

## **JOINT EXERCISE OF POWERS AGREEMENT**

### **Daly City Joint Powers Financing Authority**

This JOINT EXERCISE OF POWERS AGREEMENT (this "Agreement") dated as of March 1, 2021, is between the CITY OF DALY CITY, a general law city duly organized and existing under the laws of the State of California (the "City"), and the NORTH SAN MATEO COUNTY SANITATION DISTRICT, a county sanitation district organized and existing under the County Sanitation District Act (California Health and Safety Code §4700 et seq.) and a subsidiary district of the City (the "Sanitation District");

#### **WITNESSETH:**

**WHEREAS**, agencies formed under Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Joint Powers Law") are permitted, among other things, to jointly exercise any power common to their members and provide assistance to their members in connection with the financing of public capital improvements; and

**WHEREAS**, the City and the Sanitation District wish to form an agency under the Joint Powers Law, to be known as the Daly City Joint Powers Financing Authority (the "Financing Authority"), for the purpose of providing an entity that can, among other things, jointly exercise any power common to the City and the Sanitation District and any additional members and provide assistance to the Sanitation District and the City and any additional members in their respective financing undertakings;

**NOW, THEREFORE**, in consideration of the above premises and of the mutual promises herein contained, the City and the Sanitation District do hereby agree as follows:

## **ARTICLE I**

### **GENERAL PROVISIONS**

#### **Section 1.01. Parties.**

(a) General. The parties to this Agreement shall be the City, the Sanitation District and each public agency that hereafter executes this Agreement, or any addenda, amendment, or supplement thereto and agrees to become a party to this Agreement, and which has not, pursuant to provisions hereof, withdrawn therefrom (collectively, the "Members").

A party to this Agreement may be a voting Member or an Associate Member (as defined below).

The rights of any Associate Member under this Agreement shall be limited solely to those rights expressly set forth in any addenda or supplement to this Agreement.

(b) New Members.

(i) *Governing Body Approval; Application.* With the approval of two-thirds (2/3rds) of the Board, any qualified public agency (as defined by Section 6500 of the JPA law) may become a party of this Agreement.

A public agency requesting membership may apply by presenting to the Board a certified resolution of the public agency approving of this Agreement. The date and terms upon which the applying public agency will become a Member will be determined by the Board.

(ii) *Associate Member.* There is hereby established an "Associate Member" category of membership in the Authority, which shall be available to public agencies in the sole discretion of the Board. An entity shall become an Associate Member of the Authority by adopting one or more agreements or amendments of this Agreement on terms and conditions established by the Board. The rights of Associate Members shall be limited as set forth in such agreements or amendments of this Agreement. Except as expressly provided for by such agreements or amendments of this Agreement, Associate Members shall not have any rights otherwise granted to the other Members of the Authority by this Agreement, including but not limited to the right to vote, the right to amend this Agreement and the right to sit on committees or boards established under this Agreement.

**Section 1.02. Purpose.** This Agreement is entered into pursuant to the Joint Powers Law. The purpose of this Agreement is to provide for the joint exercise of any powers common to the Members, to provide assistance to the Members from time to time in connection with their financing programs, and for any other financing purposes authorized under Article 4 of the Joint Powers Law (commencing with Section 6584) (the "Bond Act") and other applicable law.

The Members hereby agree that the Joint Powers Authority is not being formed for the purpose of providing municipal services as that term is used in the Joint Powers Law.

**Section 1.03. Creation of Authority.** Pursuant to the Joint Powers Law, there is hereby created a joint powers agency to be known as the Daly City Joint Powers Financing Authority (the "Joint Powers Authority"). The Joint Powers Authority is a public entity separate and apart from the Members, and shall administer this Agreement. The Joint Powers Authority shall be deemed to be created and to exist as an entity which is authorized to transact business and exercise its powers, upon the adoption of a resolution approving the execution and delivery of this Agreement by the Board of Directors of the Sanitation District and the City Council of the City.

**Section 1.04. Board.**

(a) Composition of Board; Chair. The Joint Powers Authority shall be governed by a Board of Directors (the "Board") consisting of five (5) directors. Each member of the City Council of the City shall be a member of the Board by virtue of being a member of the City Council of the City. All voting power of the Joint Powers Authority shall reside in the Board.

The Mayor of the City shall act as the Chair of the Board. The Chair shall perform the duties normal to said office and such duties as may be imposed by the Board.

Immediately upon admission of a new Member that is not an Associate Member pursuant to Section 1.01(b), such Members shall be entitled to appoint two members of the Board.

(b) 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 the Ralph M. Brown Act of the State of California (constituting Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California).

(c) 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 from time to time. The affirmative votes of at least a majority of the Board members present at any meeting at which a quorum is present are required to take any action by the Board.

(d) Time and Place of Regular Meetings. Unless otherwise established by the Board by resolution, regular meetings shall be held on the same date and time as regular meetings of the City Council of the City. If the Secretary does not post an agenda for a regular meeting pursuant to Government Code Section 54954.21, then such failure to post shall be deemed to be a determination by the Chair that no items required discussion and, therefore, that the regular meeting should be cancelled, except as otherwise provided in Section 54954.2.

(e) 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 the Members.

(f) 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 hereof.

**Section 1.05. Treasurer.** Pursuant to Section 6505.5 and 6505.6 of the Joint Powers Law, the person performing the functions of the treasurer of the City is hereby designated as the initial Treasurer of the Joint Powers Authority and, as such, shall perform the functions of the treasurer of the Joint Powers Authority, as such functions are set forth in Section 6505.5 of the Joint Powers Law. Pursuant to Section 6505.1 of the Joint Powers Law, the Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Joint Powers Authority and all records of the Joint Powers Authority relating thereto. As treasurer of the Joint Powers Authority, the Treasurer has custody of all of the accounts, funds and money of the Joint Powers Authority from whatever source.

In the event, but only in the event, that the Treasurer holds moneys for the account of the Joint Powers Authority or the Members, the Treasurer shall verify and report in writing at least quarterly to the Board and the Members the amount of money so held, the amount of receipts since the last such report, and the amount paid out since the last such report.

The Board, by resolution, may authorize the Treasurer to sign contracts on behalf of the Joint Powers Authority.

**Section 1.06. Auditor.** Pursuant to Section 6505.5 of the Joint Powers Law, the person performing the functions of the chief financial officer of the City is hereby designated as the initial Auditor of the Joint Powers Authority and, as such, shall perform the functions of the auditor of the Joint Powers Authority, as such functions are set forth in Sections 6505 and 6505.5 of the Joint Powers Law.

As auditor of the Joint Powers Authority, the Auditor shall draw warrants to pay demands against the Joint Powers Authority when the demands have been approved by the Board and shall assure that there is strict accountability of all funds and reporting of all receipts and disbursements of the Joint Powers Authority.

**Section 1.07. Other Officers and Employees of the Joint Powers Authority.**

(a) Other Officers. In addition to the Chair, the Treasurer and the Auditor, the officers of the Joint Powers Authority shall consist of an Executive Director, a Secretary and a General Counsel, who shall consist of the City Manager, the City Clerk and the City Attorney, respectively. The deputies and assistants of such City Manager, City Clerk and City Attorney shall constitute deputies and assistants of the Executive Director, Secretary and General Counsel of the Authority, respectively. The deputies and assistants of the chief financial officer of the City shall constitute deputies and assistants of the Treasurer of the Authority.

(b) Duties of Executive Director. The Executive Director shall perform such functions as are customary in the exercise of such a position, and as may be more specifically provided by the Board from time to time. The Executive Director shall have charge of the day-to-day administration of the Joint Powers Authority and shall execute the directives of the Board. The Executive Director shall sign all contracts on behalf of the Joint Powers Authority, except as may otherwise be provided by resolution of the Board.

(c) Duties of Secretary. The Secretary shall perform such functions as are customary in the exercise of such positions, and as may be more specifically provided by the Board from time to time. The Secretary shall have charge of the records of the Joint Powers Authority and is responsible for recording the minutes of all meetings of the Board.

(d) Duties of General Counsel. The General Counsel shall perform such functions as are customary in the exercise of such positions, and as may be more specifically provided by the Board from time to time.

(e) Other Consultants and Contractors. 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.

(f) Miscellaneous. 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 a public agency 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 any of the Members or, by reason of their employment by the Board, to be subject to any of the requirements of any of the Members.

**Section 1.08. Bonding of Officers.** From time to time, the Board may designate officers of the Joint Powers Authority having charge of, handling or having access to any records, funds or accounts or other assets of the Joint Powers Authority, and the respective amounts of the official bonds of such officers and such other persons pursuant to Section 6505.1 of the Joint Powers Law. In the event that any officer of the Joint Powers Authority is required to be bonded pursuant to this Section 1.08, such bond may be maintained as a part of or in conjunction with any other bond maintained on such person by any Member, it being the intent of this Section 1.08 not to require duplicate or over-lapping bonding requirements from those bonding requirements which are otherwise applicable to the Members.

## **ARTICLE II**

### **POWERS**

**Section 2.01. General Powers.** The Joint Powers Authority shall exercise the powers granted to it under the Joint Powers Law and other applicable laws, including but not limited to the powers set forth in the Bond Act and the powers common to each of the Members, as may be necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 2.02. As provided in the Joint Powers Law, the Joint Powers Authority is a public entity separate and apart from the Members.

**Section 2.02. Restrictions on Exercise of Powers.** The powers of the Joint Powers Authority shall be exercised in the manner provided in the Joint Powers Law, the Bond Act and other applicable laws, and, except for the exercise of those powers set forth in the Bond Act and such other applicable laws, shall be subject (in accordance with Section 6509 of the Joint Powers Law) to the restrictions upon the manner of exercising such powers that are imposed upon the City.

**Section 2.03. Non-Liability of Members and Directors For Obligations of Authority.** The debts, liabilities and obligations of the Joint Powers Authority shall not be the debts, liabilities and obligations of any of the Members. No member, officer, agent or employee of the Joint Powers Authority is individually or personally liable for the payment of the principal of or premium or interest on any obligations of the Joint Powers Authority or be subject to any personal liability or accountability by reason of any obligations of the Joint Powers Authority. Nothing herein contained relieves any such member, officer, agent or employee from the performance of any official duty provided by law or by the instruments authorizing the issuance of any obligations of the Joint Powers Authority.

In addition, no Member shall assume any liability or responsibility for any debts, liabilities or obligations which may be incurred by the other Member in connection with



the issuance of bonds or other obligations of the Joint Powers Authority for the benefit of such other Member.

**Section 2.03. Limited Control.** Notwithstanding any other provision of this Agreement, no Member shall have any rights to control the operations of the any facilities owned by another Member solely as a result of the provisions of this Agreement.

### **ARTICLE III**

#### **CONTRIBUTION; ACCOUNTS AND REPORTS; FUNDS**

**Section 3.01. Contributions.** All costs of administering the Authority shall be paid as set forth in Section 3.04.

The Members may, but are not required to: (a) make contributions from their treasuries for any of 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, or (d) use their personnel, equipment or property in lieu of other contributions or advances.

In addition to the general provision set forth in the previous paragraph, the Members hereby expressly agree that the Joint Powers Authority may enter into one or more agreements with one or more parties to this Agreement pursuant to which such other party will agree to pay its share of the costs of a particular financing, including debt service and related costs. The Authority may require such other party to (y) secure its payment obligation with a pledge of revenues on terms acceptable to the Authority and (z) agree to fix, prescribe, revise and collect rates, fees and charges as are sufficient to pay such other party's payment obligations under the agreement with the Joint Powers Authority and the costs of operating and maintaining related capital facilities.

Furthermore, the Members hereby expressly agree that the Joint Powers Authority may receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value, for, or in aid of, the construction financing, or refinancing of public capital improvement, or any portion thereof or for the financing of working capital or insurance programs, or for the payment of the principal of and interest on bonds if the proceeds of those bonds are used for one or more of the purposes set forth herein.

**Section 3.02. Accounts and Reports.** To the extent not covered by the duties assigned to a trustee chosen by the Joint Powers 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 instrument entered into with respect to the proceeds of any bonds issued by the Joint Powers Authority. The books and records of the Joint Powers Authority in the hands of a trustee or the Treasurer shall be open to inspection at all reasonable times by representatives of any of the Members. The trustee appointed under any trust agreement shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust agreement. Said trustee may be given such duties in said trust instrument as may be desirable to carry out this Agreement.

Annual audits of the Authority's accounts and records shall be made by an independent CPA firm, and reports shall be filed in the manner provided in Section 6505 of the California Government Code.

**Section 3.03. Funds.** Subject to the applicable provisions of any instrument or agreement which the Joint Powers Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Treasurer shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

**Section 3.04. Annual Budget and Administrative Expenses.** The Board shall adopt a budget for administrative expenses, which shall include all expenses not included in any financing issue of the Authority, annually prior to July 1st of each year. The estimated annual administrative expenses of the Authority shall be allocated by the Authority as determined by the Board.

## **ARTICLE IV**

### **MISCELLANEOUS PROVISIONS**

**Section 4.01. Term.** This Agreement shall become effective, and the Joint Powers Authority shall come into existence, on the date of execution and delivery hereof, and this Agreement and the Joint Powers Authority shall thereafter continue in full force and effect until terminated by a supplemental agreement of the City and the Sanitation District.

**Section 4.02. Disposition of Assets.** Upon the termination of this Agreement, all property of the Joint Powers Authority, both real and personal, including but not limited to surplus money, shall be divided between the Members in such manner as determined by the Board.

**Section 4.03. Notices.** Notices hereunder must in writing and will be sufficient if delivered to:

North San Mateo County  
Sanitation District  
153 Lake Merced Boulevard  
Daly City, CA 94015  
Attention: General Manager

City of Daly City  
333 90th Street,  
Daly City, CA 94015  
Attention: City Manager

**Section 4.04. 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 4.05. 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 4.06. Amendments.** This Agreement may be amended at any time, or from time to time, except as limited by contract with the owners of any bonds issued by the Joint Powers Authority or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all of the parties to this Agreement either as required in order to carry out any of the provisions of 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 4.07. Severability.** Should any part, term 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 portions or provisions shall not be affected thereby.

**Section 4.08. Counterpart.** This Agreement may be executed in counterparts and be as valid and binding as if each party signed the same copy. A faxed copy of the executed signature page shall be sufficient to cause the terms of this Agreement to become fully operative. The effective date of the Agreement shall be the latest date that the City or County executed the Agreement.

**Section 4.09. Successors.** This Agreement is binding upon and inures to the benefit of the successors of the respective Members. No Member may assign any right or obligation hereunder without the written consent of the other Member(s) other than Associate Members.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers.

**CITY OF DALY CITY**

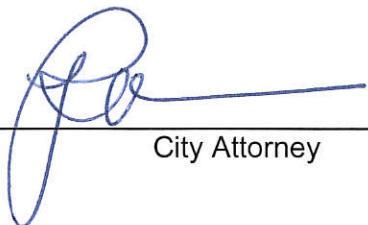
By:   
City Manager

Dated: July 20, 2022

Attest:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

**NORTH SAN MATEO COUNTY  
SANITATION DISTRICT**

By:   
General Manager

Dated: July 20, 2022

Attest:

  
Secretary