MEMORANDUM OF AGREEMENT BETWEEN THE SANTA MONICA BAY RESTORATION COMMISSION AND THE BAY FOUNDATION REGARDING THE THE SANTA MONICA BAY NATIONAL ESTUARY PROGRAM (As amended April 19, 2018)

I. INTRODUCTION

The federal Clean Water Act authorizes the United States Environmental Protection Agency (U.S. EPA), upon nomination of a state or on its own initiative, to select an estuary to be part of the National Estuary Program and to develop and approve conservation and management plans for each estuary that is part of the Program. (Clean Water Act §320.) The National Estuary Program is designed to promote collaborative watershed-based partnerships in order to develop and implement a comprehensive conservation and management plan that addresses the range of environmental problems facing the estuary, while recognizing and balancing the needs of the local community.

In 1988, the State of California and U.S. EPA established the Santa Monica Bay Restoration Project (Project) as a National Estuary Program under the Clean Water Act. The Project was designated by U.S. EPA as an agency to plan for the Santa Monica Bay's restoration and to oversee implementation of the conservation and management plan. In 1995, the Project finalized the Santa Monica Bay Restoration Plan (Bay Restoration Plan; also known as the Comprehensive Conservation and Management Plan), which defined the priority problems facing Santa Monica Bay and the actions necessary to address them.

In 2000, the State of California created within the State Water Resources Control Board (State Water Board) the Project. State law required that the Secretary of the California Environmental Protection Agency, in consultation with the Secretary of the Resources Agency and the Project, to make recommendations for measures to coordinate state policies to restore Santa Monica Bay. Enactment of legislation and development of a non-regulatory, locally based state entity to facilitate coordination of state programs on behalf of Santa Monica Bay was recommended.

In 2002, the State of California renamed the Project as the Santa Monica Bay Restoration Commission (Commission). The law states:

> "The Santa Monica Bay Restoration Project is hereby renamed the Santa Monica Bay Restoration Commission. The commission shall independently execute the duties described in this section, and the State Water Resources Control Board shall provide administrative services to the commission." (Cal. Pub. Res. Code§ 30988.2(a).)

The 2002 state law creating the Commission required the development of a Memorandum of Understanding (MOU) between state and federal agencies to ensure the coordination of state programs affecting Santa Monica Bay, that delineates the authority of the Commission and its governance structure with respect to the implementation of those state programs, and that prescribes the Commission's membership. (Cal. Pub. Res. Code §30988.2(b).)

The state law also created in the state treasury the Santa Monica Bay Restoration Account and authorized moneys in the account to be expended, upon appropriation by the Legislature, to support the activities of the Commission. (Cal. Pub. Res. Code§ 30988.2(d)(l).) No moneys have been appropriated by the Legislature to date to support the activities of the Commission. The Clean Water Act authorizes U.S. EPA to make grants to agencies and entities, including nonprofit private entities, to pay for activities necessary for the development and implementation of the conservation and management plans. (Clean Water Act §320(g).) U.S. EPA has made grants to The Bay Foundation (Foundation) under the Clean Water Act to pay for activities to develop and implement the Bay Restoration Plan. The Commission and the Foundation are partners in the Santa Monica Bay Estuary Program, which is one of 28 entities that comprise the National Estuary Program established pursuant to Section 320 of the Clean Water Act.

II. PURPOSE OF THIS MEMORANDUM OF AGREEMENT

The purpose of this Memorandum of Agreement (MOA) is to describe the roles and responsibilities of the Commission and Foundation in the development and implementation of the Bay Restoration Plan and to clarify the fiscal relationship between the Commission and the Foundation.

This MOA does not alter existing law, nor does it place additional roles or responsibilities on either the Commission or the Foundation than each already maintains under existing law.

III. THE SANTA MONICA BAY RESTORATION COMMISSION

The Commission is a non-regulatory, locally based state government entity established to monitor, assess, coordinate, and advise all state programs, and oversee funding that affects the beneficial uses, restoration, and enhancement of the Santa Monica Bay and its watershed. (Cal. Pub. Res. Code §30988(d).) Its membership includes federal, state and local public agency officials and employees and representatives of other stakeholder interests. The enabling statute provides that governance structure shall be set forth in the MOU. (Cal. Pub. Res. Code§ 30988.2(b)(l).) The MOU was adopted in 2003 and has

been periodically updated since then. The Commission is composed of the Governing Board, the Watershed Advisory Council, and a Technical Advisory Committee. The Governing Board is the key decision-making authority of the Commission. The Commission is the policy-making deliberative body of the Santa Monica Bay Estuary Program.

Implementation of the Bay Restoration Plan, approved by the State of California and the U.S. EPA in 1995, is a primary mission of the Commission.

The Commission has the authority to do all of the following:

(1) Request and receive federal, state, local, and private funds from any source, and expend those moneys for the restoration and enhancement of Santa Monica Bay and its watershed.

(2) Award and administer grants for the restoration and enhancement of Santa Monica Bay and its watershed.

(3) Enter into contracts and joint powers authority agreements, as necessary, to carry out the purposes of the commission.

(4) Monitor, assess, and coordinate activities among federal, state, and local agencies and, where appropriate, private firms, to restore and enhance Santa Monica Bay and its watershed.

(Cal. Pub. Res. Code§ 30988.2(c)(l-4).)

To date, the Commission has not directly received any state, federal, or private funding. To carry out its mission to implement the Bay Restoration Plan and to meet the requirements and goals of the National Estuary Program, the Commission relies on services provided by other entities. The State Water Board provides administrative services to the Commission in the form of staff, office space, and other administrative services, such as websites, mail, and email. (Cal. Pub. Res. Code §30988.2(a).) The Foundation provides staff, and administrative services to the Commission that are funded by grants from U.S. EPA and other funding sources, including state grants, donations, and other sources.

The Commission, through its Governing Board, makes recommendations to other state, federal, and local agencies to provide grants to entities to carry out activities to implement the Bay Restoration Plan.

The Governing Board selects projects that may be funded through state bond programs (such as Propositions 12, 50, and 84) and makes recommendations to the actual funding agencies regarding those projects. The Commission serves as an advisory body to those partner entities that issue and manage the bond funds for projects within the Santa Monica Bay Watershed.

IV. THE BAY FOUNDATION

The Bay Foundation (Foundation) is a non-profit U.S. Internal Revenue Code section 501(c)(3) corporation. Formed in 1991, the Foundation raises and expends funds for research, education, planning, cleanup efforts, and other priorities identified in the Bay Restoration Plan. The Foundation Board of Directors is separate from the Commission. It is diverse and comprised of community members, local government and agency representatives. The Foundation supports the work of the Commission, with a focus on obtaining and expending funds not otherwise available to the Commission.

The Foundation receives some of its funding in the form of a U.S. EPA grant pursuant to Clean Water Act section 320 (33 U.S.C. §1330) to implement the Bay Restoration Plan (also known as the Comprehensive Conservation and Management Plan). The Foundation also receives important grants and donations from other entities to support the Foundation and its activities.
U.S. EPA oversees the grant, including conducting regular audits and oversight.

All funding from the U.S. EPA for purposes of the National Estuary Program is provided to the Foundation, which maintains staff and provides administrative services to implement the Bay Restoration Plan.

The Foundation Board of Directors establishes Foundation administrative and personnel policies and oversees the disposition of funds received by the Foundation.

OTHER PARTNERS:

The Commission coordinates activities and oversees funding to implement the Bay Restoration Plan. When the Commission's Governing Board approves recommendations for project funding through state bond funds or grants, the recommendations are forwarded to state agency partners, who review and approve the requests according to their established public processes. Those state agencies manage their grant programs and oversee the use of such funds.

In consideration of the above premises, the parties hereto agree as follows:

The Commission agrees to:

1. Develop and update the Bay Restoration Plan.
2. Develop and implement projects that fulfill the goals of the Bay Restoration Plan.
3. Seek funding and recommend issuance of grants to implement the Bay Restoration Plan.

The Foundation agrees to:

1. Carry out the Annual Work Plan approved by U.S. EPA, including providing staff and services to the Commission.
2. Comply with all legal requirements of a non-profit entity, pursuant to U.S. Internal Revenue Code section 501 (c)(3).
3. Disclose fiscal documents to the Commission and the public to the extent required by law.

The Commission and Foundation recognize and further agree that the above-enumerated actions do not limit their ability to carry out other duties or activities that advance the purposes of this Memorandum of Agreement. The Commission and Foundation also recognize and agree to ensure that records created or used by the Commission or Foundation pursuant to implementation of the Bay Restoration Plan or Annual Work Plans are treated as public records and subject to disclosure as may be required by law.

Francine Diamond

Chair, Santa Monica Bay Restoration Commission Governing Board

11/15/18

Date

Laurie Newman

President, The Bay Foundation Board of Directors

8/17/18

Date