

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

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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:

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

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47 (1) *Contracting with Consultant.*

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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.

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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

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

67  
68 ii. Subsequent Fiscal Years. Not later than each February 15, beginning on  
69 February 15, 2018, Brentwood shall obtain a proposed budget and scope from Consultant for  
70 services during the upcoming fiscal year. Brentwood shall promptly provide the proposed  
71 budget and scope to the other Parties and shall give the other Parties until each March 15 to  
72 review the proposed budget and scope, and provide written comments to Brentwood. Such  
73 comments shall include each Party's determination as to whether it is willing to pay its share of  
74 the cost of such work, as identified in Paragraph 2(e)(2). If, after each March 15, no Party has  
75 indicated in writing that it is unwilling to pay its share of the cost of such work, the Consultant's  
76 budget and scope for the upcoming fiscal year shall be deemed approved and Brentwood shall  
77 take such actions as may be necessary to cause Consultant to perform the services included in  
78 that budget and scope of work. In the event that one or more Parties object to the proposed  
79 budget and scope of work, the Parties shall promptly meet and confer to determine an  
80 appropriate course of action.

81  
82 C. Payments by Parties to Brentwood. Brentwood shall, upon receipt of  
83 Consultant's monthly invoices, pay Consultant for services rendered during the previous month.  
84 Brentwood will promptly provide invoices to the other Parties identifying their shares of the cost  
85 of the previous month's work and such other Parties shall pay said invoices within 30 days of  
86 receipt.

87  
88 (2) *Cost-Share for East CC Basin GSP.* The costs associated with developing the  
89 East CC Basin GSP ("**GSP Costs**"), including but not limited to, any local cost-shares required  
90 by state or federal grants, will be shared equally among the Parties.

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92 A. In-Kind Services Provided by County. The County, at its sole discretion, may  
93 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.

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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.  
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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.

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144 2.       *Other Provisions of the MOU Not Affected*  
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146           Except as expressly stated above, no provisions of the MOU shall be modified by the  
147 terms of this First Amendment.  
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151 **CITY OF ANTIOCH**  
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154 By: \_\_\_\_\_  
155       Ron Bernal, City Manager  
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Date: \_\_\_\_\_

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161 APPROVED AS TO FORM:

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164 By: \_\_\_\_\_

Date: \_\_\_\_\_

165 Derrek Cole, Interim City Attorney

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168 **CITY OF BRENTWOOD**

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171 By: \_\_\_\_\_

Date: \_\_\_\_\_

172 Gustavo "Gus" Vina, City Manager

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174 APPROVED AS TO FORM:

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177 By: \_\_\_\_\_

Date: \_\_\_\_\_

178 Damien Brower, City Attorney

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181 **BYRON BETHANY IRRIGATION DISTRICT**

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184 By: \_\_\_\_\_

Date: \_\_\_\_\_

185 Rick Gilmore, General Manager

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188 **CONTRA COSTA WATER DISTRICT**

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190 By: \_\_\_\_\_

Date: \_\_\_\_\_

191 Jerry Brown, General Manager

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193 APPROVED AS TO FORM:

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196 By: \_\_\_\_\_

Date: \_\_\_\_\_

197 District Legal Counsel

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200 **CONTRA COSTA COUNTY**

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203 By: \_\_\_\_\_

Date: \_\_\_\_\_

204 John Kopchik, Director of  
205 Conservation and Development

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

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210  
211 By: \_\_\_\_\_ Date: \_\_\_\_\_  
212 Deputy County Counsel

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214  
215 **DIABLO WATER DISTRICT**

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217  
218 By: \_\_\_\_\_ Date: \_\_\_\_\_  
219 Mike Yeraka, General Manager

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

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224  
225 By: \_\_\_\_\_ Date: \_\_\_\_\_  
226 Patricia A. Corey, General Manager

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228  
229 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

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231  
232 By: \_\_\_\_\_ Date: \_\_\_\_\_  
233 Michael R. Davies, General Manager