

MEMORANDUM OF UNDERSTANDING

**Development of a Groundwater Sustainability Plan
for the East Contra Costa County Portion of the
Tracy Subbasin, (DWR Basin 5-22.15, San Joaquin Valley)**

This Memorandum of Understanding for the Development of a Groundwater Sustainability Plan for the East Contra Costa County portion of the Tracy Subbasin, (DWR Basin 5-22.15, San Joaquin Valley) (“MOU”) is entered into and effective this ____ day of _____, 2017 (“Effective Date”) by and among the City of Antioch (“Antioch”), City of Brentwood (“Brentwood”), Byron-Bethany Irrigation District (“BBID”), Contra Costa Water District (“CCWD”), Contra Costa County (“County”), Diablo Water District (“DWD”), East Contra Costa Irrigation District (“ECCID”), and Discovery Bay Community Services District (“Discovery Bay”). Each of the foregoing parties to this MOU is sometimes referred to herein as a “Party” and are collectively sometimes referred to as the “Parties.”

Recitals

A. In September 2014, the California Legislature enacted the Sustainable Groundwater Management Act of 2014 (“SGMA”), which established a statewide framework for the sustainable management of groundwater resources. That framework focuses on granting new authorities and responsibility to local agencies while holding those agencies accountable. The framework also provides for state intervention where a local agency fails to develop a groundwater sustainability plan in a timely manner.

Exhibit D

23 B. The Tracy Subbasin (“**Basin**”) is referred to as DWR Basin 5-22.15, San Joaquin Valley
24 and is shown on the map attached hereto as Exhibit A and incorporated herein by reference as if
25 set forth in full. The Tracy Subbasin is located in eastern Contra Costa County and in San
26 Joaquin County, and Alameda County. The portion of the Basin within Contra Costa County is
27 referred to herein as the “**East CC Basin**,” the portion of the Basin within San Joaquin County is
28 referred to herein as the “**SJ Basin**,” and the portion of the Basin within Alameda County is
29 referred to herein as the “**Alameda Basin**.” The Parties collectively overlie all of the East CC
30 Basin.

31 C. Under SGMA, one or more local agencies may form a groundwater sustainability agency
32 (“**GSA**”), by memorandum of agreement, joint exercise of powers agreement, or other
33 agreement. (Wat. Code, §§ 10723(a), 10723.6.) The Parties desire for each Party to be the GSA
34 within all or a portion of that Party’s boundary. The Parties further desire to develop a
35 governance structure for the East CC Basin to be considered during development of the
36 groundwater sustainability plan (a “**GSP**”) for the East CC Basin (the “**East CC Basin GSP**”).
37 The Parties further desire to resolve areas of jurisdictional overlap so that no two Parties serve as
38 GSAs over the same area. The purpose of this MOU is to coordinate the Parties’ activities
39 related to each Party becoming a GSA, development of the East CC Basin GSP, and each Party’s
40 future consideration of whether to adopt a GSP for the East CC Basin.

41 D. The Parties wish to collaborate in an effort to ensure sustainable groundwater
42 management for the East CC Basin, manage the groundwater basin as efficiently as practicable
43 balancing the financial resources of the agencies with the principles of effective and safe
44 groundwater management, while retaining groundwater management authority within their
45 respective jurisdictions. The Parties desire to share responsibility for East CC Basin

46 management under SGMA. The Parties recognize that the key to success in this effort will be
47 the coordination of activities under SGMA, and the collaborative development of the East CC
48 Basin GSP, which each Party may consider adopting and implementing within its GSA
49 management area. The Parties also will need to confer with GSAs for the SJ Basin and Alameda
50 Basin regarding the terms of an agreement that coordinates the East CC Basin GSP with the
51 GSP(s) of the GSA(s) for the SJ Basin and the Alameda Basin.

52 E. The Basin has been designated by the California Department of Water Resources
53 (“DWR”) as a medium-priority groundwater basin, which, under the terms of SGMA, means that
54 the Parties must submit an East CC Basin GSP to DWR by January 31, 2022.

55 F. The Parties wish to memorialize their commitments by means of this MOU.

56 Understandings

57 1. *Term.* The term of this MOU begins on the Effective Date, which shall occur upon
58 execution of this MOU by all eight of the parties, and this MOU shall remain in full force
59 and effect until the earliest of the following events: (i) January 31, 2022, (ii) the date
60 upon which the Parties submit an East CC Basin GSP to DWR, or (iii) the date upon
61 which the Parties then party to the MOU execute a document jointly terminating the
62 provisions of this MOU. An individual Party’s obligations under this MOU terminate
63 when the Party withdraws from the MOU in accordance with Section 4.

64 2. *Development of the GSP*

65 a. *Parties to Become GSAs.* Each Party, except Contra Costa Water District, agrees
66 to take the necessary actions to become the GSA for all or a portion of that area of
67 the East CC Basin that it overlies, as shown on Exhibit B, attached hereto, no later

68 than April 1, 2017, or shortly thereafter. The Parties shall jointly submit the
69 Parties' individual elections to become GSAs and this MOU to DWR prior to
70 April 1, 2017, or shortly thereafter. The Parties further agree to develop a
71 governance structure for the East CC Basin to be considered during development
72 of the East CC Basin GSP

73 b. *Single GSP.* The Parties will collaborate to develop a single East CC Basin GSP
74 that, at a minimum, satisfies the GSP requirements in the SGMA and the
75 regulations promulgated under the SGMA. The East CC Basin GSP must include
76 an analysis of implementation costs and revenue sources, and must include an
77 analysis of governance structure options. The East CC Basin GSP shall be drafted
78 in a manner that preserves, and does not purport to supersede, the land use
79 authority of each city or county, or the statutory authority of each special district,
80 that is a party to this MOU. The East CC Basin GSP must include provisions for
81 consultation between a GSA and any public agency that the GSA overlaps before
82 the GSA takes any action that may relate to that public agency's exercise of its
83 statutory authority. Unless the Parties later agree otherwise, it is intended that the
84 East CC Basin GSP will be implemented by each Party within its respective GSA
85 management area, and that the Parties will coordinate their implementation of the
86 East CC Basin GSP. The Parties will endeavor to negotiate terms of an
87 agreement with the GSA(s) for the SJ Basin and the Alameda Basin, to ensure
88 that the East CC Basin, SJ Basin, and Alameda Basin GSAs' GSP(s) are
89 coordinated consistent with the SGMA. If the terms of that MOU are negotiated,
90 the Parties will ask their governing bodies to consider approving the MOU.

91 c. *Overlap Areas.* Solely for the purpose of complying with the SGMA requirement
92 that GSA management areas not overlap, the Parties agree that there are no
93 overlapping GSA management areas, as shown on Exhibit B. This MOU does not
94 purport to limit any Party’s legal authority to utilize and deliver groundwater or
95 surface water throughout its jurisdictional boundary (as may be amended from
96 time-to-time), which may include area outside of a Party’s management area
97 shown on Exhibit B.

98 d. *Cooperation of Efforts.* The Parties will designate staff who will endeavor to
99 meet monthly or more frequently if necessary to develop the terms of the East CC
100 Basin GSP in an expeditious manner.

101 e. *Financing .*
102 (1) The outside technical/consultant costs associated with developing the East CC
103 Basin GSP (“GSP Costs”) will be shared equally among the Parties. However,
104 the County, at its sole discretion, may satisfy its share of GSP Costs by providing
105 in-kind services, which may include mapping, graphics, and database
106 management services.

107 (2) The \$118,300 contract with Luhdorff and Scalmanini dated April 1, 2015, for
108 SGMA technical support has been paid one-fifth each by BBID, Brentwood,
109 DWD, ECCID and Discovery Bay. Antioch and CCWD agree that within 60 days
110 of the effective date of this MOU, they shall reimburse BBID, Brentwood, DWD,
111 ECCID and Discovery Bay each \$3,380 in order to reallocate the \$118,300
112 contract cost into one-seventh portions.

113 f. *Approval of the GSP.* The Parties agree that the East CC Basin GSP will become
114 effective for each Party when all of the Parties adopt the East CC Basin GSP.

115 3. *Savings Provisions.* This MOU shall not operate to validate or invalidate, modify or
116 affect any Party's water rights or any Party's obligations under any agreement, contract
117 or memorandum of understanding/agreement entered into prior to the effective date of
118 this MOU. Nothing in this MOU shall operate to convey any new right to groundwater to
119 any Party. Each Party to this MOU reserves any and all claims and causes of action
120 respecting its water rights and/or any agreement, contract or memorandum of
121 understanding/agreement; any and all defenses against any water rights claims or claims
122 under any agreement, contract or memorandum of understanding/agreement.

123 4. *Withdrawal.* Any Party shall have the ability to withdraw from this MOU by providing
124 sixty (60) days written notice of its intention to withdraw. Said notice shall be given to
125 each of the other Parties.

126 a. A Party shall not be fiscally liable for expenditures following its withdrawal from
127 this MOU, provided that the Party provides written notice at least sixty (60) days
128 prior to the effective date of the withdrawal. A withdrawal shall not terminate, or
129 relieve the withdrawing Party from, any express contractual obligation to another
130 Party to to this MOU or to any third party incurred or encumbered prior to the
131 withdrawal.

132 b. In the event of a Party's withdrawal, this MOU shall continue in full force and
133 effect among the remaining Parties. Further, a Party's withdrawal from this MOU
134 does not, without further action by that Party, have any effect on the withdrawing
135 Party's decision to be a GSA. A withdrawing Party shall coordinate the

136 development of its groundwater sustainability plan with the other Parties to this
137 MOU.

138 5. *CEQA*. Nothing in this MOU commits any Party to undertake any future discretionary
139 actions referenced in this MOU, including but not limited to electing to become a GSA
140 and adopting the East CC Basin GSP. Each Party, as a lead agency under the California
141 Environmental Quality Act (“CEQA”), shall be responsible for complying with all
142 obligations under CEQA that may apply to the Party’s future discretionary actions
143 pursuant to this MOU, including electing to become a GSA and adopting the East CC
144 Basin GSP.

145 6. *Books and Records*. Each Party shall have access to and the right to examine any of the
146 other Party’s pertinent books, documents, papers or other records (including, without
147 limitation, records contained on electronic media) relating to the performance of that
148 Party’s obligations pursuant to this Agreement, *providing that* nothing in this paragraph
149 shall be construed to operate as a waiver of any applicable privilege and *provided further*
150 that nothing in this paragraph shall be construed to give either Party rights to inspect the
151 other Party’s records in excess of the rights contained in the California Public Records
152 Act.

153 7. *General Provisions*

154 a. *Authority*. Each signatory of this MOU represents that s/he is authorized to
155 execute this MOU on behalf of the Party for which s/he signs. Each Party
156 represents that it has legal authority to enter into this MOU and to perform all
157 obligations under this MOU.

180 severable. However, in lieu thereof, there shall be added a provision as similar in
181 terms to such illegal, invalid or unenforceable provision as may be possible and
182 be legal, valid and enforceable.

183 h. *Waivers.* Waiver of any breach or default hereunder shall not constitute a
184 continuing waiver or a waiver of any subsequent breach either of the same or of
185 another provision of this MOU and forbearance to enforce one or more of the
186 remedies provided in this MOU shall not be deemed to be a waiver of that
187 remedy.

188 i. *Necessary Actions.* Each Party agrees to execute and deliver additional
189 documents and instruments and to take any additional actions as may be
190 reasonably required to carry out the purposes of this MOU.

191 j. *Compliance with Law.* In performing their respective obligations under this
192 MOU, the Parties shall comply with and conform to all applicable laws, rules,
193 regulations, and ordinances.

194 k. *Liability.* Each Party agrees to indemnify and hold every other Party to the
195 Agreement, and their officers, agents and employees, free and harmless from any
196 costs or liability imposed upon any other Party, officers, agents, or employees
197 arising out of any acts or omissions of its own officers, agents or employees.

198 l. *Third Party Beneficiaries.* This MOU shall not create any right or interest in any
199 non-Party or in any member of the public as a third party beneficiary.

200 m. *Counterparts.* This MOU may be executed in one or more counterparts, each of
201 which shall be deemed to be an original, but all of which together shall constitute
202 but one and the same instrument.

203 n. *Notices.* All notices, requests, demands or other communications required or
204 permitted under this MOU shall be in writing unless provided otherwise in this
205 MOU and shall be deemed to have been duly given and received on: (i) the date
206 of service if served personally or served by electronic mail or facsimile
207 transmission on the Party to whom notice is to be given at the address(es)
208 provided below, (ii) on the first day after mailing, if mailed by Federal Express,
209 U.S. Express Mail, or other similar overnight courier service, postage prepaid, and
210 addressed as provided below, or (iii) on the third day after mailing if mailed to the
211 Party to whom notice is to be given by first class mail, registered or certified,
212 postage prepaid, addressed as follows:

213

214 **City of Antioch**

215 City Manager

216 P.O. Box 5007

217 Antioch, CA 94531-5007

218 Telephone: (925) 779-7011

219 Facsimile: (925) 779-7003

220

221

222

223 **City Of Brentwood**
224 City Manager
225 150 City Park Way
226 Brentwood, CA 94513
227 Phone: (925) 516-5400
228 Fax: (925) 516-5441

229
230 **Byron Bethany Irrigation District**
231 General Manager
232 7995 Bruns Road
233 Byron, CA 94514-1625
234 Telephone: (209) 835-0375
235 Facsimile: (209) 835-2869

236
237
238 **Contra Costa Water District**
239 General Manager
240 Contra Costa Water District
241 P. O. Box H20
242 Concord, CA 94524
243 Phone (925) 688-8032
244 Fax (925) 688-8197

245
246

247

248

Contra Costa County

249

Director, Department of Conservation and Development

250

30 Muir Road

251

Martinez, CA 94553

252

Phone (925) 674-7866

253

254

Diablo Water District

255

Attn: General Manager

256

P.O. Box 127

257

87 Carol Lane

258

Oakley, CA 94561

259

Phone: (925) 625-3798

260

Fax: (925) 625-0814

261

262

263

East Contra Costa Irrigation District

264

General Manager

265

1711 Sellers Avenue

266

Brentwood, CA 94513

267

Phone: (925) 634-3544

268

Fax: (925) 634-0897

269

270

271 **Discovery Bay Community Services District**

272 C/O: Mike Davies, General Manager

273 1800 Willow Lake Road

274 Discovery Bay, CA 94505-9376

275 Telephone: (925) 634-1131

276 Facsimile: (925) 513-2705

277

278 8. Signatures. The Following signatures attest each Party’s agreement hereto.

279 **CITY OF ANTIOCH**

280

281 By: _____ Date: _____

282 Ron Bernal, Interim City Manager

283 APPROVED AS TO FORM:

284

285 By: _____ Date: _____

286 Michael Vigilia, City Attorney

287

288 **CITY OF BRENTWOOD**

289

290 By: _____ Date: _____

291 Gustavo “Gus” Vina, City Manager

292

293 APPROVED AS TO FORM:

294

295 By: _____ Date: _____

296 Damien Brower, City Attorney

297

298 **BYRON BETHANY IRRIGATION DISTRICT**

299

300 By: _____

Date: _____

301 Rick Gilmore, General Manager

302

303 **CONTRA COSTA WATER DISTRICT**

304

305 By: _____

Date: _____

306 Jerry Brown, General Manager

307

308 APPROVED AS TO FORM:

309

310 By: _____

Date: _____

311 District Legal Counsel

312

313 **CONTRA COSTA COUNTY**

314

315 By: _____

Date: _____

316 John Kopchik, Director of

317 Conservation and Development

318 APPROVED AS TO FORM:

319 Sharon L. Anderson, County Counsel

320

321 By: _____

Date: _____

322 Deputy County Counsel

323

324 **DIABLO WATER DISTRICT**

325

326 By: _____

Date: _____

327 Mike Yeraka, General Manager

328

329 **EAST CONTRA COSTA IRRIGATION DISTRICT**

330

331 By: _____ Date: _____

332 Patricia A. Corey, General Manager

333

334 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

335

336 By: _____ Date: _____

337 Michael R. Davies, General Manager