

AQUATIC SCIENCE CENTER

First Meeting of Directors

November 2, 2007

9:30am-noon

Fairfield-Suisun Sewer District

1010 Chadbourne Road

Fairfield, CA 94534-9700

Phone (707) 429-8930

AGENDA

- 1. Call to Order**
- 2. Public Comments**
- 3. Brief review of Joint Powers Agreement between State Water Resources Control Board and Bay Area Clean Water Agencies**
- 4. Adoption of draft Bylaws (attached)**
- 5. Adoption of draft Service Agreement between San Francisco Estuary Institute and Aquatic Science Center (attached)**
- 6. Election of Officers**
- 7. Adoption of Program Plan for remainder of FY 2007/08 (attached)**
- 8. Adoption of draft resolution authorizing Executive Director to enter into contracts and grant agreements (attached)**

DRAFT

**BYLAWS
OF
AQUATIC SCIENCE CENTER**

adopted

NOVEMBER __, 2007

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BYLAWS OF THE AQUATIC SCIENCE CENTER

ARTICLE 1 – CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Civil Code will govern the construction of these Bylaws. Without limiting the generality of the above any capitalized term not defined in these Bylaws will have the meaning ascribed to it in the Agreement.

(a) “Agreement” shall mean the Joint Powers Agreement entered into by the Signatories.

(b) “Alternate Director” shall mean another person from the same agency or entity as the Director appointed pursuant to these Bylaws to fulfill the duties of the Director if the Director is absent for a temporary period of time.

(c) “Board of Directors” or “Board” shall mean the Board of Directors of Aquatic Science Center.

(d) “Contracting Parties” shall have the meaning given in California Government Code Section 6502.

(e) “Director” shall mean the director appointed by a Member pursuant to these Bylaws.

(f) “Members” shall mean those public entities, nonprofit, and other stakeholder entities that have agreed to be bound by the terms of these Bylaws. The term “Member” shall, unless otherwise specified, include Signatories and Non-Voting Members.

(g) “Non-Voting Member” shall mean any Member designated as a non-voting member at the time of such members admission to the Aquatic Science Center.

(h) “Public Entity” shall have the meaning given in California Government Code §6500.

(i) “Signatories” shall mean the Public Entities that are Contracting Parties to the Agreement and have agreed to be bound by the terms of these Bylaws.

ARTICLE 2 – NAME

The name of this public entity is Aquatic Science Center.

ARTICLE 3 – OFFICES

The principal office for the transaction of the business of the Aquatic Science Center is located at 7770 Pardee Lane, Oakland, California. The Board of Directors may change the

principal office from one location to another. Any change of this location will be noted by the Secretary in these Bylaws pursuant to an amendment hereof.

ARTICLE 4 – SIGNATORIES AND PARTICIPANTS

4.1 Membership

Membership in the Aquatic Science Center is open to both Signatories and Members.

4.2 Signatories

(a) The original Signatories of the Aquatic Science Center are Bay Area Clean Water Agencies (BACWA) and the State Water Resource Control Board (SWRCB).

(c) In addition to the original Signatories, any other Public Entity that becomes a Contracting Party pursuant to the Agreement and these Bylaws, is a Signatory. Any Signatory that withdraws or is expelled pursuant to these Bylaws shall cease to be a Signatory.

4.3 Members

(a) In addition to the original Signatories, BACWA and SWRCB, the U.S. Environmental Protection Agency, Region 9 shall also be a Member. The Member from U.S. Environmental Protection Agency, Region 9 is designated a Non-Voting Member.

(b) In addition to the original Members, any other Public Entity, nonprofit entity or other stakeholder organization may become a Member as provided in these Bylaws. Any Member that withdraws or is expelled pursuant to these Bylaws shall cease to be a Member.

(c) Any Member who is not a Signatory, upon its admission to the Aquatic Science Center, may be designated a Non-Voting Member. Except as to the exercise of voting power, or for the formation of a quorum, the Non-Voting Member, and the Director and Alternate Directors appointed by such Non-Voting Member shall have all duties, rights, and privileges of any Member or Director or Alternative Director appointed by a Member.

ARTICLE 5 – LIMITATION ON AUTHORITY

The Aquatic Science Center's exercise of the joint powers of the Signatories under the Agreement and these Bylaws is restricted to the extent required under California Government Code Section 6509. Pursuant to Section 6509, the Aquatic Science Center will jointly exercise such powers subject to the restrictions placed on the separate exercise of such powers by BACWA. This designation may be changed by a two-thirds (2/3) vote of the Board.

ARTICLE 6 – DEBTS AND LIABILITIES

The debts, liabilities and obligations of the Aquatic Science Center will not be the debts, liabilities or obligations of any or all of the Signatories. However, nothing in these Bylaws or the Agreement:

(a) Prevents a Signatory or Signatories from agreeing, in a separate agreement, to be jointly and/or severally liable, in whole or in part, for any debt, obligation or liability of the Aquatic Science Center, including but not limited to, any bond or other debt instrument issued by the Aquatic Science Center; or

(b) Impairs the ability of any Signatory to undertake the responsibility described in subsection (a) of this Article.

ARTICLE 7 – DIRECTORS

7.1 Powers.

(a) General Powers. Subject to the provisions of these Agreement and these Bylaws, the business and affairs of the Aquatic Science Center will be managed, and all powers will be exercised, under the policy direction of the Board of Directors. The Aquatic Science Center will have such powers necessary and proper to effect the purposes of the Aquatic Science Center, the Agreement, and these Bylaws.

(b) Specific Powers. Without prejudice to these general powers, the Board of Directors also has the power to:

(i) borrow money and incur indebtedness on behalf of the Aquatic Science Center and cause to be executed and delivered for the Aquatic Science Center's purposes, in the Aquatic Science Center's name, promissory notes, bonds, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities and certificates of participation

(ii) maintain an office or offices within in the State of California;

(iii) acquire, own, maintain, and dispose of real and personal property as necessary to carry out the purposes of the Aquatic Science Center;

(iv) hire and fire employees;

(v) enter into contracts in its own name;

(vi) accept and receive donations;

(vi) sue and be sued; and

(vii) have perpetual succession.

7.2 Directors and Alternates.

(a) Appointment of Directors and Alternate Directors by Member. Each Member shall appoint three of its members, employees, or other representatives as a Directors and, for each directorship, shall appoint up to two Alternate Directors, any or all of whom may be elected officials. If two Alternate Directors are appointed by any Member, the Alternate Directors shall be designated as a first and second alternate.

(b) Expansion of Number of Directors to be Appointed. Upon a two-thirds (2/3) vote of the Board, the number of Directors on the Board may be expanded, but each Signatory shall have the same number of Directors and no Member who is not a Signatory shall have fewer than one Director for each three Directors appointed by each Signatory. Such Directors shall be appointed in accordance with these Bylaws.

(c) Non-Voting Directors. The Director appointed by any Non-Voting Member shall not exercise a vote on any member, nor shall such Director's presence at a meeting be counted toward the requirement for any majority or supermajority vote required under these Bylaws.

7.3 Voting.

(a) Voting Power of Director and Alternate Director. Each Director shall be entitled to cast one vote for any matter than requires approval of the Board. Alternate Directors may not vote in the capacity as Director except in the absence of the Director to whom such Alternate Director is designated the alternate and any second Alternate Director may not vote in the capacity as Director except in the absence of both the Director and the first Alternate Director to whom such Alternate Director is designated the alternate.

(b) Actions Requiring Approval of Directors. Except as set forth in paragraph 7.3(c), below, the approval of any action taken in furtherance of the Agreement or these Bylaws, or the implementation of any policy or program of the Aquatic Science Center, shall require a majority (or, where applicable, such necessary supermajority) of the Board.

(c) Actions Requiring Approval of Directors Appointed by Signatories. Notwithstanding paragraph 7.3(a) or 7.3(b), above, without the approval of a majority (or, where applicable, such necessary supermajority) of Directors appointed by the Signatories, no action of the Board of Directors or any committee may be taken regarding the exercise, or any issue regarding the exercise, of powers or functions of the Aquatic Science Center set forth in Article 5, Articles 7.1(b), 7.4(d), 7.9, 7.10, Article 11 (regarding the admission, withdrawal, suspension, or expulsion of Members who are Signatories), Article 12, Article 13, Article 14, Article 15, Article 16, or Article 17, the amendment or waiver of the exercise of such powers, or as otherwise required by law.

7.4 Vacancies.

(a) Vacancies. Any vacancy in any Director's position will be filled as provided in this Article 7.

(b) Events Causing Vacancy.

(1) A vacancy on the Board exists on the occurrence of the following: (i) the death of any Director; (ii) the removal or dismissal of such Director, or resignation of a Director from the position such Director held with the Member at the time such Director became a Director; (iii) the declaration by resolution of the Board of a vacancy of the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony; or (iv) written notice to the Secretary from the entity that appointed such Director stating that the designation of the Director or Alternate Director has been revoked, said revocation to be effective upon receipt, unless the notice specifies a later time.

(2) Notwithstanding paragraph (b)(1), above, to the extent any person serves as a Director *ex officio* pursuant to the Agreement, a change in the person serving as Director by virtue of such capacity with the Member shall not constitute a vacancy within the meaning of these Bylaws.

(c) Resignations. No Director appointed by a Signatory may resign if the Aquatic Science Center would then be without at least one Director (or Alternate Director acting as Director pursuant to these Bylaws) from each of at least two Signatories in charge of its affairs, unless the Aquatic Science Center is being dissolved pursuant to Article 16 of these Bylaws.

(d) Reduction or Increase in Number of Directors. The authorized number of Directors may be reduced or increased to accommodate the deletion or addition of a Member.

(e) Temporary Authority of Director. Until such time as a new Director is designated by the respective Member, the respective Alternate Director shall act as the Director for such Member.

7.5 Call of Meetings.

The Chair or Vice-Chair of the Board may call a meeting of the Board and shall call a meeting of the Board if requested, in writing, by a majority of the Board.

7.6 Quorum.

(a) Except as provided in Article 7.6(b), attendance at any meeting of a majority of the Directors entitled to cast a vote is a quorum for the transaction of business. Except for acts requiring a supermajority under these Bylaws or the Agreement, every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is an act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the quorum for that meeting, or if a supermajority is required, by the supermajority of the quorum for that meeting.

(b) Notwithstanding paragraph 7.6(a) above, a quorum for the exercise of any power reserved to the Signatories and the Directors appointed by such Signatories pursuant to Section

7.3(c), shall only be present if a majority, or such designated supermajority, of such Directors is present for the exercise of such power.

(c) The presence or absence of any Director appointed by a Non-Voting Member shall not be counted in any assessment of whether a quorum for the transaction of business is present.

7.7 Rules of Order.

The Board may adopt rules of order to govern the conduct and procedure of Board meetings.

7.8 Minutes.

The Board will keep or cause to be kept a written summary of minutes of its proceedings, except executive sessions.

7.9 Fees and Compensation of Directors.

Directors and members of committees may receive such reimbursement of expenses as may be determined by resolution of the Board to be just and reasonable.

7.10 Delegation of Powers.

Except as otherwise proscribed in these Bylaws and the Agreement, the Board may delegate any of its powers, subject to the constraints of California law.

ARTICLE 8 – BOARD COMMITTEES

8.1 Ad Hoc Committees.

(a) Upon written notice to all Members, the Chair may designate one (1) or more ad hoc advisory committees or a subcommittee of any such committee, each consisting of two (2) or more Directors or their respective Alternate Directors, to be ratified by and serve at the pleasure of the Board, and to exercise such powers as may be delegated to it, except that no ad hoc committee may:

(1) take any action on the exercise of such powers designated under paragraph 7.3(b);

(2) take any final action on matters which, under the Agreement or these Bylaws, requires approval a majority or supermajority vote of Board;

(3) amend or repeal Bylaws or adopt new Bylaws;

(4) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;

(5) fill any vacancy in a committee, create any other committee of the Board or appoint members to such committees; or

(6) approve any transaction (i) to which the Aquatic Science Center is a party and one or more Directors have a material financial interest as defined in the California Government Code; or (ii) between the Aquatic Science Center and one or more of its Directors or between the Aquatic Science Center or any person in which one or more of its Directors have a material financial interest.

(b) Any ad hoc committee which either (i) has a membership which is sufficient to constitute a quorum of the Board or (ii) becomes a standing committee, shall comply with the requirements of the Ralph M. Brown Act, California Government Code Section 54950, et seq., as if such committee meeting were a meeting of a legislative body as such term is defined in Government Code Section 54952.

8.2 Meetings and Action of Committees.

Meetings and action of Board committees will be governed by, and held and taken in accordance with, the provisions of Article 7 of these Bylaws concerning meetings of Directors, with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board and its members, except that the meetings of committees may be called by the Board. A summary of minutes will be kept of each meeting of any committee and will be filed with the Secretary of the Aquatic Science Center.

ARTICLE 9 – OFFICERS

9.1 Officers.

The officers of the Aquatic Science Center are the Chair, Vice-Chair, Executive Director, Secretary and Treasurer. The Chair and Vice-Chair will be elected by the Board or may be designated by the Board in writing. All Directors are eligible to serve as an elected officer. Any number of offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the Executive Director.

9.2 Election of Officers.

At the first meeting of the Board, and as necessary thereafter, nominations for the offices of Chair and Vice-Chair, will be made and seconded by a Director. If more than two (2) names are nominated for any one office, balloting occurs until a nominee receives a majority of the votes cast; provided that after the first ballot the nominee receiving the fewest votes will be dropped from the balloting. Each elected officer serves a term ending on December 31st of the year following the year of such appointment for a term not to exceed two years. An elected officer may succeed himself/herself and may serve any number of consecutive or non-consecutive terms.

9.3 Removal of Officers.

An elected officer may be removed, with or without cause, by a two-thirds (2/3) vote of the Board at a regular or special meeting. The removal of an individual from any office shall not by itself affect the status of such individual as a Director or Alternate Director.

9.4 Vacancies.

Any vacancy in any office because of death, resignation, removal, disqualification, or any other cause will be filled for the balance of the vacated term in the manner prescribed in these Bylaws for regular appointments to that office; provided, however, that such vacancies may be filled at any regular or special meeting of the Board.

9.5 Resignation of Officers.

In the absence of a contrary written agreement, any officer may resign at any time by giving written notice to the Executive Director or Secretary. Any resignation takes effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in that notice, the acceptance of the resignation is not necessary to make it effective.

9.6 Responsibilities of Officers.

(a) Chair of the Board. The Chair of the Board presides at meetings of the Board and exercises and performs such other powers and duties as may be from time to time assigned to the Chair by the Board or prescribed by the Bylaws.

(b) Vice-Chair of the Board. The Vice-Chair of the Board fulfills all the duties of the Chair in the absence of the Chair.

(c) Executive Director. Subject to such supervisory powers as may be given by the Board of Directors to the Chair of the Board, the Executive Director generally supervises, directs, and controls the business and the employees of the Aquatic Science Center. The Executive Director has such other powers and duties as may be prescribed by the Board or the Bylaws. The Executive Director may, but need not, be a Director.

(d) Secretary. The Secretary will (i) keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of summary minutes of all meetings and actions of Directors and committees of the Aquatic Science Center, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings and the proceedings of such meetings; and (ii) give, or cause to be given, notice of all meetings of the Board and Committees of the Aquatic Science Center required by the Bylaws to be given. The Secretary has such other powers and may perform such other duties as may be prescribed by the Board.

(e) Treasurer. The Treasurer will (i) keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Aquatic Science Center, including accounts of its assets, liabilities, receipts,

disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements, which books of account will be open to inspection by any Director at all reasonable times; (ii) deposit all money and other valuables in the name and to the credit of the Aquatic Science Center with such depositories as may be designated by the Board, disburse the funds of the Aquatic Science Center as may be ordered by the Board, and render to the Directors, whenever they request it, an account of all of such transactions and of the financial condition of the Aquatic Science Center; (iii) other powers and perform such other duties as may be prescribed by the Board or the Bylaws; and (iv) if required by the Board, give the Aquatic Science Center a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his/her office and for restoration to the Aquatic Science Center of all its books, papers, vouchers, money, and other property of every kind in the possession or control of the Treasurer upon death, resignation, retirement, or removal from office.

9.7 Fees and Compensation of Officers.

The officers may receive such reimbursement of expenses as may be determined by resolution of the Board to be just and reasonable.

ARTICLE 10 – MEMBER INDEMNITY

The Aquatic Science Center shall carry during the entire term of this Agreement, liability insurance coverage, naming the Members as additional insured parties, in such kind and amounts as the Board may from time to time determine to be appropriate. Such cost shall be incurred by the Aquatic Science Center.

The Aquatic Science Center shall indemnify and hold harmless each Member, its officers, agents, employees, and each Director and Alternate Director from and against all claims, demands or liabilities, including legal costs, arising out of or encountered in connection with the JPA or these Bylaws and the activities conducted hereunder and shall defend them and each of them against any claim, cause of action, liability or damage resulting therefrom.

ARTICLE 11 – ADMISSION, WITHDRAWAL, SUSPENSION, AND EXPULSION

11.1 Conditions for Admission of a New Member.

No new Member shall be added to the Aquatic Science Center unless such prospective new Member:

(a) adopts a resolution approving entry into the Aquatic Science Center, designating a Director, acknowledging and agreeing to be bound by these Bylaws and, in the case of a new Signatory, authorizing the execution of the Agreement; and

(b) is approved for admission to the Aquatic Science Center by a vote of at least two-thirds (2/3) of the authorized Directors of the Board.

11.2 Conditions to Permitting Withdrawal of a Member.

A Member may withdraw provided that the following conditions are satisfied:

- (a) such Member is not in default of any of its obligations owed to Aquatic Science Center;
- (b) such withdrawal will not cause the Aquatic Science Center to be in default or breach of any agreement to which it is a party, or of any bond or other evidence of indebtedness issued by the Aquatic Science Center;
- (c) not later than thirty (30) days immediately preceding the effective date of such withdrawal, such Member has provided written notice to the Aquatic Science Center of its intent to withdraw;
- (d) such withdrawal is effective on thirty (30) days notice;
- (e) with respect to the withdrawal of a Signatory, the Aquatic Science Center will have at least two (2) Signatories after such withdrawal. In the event that such withdrawal would leave the Agreement with only one Signatory, said Signatory may not withdraw until all principal of and interest on any and all bonds and other evidences of indebtedness issued by the Aquatic Science Center have been paid in full;
- (f) in connection with the termination of the Aquatic Science Center pursuant to Article 16, compliance with the requirements of such Article 16 shall be deemed sufficient for all Members to withdrawal from Membership in the Aquatic Science Center;
- (g) a notice of withdrawal may be revoked within thirty (30) days.

11.3 Conditions to Permitting Suspension of a Member.

The Aquatic Science Center may suspend a Member from the Aquatic Science Center subject to the following conditions:

- (a) the Member is in default under the terms of the Agreement, these Bylaws, any contract executed by the Member in connection with any the Aquatic Science Center program, any bond or other evidence of indebtedness for which the Member has agreed to assume responsibility, in whole or in part;
- (b) the Aquatic Science Center has given written notice of the default described in subsection 11.3(a) to the defaulting Member; and
- (c) not earlier than thirty (30) days after transmittal of the notice and not later than the sixty (60) days immediately preceding the effective date of such suspension, two-thirds (2/3) of the authorized Directors votes to suspend said Member.

11.4 Conditions to Permitting Expulsion of a Member.

The Aquatic Science Center may expel a Member from the Aquatic Science Center provided that:

(a) the Member is in default under the terms of the Agreement, these Bylaws, any contract executed by the Member in connection with any the Aquatic Science Center program, any bond or other evidence of indebtedness for which the Member has agreed to assume responsibility, in whole or in part;

(b) the Aquatic Science Center has given written notice of the default described in subsection 11.4(a) to the defaulting Member; and

(c) not earlier than thirty (30) days after transmittal of the notice and not later than the sixty (60) days immediately preceding the effective date of such expulsion, two-thirds (2/3) of the authorized Directors votes to expel said Member.

ARTICLE 12 – FEES

No fees may be assessed to join or continue membership in the Aquatic Science Center.

ARTICLE 13 – ADMINISTRATIVE AGENCY

The San Francisco Estuary Institute (SFEI) is designated in the Agreement as the administrative agency for the Aquatic Science Center. As such, pursuant to an administrative service agreement, SFEI will provide necessary services to administer and execute the purposes of the JPA for the Aquatic Science Center.

ARTICLE 14 – PURCHASE OF INSURANCE

In conformance with the procedures and criteria developed by it, the Board may cause the Aquatic Science Center to purchase commercial insurance or reinsurance or terminate commercial insurance or reinsurance upon a majority vote.

ARTICLE 15 – EVENTS OF DEFAULT AND REMEDIES

15.1 Events of Default Defined.

The following are "events of default" under the Agreement and these Bylaws, and the terms "events of default" and "default" means, whenever they are used in the Agreement and these Bylaws, with respect to a Member, any one or more of the following events:

(a) failure by such Member to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Agreement, to comply with these Bylaws or to comply with any Aquatic Science Center program requirement (including but not limited to any contract executed by the Member in connection with any program, any bond or

other evidence of indebtedness for which the Member has agreed to assume responsibility, in whole or in part) for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to such Member by the Aquatic Science Center or the Secretary; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Aquatic Science Center, or the Secretary, as the case may be, will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Member within the applicable period and diligently pursued until the default is corrected. After such an extension, failure to diligently pursue or to achieve corrective action is a separate "event of default" under this clause requiring notice but not requiring that the Aquatic Science Center consent to any extension;

(b) the filing by such Member of a case in bankruptcy, or the subjection of any right or interest of such Member under the Agreement or these Bylaws to any execution, garnishment or attachment, or adjudication of such Member as bankrupt, or assignment by such Member for the benefit of creditors, or the entry by such Member into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Member in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar act which may hereafter be enacted;

(c) action taken by the Member to withdrawal from or repudiate membership in the Aquatic Science Center in violation of, or inconsistent with, the Agreement or these Bylaws; or

(d) the failure of the Director or Alternative Director of such Member to attend at least fifty percent of the board meetings in a given twelve-month period;

15.2 Remedies on Default.

(a) Whenever any event of default referred to in paragraph 15.1(a) of this Article has occurred and is continuing, it will be lawful for the Aquatic Science Center to exercise any and all remedies available pursuant to law or granted pursuant to the Agreement and these Bylaws.

(b) In the event that the Aquatic Science Center elects to expel any defaulting Member, subject to the conditions described and in the manner provided in Section 11.4 of these Bylaws, the Member nevertheless agrees to pay the Aquatic Science Center all costs, losses or damages arising or occurring as a result of such default and termination, and administrative and legal costs incurred in noticing the default and effecting the expulsion. No such expulsion becomes effective, by operation of law or otherwise, unless and until the Aquatic Science Center has given written notice of such expulsion to the Member; no such expulsion will be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided; and no such expulsion terminates the obligation of the expelled Member to pay any fees assessed prior to such expulsion.

15.3 No Remedy Exclusive.

No remedy conferred herein upon or reserved to the Aquatic Science Center is intended to be exclusive and every such remedy is cumulative and is in addition to every other remedy given under the Agreement or these Bylaws, now or hereafter existing at law or in equity. No

delay or omission to exercise any right or power accruing upon any default impairs any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Aquatic Science Center to exercise any remedy reserved to it in these Bylaws, it is not necessary to give any notice, other than such notice as may be required in these Bylaws or by law.

15.4 Agreement to Pay Attorneys' Fees and Expenses.

In the event either the Aquatic Science Center or any Member, should be in default under any of the provisions of these Bylaws and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

15.5 No Additional Waiver Implied by One Waiver.

In the event any agreement contained in the Agreement and these Bylaws should be breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

ARTICLE 16 – TERMINATION

16.1 Time of Termination.

The Aquatic Science Center may be terminated upon the written consent of all of the Members if the effective termination date and such written consents are delivered to the Aquatic Science Center and the Secretary at least sixty (60) days prior to the effective termination date provided that all principal of and interest on any and all bonds and other evidences of indebtedness issued by the Aquatic Science Center are paid in full.

16.2 Continuing Obligations.

After the termination date, the Aquatic Science Center will continue to be obligated to pay, or cause to be paid any amounts due for winding up its affairs, including but not limited to any litigation costs and/or extraordinary costs associated with a financing transaction.

16.3 Distribution of Assets.

In the event any assets remain after winding up the affairs of the Aquatic Science Center, the Board shall either return any assets to the Member or other entity which provided such asset to Aquatic Science Center, or shall sell the assets, in accordance with California law, and distribute the funds according to Section 16.4.

16.4 Distribution of Funds.

In the event any surplus money remains on hand after winding up the affairs of the Aquatic Science Center, such sums will be returned to the Members in proportion to the contributions made.

ARTICLE 17 – AMENDMENTS

17.1 Amendment by Directors.

Subject to the limitations set forth below, the Board may adopt, amend or repeal Bylaws. Such power is subject to the following limitations:

(a) The Board may not amend any provision of these Bylaws which requires the vote of a larger proportion of Directors than a simple majority, except by vote of such larger number of Directors.

(b) The Board may not delete or amend Bylaw provisions requiring compliance with the Agreement.

(d) The Board may not delete or amend Bylaw provisions contained in Article 4, paragraph 7.1(b), 7.3, 7.4(d), 7.9, 7.10, Article 11, Article 12, Article 13, Article 14, Article 15, Article 16, and Article 17.

ARTICLE 18 – RECORDS AND REPORTS

18.1 Maintenance of the Aquatic Science Center Records.

The Aquatic Science Center will keep at the Aquatic Science Center's principal executive office, or if its principal executive office is not in the State of California, at its principal business office in this state:

- (a) a copy of the Agreement and these Bylaws;
- (b) adequate and correct books and records of account; and
- (c) minutes in written form of the proceedings of its Board and committees of the Board.

18.2 Inspection Rights.

(a) Any Member may inspect the Agreement, Bylaws, accounting books and records and minutes of the proceedings of the Board and committees of the Board, at any reasonable time, for a purpose reasonably related to such person's interest in the business of the Aquatic Science Center.

(b) Any inspection and copying under this section may be made in person or by an agent or attorney or the entity entitled thereto and the right of inspection includes the right to

copy and make extracts. The Aquatic Science Center may charge reasonable fees associated with the provision of such copies or extracts.

18.3 Inspection by Directors.

Every Director has the absolute right at any reasonable time to inspect all non-confidential books, records, and documents of every kind and the physical properties of the Aquatic Science Center. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents. The Aquatic Science Center may charge reasonable fees associated with the provision of such copies or extracts.

18.4 Financial Report.

(a) As soon as possible after the close of the Aquatic Science Center's fiscal year, the Board will cause an annual report prepared by BACWA's auditor and sent to the governing body of each Member.

(b) The report required by this section will be accompanied by any report thereon of independent accountants, or, if there is no such report, by the certificate of an authorized officer of the Aquatic Science Center that such statements were prepared without audit from the books and records of the Aquatic Science Center.

18.5 Fiscal Year.

The Aquatic Science Center's fiscal year is July 1 to June 30.

ADMINISTRATIVE SERVICES AGREEMENT

between

AQUATIC SCIENCE CENTER,
a California Joint Powers Agency

and

SAN FRANCISCO ESTUARY INSTITUTE
a California Not-for-Profit Corporation

This Administrative Services Agreement (“Agreement”) is made this __ day of November, 2007, by and between Aquatic Science Center, a California joint powers agency, with its principal office in Oakland, California, and San Francisco Estuary Institute, a California not-for-profit corporation (“SFEI”), with its principal office in Oakland, California.

WHEREAS, Aquatic Science Center was formed in June 2007 pursuant to a joint powers agreement between Bay Area Clean Water Agencies (“BACWA”) and the State Water Resource Control Board (“SWRCB”) (such joint powers agreement referred to herein as the “JPA”); and

WHEREAS, the Aquatic Science Center, and certain federal and state environmental agencies, and the municipalities they regulate have a consistent and continuing need for integrated and comprehensive information on water quality; and

WHEREAS, Aquatic Science Center has the goal of increasing scientific understanding of the San Francisco Estuary and using that knowledge to better manage the Estuary; and

WHEREAS, Aquatic Science Center, pursuant to California Government Code §6500 et seq., may appoint an agency or corporation, including a nonprofit corporation, to administer its operations; and

WHEREAS, SFEI is a non-profit corporation governed by a board of directors composed of Bay Area scientists, environmentalists, regulators, and representatives of local government and industry and is uniquely qualified to administer the operations of Aquatic Science Center in a timely and efficient manner; and

WHEREAS, Aquatic Science Center recognizes SFEI’s unique expertise in providing scientific and technical information regarding the aquatic environment of the San Francisco Bay; and

WHEREAS, Aquatic Science Center wishes to engage SFEI to provide certain administrative services to further the goals of Aquatic Science Center and SFEI desires to provide such services under the terms set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and premises set forth herein, Aquatic Science Center and SFEI agree as follows:

1. Engagement of SFEI as Administrator of Aquatic Science Center

1.1 Engagement. Aquatic Science Center hereby engages SFEI to serve as the Administrator of Aquatic Science Center, providing such services as are set out in Section 2. SFEI personnel shall devote sufficient time to carry out the duties hereunder.

1.2. Policies and Applicable Law. SFEI agrees to provide all services hereunder in substantial compliance with: (a) Aquatic Science Center's JPA and Aquatic Science Center's Bylaws (the "Bylaws") and (b) federal, state, and local laws, rules and regulations applicable to such services that are in effect during the term hereof.

1.3. Retention of Control by Aquatic Science Center. The parties expressly agree that the provision of the Services by SFEI to Aquatic Science Center is not a delegation of control by Aquatic Science Center.

2. Services

2.1. Administration of Aquatic Science Center and Provision of Support Services.

As the Administrator of Aquatic Science Center and in accordance with the requirements of law and the terms of the JPA and the Bylaws, SFEI shall, at the control and direction of the Aquatic Science Center:

- (a) receive, administer, and disburse funds received by the Aquatic Science Center to carry out the administrative requirements of the Aquatic Science Center;
- (b) conduct the general business operations of Aquatic Science Center;
- (c) provide general scientific, monitoring, and information management support services on behalf of Aquatic Science Center; and
- (d) administer any grants awarded, or contracts entered into, by Aquatic Science Center with any other party.

2.2 Grants and Contracts Awarded to SFEI. Nothing in this Agreement shall prohibit SFEI from competing for on an equal basis for, or being awarded, any grant or contract by Aquatic Science Center for any scientific or technical services.

2.3. Governance. SFEI shall conduct the general business operations of Aquatic Science Center. Subject to the direction of the Aquatic Science Center, SFEI will conduct necessary business, administrative, scientific, and managerial services for the JPA.

2.4. Accounting and Reporting Requirements.

(a) The Parties hereby acknowledge that an appropriate financial officer of BACWA will be hired to serve as Treasurer, serve as auditor and provide other financial services, pursuant to the JPA and California law.

(b) Notwithstanding the foregoing, SFEI will coordinate with the appropriate financial officer of BACWA to provide general accounting and fiscal services, including the preparation of any reports necessary to allow Aquatic Science Center to comply with any auditing requirement under Article 8 of the JPA.

3. Compensation and Reimbursement

SFEI shall bill Aquatic Science Center for reasonable overhead for administrative services based on an indirect cost rate of _____.

4. Term and Termination

4.1. This Agreement shall be effective as of the date first state above and shall be for an initial term of three (3) years commencing upon the execution of this agreement by the Parties. The Agreement shall be extended for two (2) year terms unless terminated by the Parties.

4.2. This Agreement shall terminate upon three hundred-sixty (360) days' written notice of either Party.

5. Miscellaneous

5.1. Entire Agreement. This Agreement, including any exhibits attached hereto and incorporated by reference, constitutes the entire agreement between the parties with regard to the subject matter hereof. Neither party has relied upon any statements, representations or other communications that are not contained in this Agreement. This Agreement cannot be changed, modified, assigned or amended in any respect except by a written amendment signed by the parties.

5.2. Governing Law. This Agreement shall be governed by the laws of the State of California.

5.3. Notices. Notices under this Agreement shall be made in writing to:

If to San Francisco Estuary Institute:

San Francisco Estuary Institute
7770 Pardee Lane
Oakland, CA 94621-1424
Attn: Mike Connor

If to Aquatic Science Center:

Bay Area Clean Water Agencies
6114 LaSalle Avenue, #456
Oakland, CA 94611-2802

Attn: Michele Pla, Executive Director

and

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Attn: _____.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates hereafter set forth.

AQUATIC SCIENCE CENTER

By: _____

Date: _____

SAN FRANCISCO ESTUARY INSTITUTE

By: _____

Date: _____

2007/08 Program Plan for the Aquatic Science Center

DRAFT – 10-17-07

The Aquatic Science Center (Center) was established for the efficient delivery of scientific and information management support to public agencies and non-governmental organizations. The Center anticipates the following subject areas where contractual support or fiduciary services may be requested from a variety of state, federal, and local agencies:

- 1) **The San Francisco Estuary Regional Monitoring Program for Water Quality.** Several members would prefer to contribute to the program via a quasi-state agency more closely linked to the Water Board as their contribution fulfills Water Board NPDES and waste discharge requirements. \$200,000-800,000 per year.
- 2) **TMDL support including: impairment assessments, pollutant conceptual model development, implementation alternatives evaluations, and implementation effectiveness monitoring.** Depending on schedule, the JPA would provide an effective mechanism to conduct necessary technical studies and synthesis. \$100,000-500,000 per year.
- 3) **Collaboration with DFG to study pelagic organism decline in the Delta.** The JPA would allow for technical syntheses to occur in a timely fashion. \$50,000-200,000 every few years.
- 4) **Collaboration with DFG and USGS to refine to the Comprehensive Ecosystem Monitoring, Assessment, and Research Program.** Approximately \$50,000.
- 5) **Collaborative effort with EPA to develop and implement a coordinated watershed monitoring program in the San Joaquin River Basin.** Up to \$100,000
- 6) **Collaborative effort with State Water Board to provide technical support to Surface Water Ambient Monitoring Program.** \$100,000-250,000.
- 7) **Development of technical and scientific recommendations to the California Water Quality Monitoring Council.** \$50,000-200,000.

The Executive Director is authorized to enter into contracts that are consistent with the program plan described above. Two weeks prior to entering into any contracts, the Executive Director will notify the Board of Directors in writing of their intent to enter into a contract on behalf of the Aquatic Science Center. If any Board member objects, a special session of the Board will be called for deliberation and approval of project. In addition, the Executive Director will seek advice from an ad-hoc advisory group comprised of the Board Chair and Vice Chair for any contract over \$50,000 with regard

to calling a special session of the Board for deliberation and approval of significant project requests on a case-by-case basis.

Draft Resolution

BOARD OF DIRECTORS
Aquatic Science Center

A RESOLUTION AUTHORIZING AND DESIGNATING A REPRESENTATIVE TO
NEGOTIATE CONTRACTS OR AGREEMENTS ON BEHALF OF THE AQUATIC
SCIENCE CENTER

WHEREAS, in accordance with Section 9.6(c) of the Bylaws, the Executive Director has such other powers and duties as may be prescribed by the Board or the Bylaws; and

WHEREAS, the Board, pursuant to Section 7.1 of the bylaws, has the authority to authorize and enter into contracts or agreements on behalf of the Aquatic Science Center; and

WHEREAS, the Board designates the Executive Director to sign all contracts, agreements and any amendments thereto.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Aquatic Science Center hereby authorizes _____ to negotiate and execute all grants or contract agreements consistent with the Aquatic Science Center's Board-approved Program Plan.

APPROVED AND ADOPTED this 2nd day of November, 2007.

I, the undersigned, hereby certify that the foregoing Resolution No 07-01 was duly adopted by the Board of Directors of the Aquatic Science Center by roll call vote with 100% participation and passed unanimously.

Attest: _____