

## **RESOLUTION NO. PWAF 2024-1**

### **A RESOLUTION OF THE PASS WATER AGENCY FOUNDATION AUTHORIZING FORMATION AND ADOPTING FORMATION DOCUMENTS**

WHEREAS, at the November 6, 2023 meeting of the Board of Directors of the San Gorgonio Pass Water Agency (“SGPWA”), the SGPWA Board took action to authorize the formation of a nonprofit corporation to be used for funding sponsorships and events through the use of non-rate revenue and to be used as an instrument for the acceptance of property donations; and

WHEREAS, consistent with the mission of SGPWA, the SGPWA Board authorized formation of a nonprofit corporation in order to: (1) promote the knowledge and implementation of the Agency’s mission which is to import supplemental water and to enhance local water supplies; (2) accept the transfer of, and utilize, non-rate revenue received by SGPWA, including for example and not by way of limitation, revenue from cell tower leases, grant funds applied for and received by the nonprofit corporation, and other non-rate revenue sources; (3) utilize such non-rate revenue to fund the nonprofit’s activities including community events or sponsoring a third party’s community event; and (4) receive, invest and utilize property acquired through the solicitation of contributions, donations, grants, gifts, bequests and the like for the purposes for which the nonprofit is formed; and

WHEREAS, a first meeting of the Board of Directors of the Pass Water Agency Foundation, a California Nonprofit Public Benefit Corporation (“Corporation”) was held on May 6, 2024 at 1:30 p.m. in order to take actions required for formation of the Corporation and to adopt formation documents; and

WHEREAS, the Board of Directors of the Corporation (“Corporation Board”) desires to adopt this Resolution in order to authorize the formation of the Corporation and to adopt formation documents.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF  
THE PASS WATER AGENCY FOUNDATION AS FOLLOWS:**

**1. Adoption of Articles of Incorporation**

RESOLVED, that a certified copy of the articles of incorporation, to be filed with the California Secretary of State, shall be inserted by the Secretary of the Corporation in the minute book of the Corporation and kept at the principal office for the transaction of business of the Corporation.

**2. Agent for Service of Process**

RESOLVED, that Jeffry F. Ferre, named as the initial agent for service of process in the articles of incorporation of the Corporation, is named as the Corporation’s agent for service of process.

**3. Ratification of Acts of Incorporator**

As Jeffry F. Ferre was the sole incorporator (“Incorporator”) of the Corporation and will execute the Organizational Certificate of Incorporator of Pass Water Agency Foundation, in which the Incorporator will appoint the board of directors of the Corporation and will then resign as Incorporator of the Corporation.

RESOLVED, that all actions taken on behalf of the Corporation by the Incorporator are hereby ratified, confirmed and approved.

**4. Adoption of Bylaws**

RESOLVED, that the Bylaws attached hereto are adopted as the Bylaws of the Corporation and that the Secretary of the Corporation is authorized and directed to execute a certificate of adoption of the Bylaws, to insert the certified Bylaws in the Corporation’s minute book, and to ensure that a copy of the certified Bylaws is kept at the principal office as required by law.

**5. Number of Directors**

RESOLVED, that the number of authorized directors set forth in the Bylaws of the Corporation shall be not less than five (5) nor more than eight (8).

**6. Consent to Electronic Notification**

The Bylaws of the Corporation state that notice may be given to each director in electronic form, specifically via fax or e-mail; and the California Corporations Code requires each director to provide an unrevoked consent to the use of such means of transmission prior to receiving notice via such means.

RESOLVED, that the Secretary of the Corporation is directed to collect an executed Consent to Electronic Transmission (“Consent”) from each director and place such executed Consent in the Corporation’s minute book.

FURTHER RESOLVED that meeting notices may not be sent via fax or e-mail to any director that has not signed the Consent.

**7. Obtain Exemptions from Federal and State Taxes**

RESOLVED, that the officers of the Corporation are authorized to consult with legal counsel to ascertain the availability of exemptions from taxation under federal and state tax codes and, if such exemptions are available, the officers of the Corporation are authorized and directed to execute and file all necessary applications for exemptions from such taxes with the appropriate state and federal tax authorities, and to pay the necessary filing fees.

**8. Authorization for Filings with State Attorney General**

RESOLVED, that the officers of the Corporation are authorized and directed to make periodic filings as required by the California Attorney General describing the financial activity of the Corporation and the distribution of the assets held for public purposes.

**9. Designation of Principal Office**

RESOLVED, that the principal office of the Corporation shall be located at 1210 Beaumont Avenue, Beaumont, CA 92223.

10. Accounting Year

RESOLVED, that the first accounting year of the Corporation shall be from the date of incorporation to the last day of December 2024 and thereafter the accounting year of the Corporation is to end on the last day of December of each year.

11. Submittal of Employer Identification Number Application

RESOLVED, that the officers of the Corporation are authorized, directed, and empowered to prepare and file appropriate applications to obtain an employer identification number with the IRS and any other identification numbers, permits, or licenses required by law or deemed necessary or advisable for the conduct of the business of the Corporation.

12. Ratification

RESOLVED, that any and all acts taken and any and all agreements or other instruments executed on behalf of the Corporation by any officer or director of the Corporation prior to the execution hereof with regard to any of the transactions or agreements authorized or approved by any or all of the foregoing resolutions are ratified, confirmed, adopted, and approved.

13. Incorporation Of Recitals The Recitals set forth above are incorporated herein and made an operative part of this Resolution.

14. Effective Date This Resolution shall be in full force and effect immediately upon adoption.

15. Severability If any section, subsection, clause or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The Board hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

**ADOPTED AND APPROVED** this 13<sup>th</sup> day of May 2024.

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President  
Pass Water Agency Foundation

ATTEST:

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Secretary  
Pass Water Agency Foundation

ATTACHMENT

BYLAWS OF PASS WATER AGENCY FOUNDATION

**BYLAWS**  
**OF**  
**PASS WATER AGENCY FOUNDATION**  
**A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

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**BYLAWS OF PASS WATER AGENCY FOUNDATION**  
**A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

**ARTICLE 1**  
**NAME**

1.1 **Corporate Name.** The name of the corporation is Pass Water Agency Foundation (the “**Corporation**”)

**ARTICLE 2**  
**OFFICES**

2.1 **Principal Office.** The principal office for the transaction of the business of the Corporation shall be 1210 Beaumont Avenue, Beaumont, CA 92223, or may be relocated to any place or places within or outside the State of California by resolution of the Board of Directors of the Corporation (the “**Board**”).

2.2 **Other Offices.** The Board may at any time establish branch offices, either within or outside the State of California where the Corporation is qualified to transact business, in order to advance the general and specific purposes of the Corporation.

**ARTICLE 3**  
**OBJECTIVES AND PURPOSES**

3.1 **General Purpose.** The Corporation is a Nonprofit Public Benefit Corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Corporation Law for public purposes. The Corporation is organized exclusively for educational purposes under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

3.2 **Specific Purpose.** The specific purpose of the Corporation is to (i) promote the knowledge and implementation of the mission of the San Gorgonio Pass Water Agency, a California State Water Contractor (the “**Agency**”), whose mission is established through the Agency’s strategic plan; (ii) accept the transfer of, and utilize, non-rate revenue received by the Agency from cell tower leases and other non-rate revenue sources; (iii) utilize such non-rate revenue to fund the nonprofit’s activities including community events or sponsoring a third-party’s community event (both of which would still need to be tied to the mission of the Agency; and (iv) receive, invest and utilize property acquired through the solicitation of contributions, donations, grants, gifts, bequests and the like for the purposes for which the Foundation was formed .

**ARTICLE 4**  
**LIMITATIONS**

4.1 **Political Activities.** The Corporation has been formed under the California Nonprofit Corporation Law for the public purposes described in Article 3, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the Corporation will consist of carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation will not

participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office

4.2 **Prohibited Activities.** The Corporation may not, except in any insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described in Article 3. The Corporation may not carry on any activity for the profit of its Officers, Directors or other private persons or distribute any gains, profits or dividends to its Officers, Directors or other persons as such. Furthermore, nothing in Article 3 may be construed as allowing the Corporation to engage in any activity not permitted to be carried on (i) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”) or (ii) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code.

## **ARTICLE 5** **DEDICATION OF ASSETS**

5.1 **Dedication of Assets.** The properties and assets of this nonprofit Corporation are irrevocably dedicated to public benefit and/or charitable purposes. No part of the net earnings, properties, or assets of this Corporation, on dissolution or otherwise, may inure to the benefit of any private person or individual, or any Director or Officer of this Corporation. On liquidation or dissolution, all properties and assets remaining after payment, or provision for payment, of all debts and liabilities of this Corporation shall be distributed to the Agency or to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its exempt status under Internal Revenue Code §501(c)(3).

## **ARTICLE 6** **DIRECTORS**

### **6.1 Powers**

(a) *General Corporate Powers.* The business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board.

(b) *Specific Powers.* Without prejudice to their general powers, the Directors shall have the power to:

(i) Select and remove the Officers of the Corporation; prescribe any powers and duties for them that are consistent with the law, with the Articles of Incorporation, and with these Bylaws; and fix their compensation, if any.

(ii) Change the principal executive office or the principal business office of the Corporation from one location to another; cause the Corporation to be qualified to do business in any other state, territory, dependency, or country, and conduct business within or outside the State of California; and designate any place within or outside the State of California for the holding of any meeting.

(iii) Adopt, make, and use a corporate seal and alter the form of the seal.

(iv) Borrow money and incur indebtedness on behalf of the Corporation and cause to be executed and delivered for the Corporation's purposes, in the Corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt.

6.2 **Number of Directors**. The number of Directors shall be the same as the number of Board members of the Agency which is comprised of seven (7) directors.

6.3 **Ex Officio Directors**. The directors of the Agency shall serve as ex officio Directors of this Corporation, for a term concurrent with their appointment as directors of the Agency. The ex officio Directors will have all the rights of any director of a California nonprofit corporation, including the right to vote on any matter, unless otherwise provided in these bylaws. The Chair of the Board shall be selected by a majority vote of the Directors

6.4 **Vacancies**. A vacancy shall be deemed to exist at the occurrence of any event which constitutes a vacancy on the Board of Directors of the San Gorgonio Pass Water Agency.

6.5 **Place of Meeting; Meeting by Telephone or Other Telecommunications Equipment**. Regular meetings of the Board may be held at any place within the jurisdiction of the San Gorgonio Pass Water Agency. In the absence of such designation, regular meetings shall be held at the principal office of the Corporation. Special meetings of the Board shall be held at any place within the jurisdiction of the San Gorgonio Pass Water Agency. The place of meetings and the use of telecommunication equipment for conducting meetings shall be governed by the Brown Act set forth in Government Code Section 54950 et. seq.

6.6 **Annual Meeting**. The Board shall hold a meeting annually in May at a time and place designated by the Board for purposes of electing officers, designating committees, and transacting regular business. Notice of these meetings shall be in accordance with Section 6.9.

6.7 **Special Meetings**. Special meetings of the Board for any purpose may be called in accordance with Section 6.9.

6.8 **Notice of Meetings**. Notice of any meeting of the Board shall be given in accordance with the notice and agenda posting requirements set forth in the Brown Act as the same apply to the calling of regular and special meetings of the Board.

6.9 **Waiver of Notice**. The transactions of any meeting of the Board, however called and noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding of the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about lack of adequate notice.

6.10 **Quorum**. A majority of the Board shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 6.12. Every act or decision done or made by a

majority of the Board shall be regarded as the act of the Board, subject to the provisions of the California Nonprofit Corporation Law.

6.11 **Adjournment**. A meeting may be adjourned in accordance with the provisions of the Brown Act.

6.12 **Notice of Adjournment**. Notice of the time and place of holding an adjourned meeting shall be in accordance with the provisions of the Brown Act.

6.13 **Compensation of Directors**. The Board may authorize the reimbursement of actual reasonable expenses incurred by a Director or member of a committee in carrying out their duties. Directors may not otherwise be compensated.

## ARTICLE 7 COMMITTEES

7.1 **Committees of Directors**. The Board may, by resolution adopted by a majority of the Directors then in office, designate one or more committees consisting of two or more Directors, to serve at the pleasure of the Board. Any member of any committee may be removed, with or without cause, at any time by the Board. Any committee, to the extent provided in the resolution of the Board, shall have all or a portion of the authority of the Board, except that no committee, regardless of the Board resolution, may:

- (a) Fill vacancies on the Board or on any committee;
- (b) Amend or repeal the Articles of Incorporation or Bylaws or adopt new Bylaws;
- (c) Amend or repeal any resolution of the Board;
- (d) Designate any other committee of the Board or appoint the members of any committee; and
- (e) Approve any transaction (i) to which the Corporation is a party and as to which one or more Directors has a material financial interest, or (ii) between the Corporation and one or more of its Directors or between the Corporation and any corporation or firm in which one or more of its Directors has a material financial interest.

7.2 **Executive Committee**. The Board may appoint two (2) or more Directors and the Chair of the Board of the Corporation, to serve as the Executive Committee of the Board. The Chair of the Board shall serve as chair of the Executive Committee. The Executive Committee, unless limited by a resolution of the Board, shall have and may exercise all the authority of the Board in the management of the business and affairs of the Corporation between meetings of the Board; provided, however, that the Executive Committee does not have the authority of the Board in reference to those matters enumerated in Section 7.1.

7.3 **Audit Committee.** At all times that this Corporation is required by applicable law to have an independent audit, or at any time the Corporation voluntarily chooses to do so, the Corporation shall have an Audit Committee consisting of at least two (2) Directors and which may include non-voting advisors. Directors who are employees of the Corporation or who receive, directly or indirectly, any consulting, advisory, or other compensatory fees from the Corporation (other than for service as Director) may not serve on the Audit Committee. The President and Treasurer, if also Directors, may serve on the Audit Committee only if such persons are volunteers and are not compensated by this Corporation. The Audit Committee shall perform the duties and adhere to the guidelines set forth from time to time by the Board. These duties include, but are not limited to: (i) assisting the Board in choosing an independent auditor and recommending termination of the auditor, if necessary, (ii) negotiating the auditor's compensation, (iii) conferring with the auditor regarding the Corporation's financial affairs, and (iv) reviewing and accepting or rejecting the audit. Members of the Audit Committee may not receive compensation for their service on the Audit Committee in excess of that provided to Directors for their service on the Board. If the Corporation has a Finance Committee, a majority of the members of the Audit Committee may not concurrently serve as members of the Finance Committee, and the Chair of the Audit Committee may not serve on the Finance Committee.

7.4 **Meeting and Action of Committees.** The Board may adopt rules for any committee not inconsistent with the provisions of these Bylaws.

## **ARTICLE 8 OFFICERS**

8.1 **Officers.** The Corporation shall have the following Officers: President, Vice President, Secretary, and Treasurer, and such other Officers as the Board may designate by resolution and appoint pursuant to Section 8.3. Officers need not be Directors. One person may hold two or more offices, except no person serving as Secretary, Treasurer, or Chief Financial Officer may serve concurrently as President or Chair of the Board.

8.2 **Election of Officers.** The Officers of the Corporation, except those appointed in accordance with the provisions of Section 8.3 of these Bylaws, shall be chosen by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of any Officer under a contract of employment.

8.3 **Subordinate Officers.** The Board may appoint, and may authorize the President or any other Officer to appoint, any other Officers that the business of the Corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified by the Bylaws or determined from time to time by the Board.

8.4 **Removal of Officers.** Subject to rights, if any, under any contract of employment, any Officer may be removed, with or without cause, by the Board, at any regular or special meeting of the Board, or, except in the case of an Officer chosen by the Board, by an Officer on whom such power of removal has been conferred by the Board.

8.5 **Resignation of Officers.** Any Officer may resign at any time by giving written notice to the Board, the President, or the Secretary of the Corporation. Any resignation shall take

effect at the date of 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. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract to which the Officer is a party.

8.6 **Vacancies in Office.** A vacancy in any Office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular appointments to that Office.

### 8.7 **Responsibilities of Officers**

(a) *President.* The President shall be the chief executive officer of the Corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws. The President shall be responsible to the Board, shall see that the Board is advised on all significant matters of the Corporation's business, and shall see that all orders and resolutions of the Board are carried into effect. The President shall be empowered to act, speak for, or otherwise represent the Corporation between meetings of the Board within the boundaries of policies and purposes established by the Board and as set forth in the Articles of Incorporation and these Bylaws. The President shall be responsible for keeping the Board informed at all times of staff performance as related to program objectives, and for implementing any personnel policies adopted by the Board.

(b) *Vice President.* In the absence or disability of the President, the Vice President, if any, shall perform all duties of the President, and when so acting shall have all of the powers of, and be subject to all of the restrictions upon, the President. The Vice President shall have such other powers as may be prescribed, from time to time, by the Board of Directors or the Bylaws, and the President, or chairman of the Board, if any.

(c) *Secretary.* The Secretary shall attend to the following:

(i) *Book of Minutes.* The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of minutes of all meetings and actions of Directors and committees of Directors, with the time and place of holding regular and special meetings, and if special, how authorized, the notice given, the names of those present at such meetings, and the proceedings of such meetings.

(ii) *Notices and Other Duties.* The Secretary shall give, or cause to be given, notice of all meetings of the Board required by the Bylaws to be given. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(d) *Treasurer.* The Treasurer shall be the chief financial officer of the Corporation and shall attend to the following:

(i) *Books of Account.* The Treasurer shall 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 Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times.

(ii) *Deposit and Disbursement of Money and Valuables.* The Treasurer shall: deposit all money and other valuables in the name and to the credit of the Corporation with such depositors as may be designated by the Board; disburse funds of the Corporation as may be ordered by the Board; render to the President and Directors, whenever they request it, an account of all financial transactions and of the financial condition of the Corporation; and have other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(iii) *Bond.* If required by the Board, the Treasurer shall give the Corporation a bond in the amount and with the surety specified by the Board for the faithful performance of the duties of the office and for restoration to the Corporation of all its books, papers, vouchers, money, and other property of every kind in their possession or under their control on their death, resignation, retirement, or removal from office.

## ARTICLE 9 RECORDS AND REPORTS

9.1 **Maintenance of Articles and Bylaws.** The Corporation shall keep at its principal executive office the original or a copy of its Articles and Bylaws as amended to date.

9.2 **Maintenance of Other Corporate Records.** The accounting books, records, and minutes of the proceedings of the Board and any committee(s) of the Board shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal executive office of the Corporation. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept in either written or typed form or in any other form capable of being converted into written, typed, or printed form.

9.3 **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the Corporation and each of its subsidiary corporations. 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.

9.4 **Annual Report.** Within 120 days after the end of the Corporation's fiscal year, the President shall furnish or cause to be furnished a written report to all directors containing the following information:

- (a) The assets and liabilities of the Corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities during the fiscal year;
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted for particular purposes, for the fiscal year;
- (d) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year;
- (e) Any transaction during the previous fiscal year involving more than \$50,000 in which the Corporation (or its parent or subsidiaries, if any) was a party and in which any director

or officer of the Corporation has a direct or indirect financial interest, or any of a number of such transactions in which the same person had a direct or indirect financial interest and which transactions in the aggregate involved more than \$50,000; and

(f) The amount and circumstances of any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any director or officer of the Corporation pursuant to Article 10 of these Bylaws, unless such indemnification has already been approved pursuant to Section 10.1.

For each transaction, the report must disclose the names of the interested persons involved in such transaction and state such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the value of such interest.

The report shall be accompanied by any report of independent accountants or, if there is no such report, by the certificate of an authorized officer of this Corporation that such statements were prepared without an audit from the books and records of this Corporation. Such report may be furnished to the directors by electronic transmission in accordance with Section 18.2 of these Bylaws.

**9.5 Financial Audit.** The Corporation shall obtain a financial audit for any tax year in which it receives or accrues gross revenue of \$2 million or more, excluding grant or contract income from any governmental entity for which the governmental entity requires an accounting. Any audited financial statements obtained by the Corporation, whether or not required by law, shall be made available for inspection by the Attorney General and by the general public within nine (9) months after the close of the fiscal year to which the statements relate. For three (3) years, such statements shall be made available (a) at the Corporation's principal, regional, and district offices during regular business hours, and (b) either by mailing a copy to any person who so requests in person or in writing, or by posting them on the Corporation's website.

## **ARTICLE 10** **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

**10.1 Right to Indemnification.** This Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any action or proceeding by reason of the fact that such person is or was an Officer, Director, or agent of this Corporation, or is or was serving at the request of this Corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, or other enterprise, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding, to the fullest extent permitted under the California Nonprofit Corporation Law.

In determining whether indemnification is available to the Director, Officer, or agent of this Corporation under California law, the determination as to whether the applicable standard of conduct set forth in Corporations Code §5238 has been met shall be made by a majority vote of a quorum of Directors who are not parties to the proceeding. If the number of Directors who are not parties to the proceeding is less than two-thirds of the total number of Directors seated at the time the determination is to be made, the determination as to whether the applicable standard of conduct has been met shall be made by the court in which the proceeding is or was pending.

The indemnification provided herein is not deemed exclusive of any other rights to which those indemnified may be entitled, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

10.2 **Insurance**. This Corporation has the power and shall use its best efforts to purchase and maintain insurance on behalf of any Director, Officer, or agent of the Corporation, against any liability asserted against or incurred by the Director, Officer, or agent in any such capacity or arising out of the Director's, Officer's, or agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under Section 10.1 of these Bylaws; provided, however, that the Corporation has no power to purchase and maintain such insurance to indemnify any Director, Officer, or agent of the Corporation for any self-dealing transaction, as described in Corporations Code §5233.

## **ARTICLE 11 CONTRACTS AND LOANS WITH DIRECTORS AND OFFICERS**

11.1 **Contracts with Directors and Officers**. No Director or Officer of this Corporation, nor any other corporation, firm, association, or other entity in which one or more of this Corporation's Directors or Officers are directors or have a material financial interest, may be interested, directly or indirectly, in any contract or other transaction with this Corporation.

11.2 **Loans to Directors and Officers**. The Corporation may not make any loan of money or property to or guarantee the obligation of any Director or Officer.

## **ARTICLE 12 FISCAL YEAR**

12.1 **Fiscal Year**. The fiscal year of the Corporation shall end on June 30.

## **ARTICLE 13 AMENDMENTS**

13.1 **Amendments**. These Bylaws may be adopted, amended, or repealed by a majority vote of the entire Board; provided, however, that amendment or repeal of Section 6.2 or this Article 13 shall require the unanimous approval of the Board.

## **ARTICLE 14 MEMBERS**

14.1 **Members**. This Corporation may not have voting members within the meaning of the California Nonprofit Corporation Law.

## **ARTICLE 15 CONFLICT OF INTEREST/SELF-DEALING**

15.1 **Self-Dealing**. Prior to conducting a business session at a meeting of the Board, Board members shall disclose and discuss their individual conflicts or potential conflicts and that

of other members of the Board. Actual conflicts shall be subject to applicable federal and state laws. In the exercise of voting rights by members of the Board, no individual shall vote on any issue, motion, or resolution which directly or indirectly inures to his or her benefit financially or with respect to which he or she has any other conflict of interest. Board members shall adhere to the Conflict of Interest Policy enacted pursuant to Section 6.16 of these Bylaws.

## **ARTICLE 16** **EMERGENCY PROVISIONS**

**16.1 Emergency.** The emergency provisions of this section are adopted in accordance with Corporations Code §5151(g). Notwithstanding anything to the contrary herein, this section applies solely during an emergency, which is the limited period of time during which a quorum cannot be readily convened for action as a result of the following events or circumstances until the event or circumstance has subsided or ended and a quorum can be readily convened in accordance with the notice and quorum requirements in Sections 6.9 and 6.11 of these Bylaws:

- (a) A natural catastrophe, including, but not limited to, a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or regardless of cause, any fire, flood, or explosion;
- (b) An attack on this state or nation by an enemy of the United States of America, or on receipt by this state of a warning from the federal government indicating that an enemy attack is probable or imminent;
- (c) An act of terrorism or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government function, or population, including, but not limited to, mass evacuations; or
- (d) A state of emergency proclaimed by the governor of the state in which one or more Directors are resident, or by the President of the United States.

**16.1.1 *Emergency Actions.*** During an emergency, the board may

- (a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency;
- (b) Relocate the principal office or authorize the officers to do so;
- (c) Give notice to a director or directors in any practicable manner under the circumstances, including, but not limited to, by publication and radio, when notice of a meeting of the board cannot be given to that director or directors in the manner prescribed by Section 5.9 of these Bylaws; and
- (d) Deem that one or more officers present at a board meeting is a director, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

During an emergency the board may not take any action that is not in the Corporation's ordinary course of business. Any actions taken in good faith during an emergency under this section may not be used to impose liability on a director, officer, employee, or agent.

## ARTICLE 17

### CONSTRUCTION AND DEFINITIONS

17.1 **Construction and Definitions.** Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, and the plural number includes the singular.

17.2 **Electronic Transmission.** Subject to any guidelines and procedures that the Board may adopt from time to time, the terms “**written**” and “**in writing**” as used in these Bylaws include any form of recorded message in the English language capable of comprehension by ordinary visual means and may include electronic transmissions, such as fax or email, provided (i) for electronic transmissions *from* the Corporation, the Corporation has obtained an unrevoked written consent from the recipient to the use of such means of communication; (ii) for electronic transmissions *to* the Corporation, the Corporation has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (iii) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible tangible form.

## **CERTIFICATE OF SECRETARY**

I, the undersigned, the duly elected Secretary of Pass Water Agency Foundation, a California nonprofit public benefit corporation, do hereby certify:

That the foregoing Bylaws consisting of twelve (12) pages were adopted as the Bylaws of the Corporation by the Directors of the Corporation on May 13<sup>th</sup>, 2024, and the same do now constitute the Bylaws of said Corporation.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name this May 13, 2024.

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Secretary