

1 **FIRST AMENDMENT**

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

6 This First Amendment to the Memorandum of Understanding (“**MOU**”) for the
7 Development of a Groundwater Sustainability Plan for the East Contra Costa County Portion of
8 the Tracy Subbasin, (DWR Basin 5-22.15, San Joaquin Valley) (“**First Amendment**”) is entered
9 into and effective this ____day of _____, 2017, by and among the City of Antioch (“**Antioch**”),
10 the City of Brentwood (“**Brentwood**”), Byron-Bethany Irrigation District (“**BBID**”), Contra
11 Costa Water District (“**CCWD**”), Contra Costa County (“**County**”), Diablo Water District
12 (“**DWD**”), East Contra Costa Irrigation District (“**ECCID**”), and Discovery Bay Community
13 Services District (“**Discovery Bay**”). Each of the parties to this First Amendment is sometimes
14 referred to as a “**Party**” and are collectively sometimes referred to as the “**Parties.**”
15

16 **Recitals**

17 A. On May 9, 2017, the Parties entered into the MOU in order to develop a
18 groundwater sustainability plan (“**GSP**”) for the East Contra Costa County Portion of the Tracy
19 Subbasin (the “**Basin**”).
20

21 B. The MOU reflects the Parties’ agreement that the costs of developing the GSP
22 should be split evenly among the Parties.
23

24 C. Previously, Brentwood contracted with Luhdorff and Scalmanini (“**Consultant**”) on behalf of Brentwood, Byron-Bethany Irrigation District, Diablo Water District, East Contra
25 Costa Irrigation District, and Discovery Bay Community Services District for technical work to
26 support compliance with the Sustainable Groundwater Management Act in the East Contra Costa
27 County portion of the Tracy Subbasin. Paragraph 2(e)(2) of the MOU required CCWD and
28 Antioch to make certain payments to BBID, Brentwood, DWD, ECCID, and Discovery Bay in
29 order to reallocate costs incurred under a contract with Consultant dated April 1, 2015. CCWD
30 and Antioch have made those payments.
31
32

33 D. The Parties now wish to embark on preparing the GSP and wish to share the cost
34 of that effort equally as contemplated in the MOU. Moreover, the Parties desire for Brentwood,
35 again, to serve as the contracting Party with Consultant on behalf of all of the other Parties.

36 E. The Parties wish to memorialize their mutual agreements by means of this First
37 Amendment.

38 Agreements

39 40 1. *Contracting with Consultant & Cost Share Among the Parties*

41
42 As of the effective date of this First Amendment, Paragraph 2(e) in the MOU is deleted in
43 its entirety and replaced with new Paragraph 2(e) to read:

44
45 e. Contracting with Consultant & Cost Share Among the Parties.

46
47 (1) *Contracting with Consultant.*

48
49 A. Contract for the Preparation of the GSP. Brentwood, acting on behalf of the other
50 Parties, shall promptly enter into an agreement with Luhdorff and Scalmanini (“**Consultant**”) for
51 the preparation of the GSP for the Basin.

52
53 B. Annual Budgets and Scopes of Work.

54
55 i. Fiscal Year 2017/18. Not later than December 1, 2017, Brentwood shall
56 obtain a proposed budget and scope from Consultant for services during Fiscal Year (July 1 –
57 June 30) 2017/18. Brentwood shall promptly provide the proposed budget and scope to the other
58 Parties and shall give the other Parties at least ten business days to review the budget and scope
59 and provide written comments to Brentwood. Such comments shall include each Party’s
60 determination as to whether it is willing to pay its share of the cost of the work, as identified in
61 Paragraph 2(e)(2) below. If, after ten business days, no Party has indicated in writing that it is
62 unwilling to pay its share of the cost of the work, the Consultant’s budget and scope for Fiscal

Year 2017/18 shall be deemed approved and Brentwood shall take such actions as may be necessary to cause Consultant to perform the services included in that budget and scope of work. In the event that one or more Parties object to the proposed budget and scope of work, the Parties shall promptly meet and confer to determine an appropriate course of action.

ii. Subsequent Fiscal Years. Not later than each February 15, beginning on February 15, 2018, Brentwood shall obtain a proposed budget and scope from Consultant for services during the upcoming fiscal year. Brentwood shall promptly provide the proposed budget and scope to the other Parties and shall give the other Parties until each March 15 to review the proposed budget and scope, and provide written comments to Brentwood. Such comments shall include each Party's determination as to whether it is willing to pay its share of the cost of such work, as identified in Paragraph 2(e)(2). If, after each March 15, no Party has indicated in writing that it is unwilling to pay its share of the cost of such work, the Consultant's budget and scope for the upcoming fiscal year shall be deemed approved and Brentwood shall take such actions as may be necessary to cause Consultant to perform the services included in that budget and scope of work. In the event that one or more Parties object to the proposed budget and scope of work, the Parties shall promptly meet and confer to determine an appropriate course of action.

C. Payments by Parties to Brentwood. Brentwood shall, upon receipt of Consultant's monthly invoices, pay Consultant for services rendered during the previous month. Brentwood will promptly provide invoices to the other Parties identifying their shares of the cost of the previous month's work and such other Parties shall pay said invoices within 30 days of receipt.

(2) *Cost-Share for East CC Basin GSP.* The costs associated with developing the East CC Basin GSP ("**GSP Costs**"), including but not limited to, any local cost-shares required by state or federal grants, will be shared equally among the Parties.

A. In-Kind Services Provided by County. The County, at its sole discretion, may satisfy its share of GSP Costs by providing in-kind services, which may include but may not be

94 limited to mapping, graphics, and database management services. For Fiscal Year 2017/18, the
95 County will provide written notice to the other Parties by December 1, 2017, stating either that
96 the County will pay its share of GSP Costs during Fiscal Year 2017/18, or that the County will
97 provide in-kind services in lieu of paying its share of GSP Costs during Fiscal Year 2017/18.
98 For each fiscal year following Fiscal Year 2017/18, the County will provide written notice to the
99 other Parties by the March 15 immediately preceding the fiscal year stating either that the
100 County will pay its share of GSP Costs in the fiscal year, or that the County will provide in-kind
101 services in lieu of paying its share of GSP Costs in the fiscal year. In the case of payments to
102 Consultant or other vendors where the County wishes to substitute in-kind services for direct
103 payments, Brentwood shall allocate such invoices equally among the Parties other than the
104 County. Notwithstanding anything to the contrary contained herein, no Party shall be obligated
105 to pay the County for the value of any in-kind services provided by the County, and the value of
106 any in-kind services provided by the County shall only act as a credit towards the County's share
107 of GSP Costs, as more particularly described in Paragraph 2(e)(2)(B).

108 B. Annual Accounting. Brentwood shall prepare an annual accounting by October
109 1, 2018, and by each October 1 thereafter, that shows all GSP Costs for the previous fiscal year
110 and that identifies in-kind services provided by the County and the County's calculation of the
111 value of those in-kind services. By July 30th following the end of a fiscal year, the County will
112 provide Brentwood an accounting of the County's in-kind services during the prior fiscal year,
113 and any carry-over value of in-kind services provided during any fiscal years preceding the prior
114 fiscal year. The value of the County's in-kind services will be calculated based on (1) the then-
115 current fully-burdened hourly rates for County staff time, benefits, and overhead, and (2) the
116 County's actual costs for any materials or supplies required to provide the in-kind services.
117

118 i. Upon written notice to the other Parties no later than 15 days after
119 receiving Brentwood's annual accounting, any Party other than the County may dispute the
120 County's calculation of the value of the in-kind services that the County provided during the
121 fiscal year for which the accounting is prepared, but no Party may challenge the value of in-kind
122 services that were carried over from any fiscal year preceding the fiscal year for which the
123 accounting is prepared. In the event that one or more Parties provide notice of a dispute under

124 this subparagraph, the Parties shall promptly meet and confer in an effort to resolve the dispute
125 to the satisfaction of all Parties. The County's obligation to make any payments to other Parties
126 under Paragraph 2(e)(2)(B)(ii) shall be tolled until the County receives, from each disputing
127 Party, written notice that the dispute has been resolved to the disputing Party's satisfaction.

128
129 ii. Except as expressly provided in Paragraph 2(e)(2)(B)(i), in the event that
130 Brentwood's annual accounting shows that the value of the in-kind services provided by the
131 County during the fiscal year for which the accounting is prepared, plus any carry-over value for
132 in-kind services provided in any preceding fiscal years, is less than the individual contributions
133 of the other Parties during the fiscal year for which the annual accounting is prepared, the
134 County shall provide, by the November 30 following receipt of the annual accounting, payments
135 to each of the other Parties sufficient to equalize the values of the Parties' contributions during
136 the fiscal year for which the accounting is prepared. In the event that Brentwood's annual
137 accounting shows that the value of the in-kind services provided by the County during the fiscal
138 year for which the accounting is prepared, plus any carry-over value for in-kind services
139 provided in any preceding fiscal years, is greater than the individual contributions of the other
140 Parties, Brentwood shall credit the County with the difference and carry over that excess
141 contribution to be credited towards the value of the County's in-kind services provided in the
142 subsequent fiscal year.

143
144 2. *Other Provisions of the MOU Not Affected*

145
146 Except as expressly stated above, no provisions of the MOU shall be modified by the
147 terms of this First Amendment.

148
149
150
151 **CITY OF ANTIOCH**

152
153
154 By: _____
155 Ron Bernal, City Manager

Date: _____

161 APPROVED AS TO FORM:

162
163
164 By: _____
165 Derrek Cole, Interim City Attorney

Date: _____

166
167
168 **CITY OF BRENTWOOD**

169
170
171 By: _____
172 Gustavo "Gus" Vina, City Manager

Date: _____

173
174 APPROVED AS TO FORM:

175
176
177 By: _____
178 Damien Brower, City Attorney

Date: _____

179
180
181 **BYRON BETHANY IRRIGATION DISTRICT**

182
183
184 By: _____
185 Rick Gilmore, General Manager

Date: _____

186
187
188 **CONTRA COSTA WATER DISTRICT**

189
190 By: _____
191 Jerry Brown, General Manager

Date: _____

192
193 APPROVED AS TO FORM:

194
195
196 By: _____
197 District Legal Counsel

Date: _____

198
199
200 **CONTRA COSTA COUNTY**

201
202
203 By: _____
204 John Kopchik, Director of
205 Conservation and Development

Date: _____

207 APPROVED AS TO FORM:
208 Sharon L. Anderson, County Counsel

211 By: _____ Date: _____
212 Deputy County Counsel

213
214
215 **DIABLO WATER DISTRICT**

216
217
218 By: _____ Date: _____
219 Mike Yeraka, General Manager

220
221
222 **EAST CONTRA COSTA IRRIGATION DISTRICT**

223
224
225 By: _____ Date: _____
226 Patricia A. Corey, General Manager

227
228
229 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

230
231
232 By: _____ Date: _____
233 Michael R. Davies, General Manager