

#### SECTION 9. CONTRIBUTIONS AND ADVANCES

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the District and CMFA for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance made in respect of a revenue-producing facility shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the District or CMFA, as the case may be, and the Authority at the time of making such advance as provided by 6512.1 of the Law. It is mutually understood and agreed that neither the District nor CMFA has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either may do so. The District or CMFA may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority. After termination of this Agreement pursuant to Section 3, any surplus money in possession of the Authority shall be returned to the District and CMFA in proportion to the unreimbursed contributions each has made.

#### SECTION 10. BONDS

##### A. Authority to Issue Bonds.

When authorized by the Law or other applicable provisions of law and by resolution of the Board, the Authority may issue Bonds for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement. Said Bonds shall have such terms and conditions as are authorized by the Board.

B. Bonds Limited Obligations.

The Bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable indenture(s) and shall not constitute a charge against the general credit of the Authority. The Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Bonds shall not constitute a debt, liability or obligation of the State or any public Authority thereof, including CMFA and the District, other than the special obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State of California or any public Authority thereof, including CMFA and the District, shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Bonds nor shall the State of California or any public Authority or instrumentality thereof, including CMFA and the District, in any manner be obligated to make any appropriation for such payment. The Authority shall have no taxing power.

No covenant or agreement contained in any Bond or indenture shall be deemed to be a covenant or agreement of any director, officer, agent or employee of the Authority, in his or her individual capacity and no director or officer of the Authority executing a Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance of such Bond.

SECTION 11. AGREEMENT NOT EXCLUSIVE

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the District and CMFA, except as the terms of this Agreement may conflict therewith, in which case the terms of this Agreement shall prevail.

SECTION 12. ACCOUNTS AND REPORTS

All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles and by each Indenture for outstanding Bonds (to the extent such duties are not assigned to a trustee for owners of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by the District and CMFA and their representatives.

The Authority shall require that each indenture, trust agreement or resolution provide that the trustee appointed thereunder shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of such indenture, trust agreement or resolution. Said trustee may be given such duties in said indenture, trust agreement or resolution as may be desirable to carry out the requirements of this Section.

A. Audits.

The Treasurer/Auditor of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the requirements of the Law. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the

Authority available for that purpose.

**B. Audit Reports.**

The Treasurer/Auditor of the Authority, as soon as practicable after the close of each Fiscal Year but in any event within the time necessary to comply with the requirements of the Law shall file a report of the audit performed pursuant to Subsection B of this Section 12 as required by the Law and shall send a copy of such report to public entities and persons in accordance with the requirements of the Law.

**SECTION 13. FUNDS.**

Subject to the provisions of each indenture, trust agreement, or resolution for outstanding Bonds providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer/Auditor of the Authority shall receive, have the custody of and disburse Authority funds pursuant to accounting procedures approved by the Board and shall make the disbursements required by this Agreement or otherwise necessary to carry out the provisions and purposes of this Agreement.

**SECTION 14. CONFLICT OF INTEREST CODE**

The Authority, unless otherwise exempt, shall adopt a Conflict of Interest Code.

**SECTION 15. BREACH**

If default shall be made by the District or CMFA in any covenant contained in this Agreement, such default shall not excuse either the District or CMFA from fulfilling its obligations under this Agreement and the District and CMFA shall continue to be liable for the performance of all conditions herein contained. The District and CMFA hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the District and CMFA hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all

of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies. Nothing herein shall be construed to create any indebtedness of the District or CMFA and neither the tax revenue nor faith and credit of the District or CMFA are pledged or encumbered by this Agreement.

SECTION 16. SEVERABILITY

Should any part, term or provision of this Agreement be decided by the courts 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 parts, terms or provisions hereof shall not be affected thereby.

SECTION 17. SUCCESSORS; ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

SECTION 18. AMENDMENT OF AGREEMENT

This Agreement may be amended by supplemental agreement executed by the District and CMFA at any time to provide for the financing of public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the District and CMFA in accordance with the Law or for any other purpose; provided, however, that in no event shall this Agreement terminate while any Bonds of the Authority remain outstanding under the terms of the trust agreement or other instrument pursuant to which such Bonds are issued.

SECTION 19. FORM OF APPROVALS

Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of CMFA, by resolution duly and regularly adopted by the members of CMFA and, in the case of the District, by resolution duly and regularly adopted by the Board of Directors of the District and, in the case of the Authority, by resolution duly and regularly adopted by the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

SECTION 20. WAIVER OF PERSONAL LIABILITY

No member, officer or employee of the Authority, the District or CMFA shall be individually or personally liable for any claims, losses, damages, costs, injury and liability of every kind, nature and description arising from the actions of the Authority or the actions undertaken pursuant to this Agreement. Without limiting the generality of the foregoing, no member, officer or employee of the Authority or of any Member shall be personally liable on any Bonds or be subject to any personal liability or accountability by reason of the issuance of Bonds pursuant to the Law and this Agreement. To the full extent permitted by law, the Board shall provide for indemnification by the Authority of any person who is or was a member of the Board, or an officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of the Board, or an officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in the course and scope of his or her office, employment or CMFA. In the case of a criminal proceeding, the Board may provide for indemnification and defense of a member of the Board, or an officer, employee or other agent of the Authority to the extent permitted by law.



SECTION 21.            SECTION HEADINGS

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 22.            MISCELLANEOUS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Where reference is made to duties to be performed for the Agency by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by CMFA or the Water Authority, such action may be exercised through the officers, staff or employees of CMFA or the Water Authority, as the case may be, in the manner provided by law.

The section and subsection headings herein are for convenience only and are not to be construed as modifying or governing the language in the section or subsection referred to. This Agreement is made in the State of California, under the Constitution and laws of the state and is to be construed as a contract made and to be performed in the State of California.

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IN WITNESS WHEREOF, the parties hereto have caused this Joint Exercise of Powers Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the day and year first above written.

OTAY WATER DISTRICT

By   
\_\_\_\_\_  
President of the Board of Directors

CALIFORNIA MUNICIPAL FINANCE  
AUTHORITY

By   
\_\_\_\_\_  
Member of the Board of Directors

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