

1 **SECOND AMENDED AND RESTATED**
2 **MEMORANDUM OF UNDERSTANDING**
3

4 **Implementation of a Groundwater Sustainability Plan**
5 **for the East Contra Costa Subbasin, (DWR Basin 5-22.19, San Joaquin Valley)**
6

7 This Second Amended and Restated Memorandum of Understanding for the
8 Implementation of a Groundwater Sustainability Plan for the East Contra Costa Subbasin, (DWR
9 Basin 5-22.19, San Joaquin Valley) (“**MOU**”) is entered into and effective this ____ day of
10 _____, 2022 (“**Effective Date**”) by and among the City of Antioch (“**Antioch**”),
11 City of Brentwood (“**Brentwood**”), Byron-Bethany Irrigation District (“**BBID**”), Contra Costa
12 Water District (“**CCWD**”), Contra Costa County (“**County**”), Diablo Water District (“**DWD**”),
13 East Contra Costa Irrigation District (“**ECCID**”), and Discovery Bay Community Services District
14 (“**Discovery Bay**”). Each of the foregoing parties to this MOU is sometimes referred to herein as
15 a “**Party**” and are collectively sometimes referred to as the “**Parties.**”

16 Recitals

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

23 B. The East Contra Costa Subbasin (“**Basin**”) is referred to as DWR Basin 5-22.19,
24 San Joaquin Valley, and is shown on the map attached hereto as Exhibit A and incorporated herein
25 by reference as if set forth in full. The Basin is located in eastern Contra Costa County. The
26 Parties collectively overlie the entirety of the Basin.

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

38 D. The Parties’ consultant developed a proposed Basin GSP dated October 15, 2021.
39 Each Party has fully satisfied its financial obligations with respect to Basin GSP development prior
40 to submittal to California Department of Water Resources (“**DWR**”) for review, as set forth in the
41 First Amended and Restated MOU.

42 E. Each Party has adopted, or will soon consider adopting, the Basin GSP, for
43 implementation by that Party as the GSA within that Party’s jurisdiction, as specified under this
44 MOU. Following the adoption of the Basin GSP by all Parties, the Basin GSP will be submitted
45 to DWR. If DWR requires any changes to the Basin GSP prior to acceptance, the Parties will

46 share in the cost of those changes, as described in this Second Amended and Restated MOU. The
47 Parties also desire to share in the costs of administering and implementing the Basin GSP within
48 their jurisdictions, including costs charged for implementation activities by Luhdorff and
49 Scalmanini (“**Implementation Consultant**”), which will administer and implement the Basin
50 GSP on behalf of the Parties. To ensure each Party can satisfy its legal obligations as the GSA
51 within that Party’s jurisdiction, the Parties further desire to clarify that each Party is authorized to
52 direct the activities of the Implementation Consultant, and that each Party will be responsible for
53 sharing the costs of the Implementation Consultant’s activities, as further described herein. No
54 Party intends to delegate to the Implementation Consultant, under this Second Amended and
55 Restated MOU or otherwise, any discretionary decisions or actions of that Party.

56 F. The Parties desire to continue to collaborate in an effort to ensure sustainable
57 groundwater management for the Basin, and to manage the groundwater basin as efficiently as
58 practicable balancing the financial resources of the agencies with the principles of effective and
59 safe groundwater management, while retaining groundwater management authority within their
60 respective jurisdictions. The Parties desire to continue to share responsibility for Basin
61 management under SGMA. The Parties recognize that the key to success in this effort will be the
62 coordination of activities under SGMA, and the collaborative implementation and administration
63 of the Basin GSP following its adoption.

64 G. The Basin has been designated by DWR as a medium-priority groundwater basin,
65 which, under the terms of SGMA, means that the Parties must submit a Basin GSP to DWR by
66 January 31, 2022, following adoption of the Basin GSP by each Party.

67 H. This Second Amended and Restated MOU amends and restates the original
68 Memorandum of Understanding, dated May 9, 2017, as previously amended and restated. This

69 Second Amended and Restated MOU also recognizes changes that reflect DWR’s determination
70 that, for purposes of SGMA, the Basin is separate and distinct from other portions of the Tracy
71 Subbasin located in San Joaquin and Alameda Counties. The Basin is located entirely within
72 Contra Costa County. The Parties wish to memorialize and restate their commitments by means
73 of this MOU.

74

75 Understandings

76 1. *Term.* The term of this MOU begins on the Effective Date, which shall occur upon
77 execution of this MOU by all eight of the parties, and this MOU shall remain in full force and
78 effect until the earliest of the following events the date upon which the Parties that are then party
79 to the MOU execute a document jointly terminating the provisions of this MOU. An individual
80 Party’s obligations under this MOU terminate when the Party withdraws from the MOU in
81 accordance with Section 4.

82 2. *Adoption and Implementation of Basin GSP.*

83 a. *Approval of the Basin GSP; Submission to DWR.* Within 45 days after the
84 completion of the Basin GSP, each Party will cause its governing body to consider adopting the
85 Basin GSP. The Parties agree that the Basin GSP will become effective for each Party on the date
86 that the last of the Parties adopts the Basin GSP. The Parties will submit their approvals and the
87 Basin GSP to DWR no later than January 31, 2022, in accordance with Water Code section
88 10720.7. If permitted by DWR, the Parties’ authorized representatives may designate a single
89 Party’s authorized representative, or the Consultant, to satisfy the Basin GSP submission
90 requirements.

91 b. *Shared Administration and Implementation.* Following the adoption of the Basin
92 GSP by all Parties, each Party will be responsible for administering and implementing the Basin
93 GSP within that Party’s jurisdiction. No Party delegates, nor shall it be deemed to have
94 delegated, to any other Party or consultant, under this MOU or otherwise, any discretion that is
95 vested in that Party.

96 c. *Contracting with Implementation Consultant.* As more particularly described in
97 the Basin GSP, certain Basin GSP implementation activities can be undertaken jointly, and the
98 Parties agree to cooperate to jointly implement those activities. The Parties agree that
99 Brentwood will enter into a services contract (“**Implementation Contract**”) with the
100 Implementation Consultant to perform Basin GSP joint implementation activities, as described in
101 Section 9.2 of the Basin GSP, and as more particularly described in the Implementation Budget
102 attached hereto and incorporated herein as Exhibit B, as may be amended from time to time.
103 Brentwood will ensure that the Implementation Contract names each Party as a third-party
104 beneficiary under the contract with authority to provide direction on the Implementation
105 Consultant’s activities.

106 d. *Sharing and Accounting for Implementation Costs.*

107 (1) *Cost-Share.* Each Party will pay an equal share of the costs associated
108 with implementing the Basin GSP actually incurred under the Implementation Contract
109 (“**Implementation Costs**”). Notwithstanding anything to the contrary herein, no Party’s share
110 of the Implementation Costs shall exceed \$40,000 in any 12-month period (“**Annual**
111 **Maximum**”) without the advance written approval of that Party. Beginning January 1, 2023,
112 and on each January 1 thereafter, the Annual Maximum shall increase by any cost escalator
113 included in the Implementation Contract to allow for increases in the Implementation

114 Consultant's fees and charges; and if the fees and charges increase by fixed amounts, the cost
115 escalator shall be the percentage change in the fees and charges. Notwithstanding anything to
116 the contrary herein, no Party's proportional share of the cost to complete a five-year update to
117 the Basin GSP shall exceed \$75,000 without the advance written approval of that Party.

118 (2) *Annual Review of Implementation Cost Budget.* At least 60 days prior to
119 the start of a calendar year, the Parties' authorized representatives will meet to review and
120 endeavor to agree on the estimated Implementation Costs that are expected to be incurred in that
121 calendar year. While a Party may withhold its consent to the estimated Implementation Costs,
122 each Party shall remain obligated to pay its proportional share of those costs unless the Party
123 withdraws from this MOU in accordance with Section 4.

124 (3) *Payment and Invoicing.* Brentwood shall, upon receipt of the
125 Implementation Consultant's monthly invoices, pay the Implementation Consultant for services
126 rendered during the previous month. Brentwood will promptly provide invoices to the other
127 Parties identifying each Party's equal share of the cost of the Implementation Consultant's
128 previous month's work, and, subject to the provisions of Section 2(d)(1), each other Party shall
129 pay its equal share of the Implementation Consultant's costs stated on the invoice within 30 days
130 after receipt of the invoice from Brentwood.

131 (4) *Other Costs.* Except for those Implementation Costs that will be shared
132 by the Parties under this Section 3, each Party shall be solely responsible for all costs connected
133 with any activities that Party performs as the GSA within that Party's jurisdiction, as more
134 particularly shown in Exhibit A. However, if DWR requires any changes to the Basin GSP prior
135 to acceptance, each Party shall pay an equal share of the costs for Luhdorff and Scalmanini to
136 make those changes; and those costs shall be invoiced to the Parties by Brentwood, and paid by

137 the Parties, in the same manner as Implementation Costs under Section 2(d)(1). The costs to
138 make those changes to the Basin GSP prior to acceptance by DWR are in addition to, and shall
139 not be included in, the Annual Maximum referenced in Section 2(d)(1).

140 3. *Savings Provisions.* This MOU shall not operate to validate or invalidate, modify or affect
141 any Party's water rights or any Party's obligations under any agreement, contract or memorandum
142 of understanding/agreement entered into prior to the effective date of this MOU. Nothing in this
143 MOU shall operate to convey any new right to groundwater to any Party. Each Party to this MOU
144 reserves any and all claims and causes of action respecting its water rights and/or any agreement,
145 contract or memorandum of understanding/agreement; any and all defenses against any water
146 rights claims or claims under any agreement, contract or memorandum of
147 understanding/agreement.

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

151 a. A Party shall not be fiscally liable for Implementation Costs that accrue following
152 its withdrawal from this MOU, provided that the Party provides written notice at least sixty (60)
153 days prior to the effective date of the withdrawal. A withdrawal shall not terminate, or relieve the
154 withdrawing Party from, any express contractual obligation to another Party to this MOU or to any
155 third party incurred or encumbered prior to the withdrawal.

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

159 withdrawing Party shall coordinate the implementation and administration of its groundwater
160 sustainability plan with the other Parties to this MOU.

161 5. *CEQA*. Nothing in this MOU commits any Party to undertake any future discretionary
162 actions referenced in this MOU, including but not limited to electing to become a GSA and
163 adopting the Basin GSP. Each Party, as a lead agency under the California Environmental Quality
164 Act (“*CEQA*”), shall be responsible for complying with all obligations under *CEQA* that may
165 apply to the Party’s future discretionary actions pursuant to this MOU, including electing to
166 become a GSA and adopting the Basin GSP.

167 6. *Books and Records*. Each Party shall have access to and the right to examine any of the
168 other Party’s pertinent books, documents, papers or other records (including, without limitation,
169 records contained on electronic media) relating to the performance of that Party’s obligations
170 pursuant to this MOU, provided that nothing in this paragraph shall be construed to operate as a
171 waiver of any applicable privilege and provided further that nothing in this paragraph shall be
172 construed to give any Party rights to inspect the another Party’s records in excess of the rights
173 contained in the California Public Records Act.

174 7. *General Provisions*

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

178 b. *Amendment*. This MOU may be amended or modified only by a written instrument
179 executed by each of the Parties to this MOU.

180 c. *Jurisdiction and Venue.* This MOU shall be governed by and construed in
181 accordance with the laws of the State of California, except for its conflicts of law rules. Any suit,
182 action, or proceeding brought under the scope of this MOU shall be brought and maintained to the
183 extent allowed by law in the County of Contra Costa, California.

184 d. *Headings.* The paragraph headings used in this MOU are intended for convenience
185 only and shall not be used in interpreting this MOU or in determining any of the rights or
186 obligations of the Parties to this MOU.

187 e. *Construction and Interpretation.* This MOU has been arrived at through
188 negotiations and each Party has had a full and fair opportunity to revise the terms of this MOU.
189 As a result, the normal rule of construction that any ambiguities are to be resolved against the
190 drafting Party shall not apply in the construction or interpretation of this MOU.

191 f. *Entire Agreement.* This MOU constitutes the entire agreement of the Parties with
192 respect to the subject matter of this MOU and supersedes any prior oral or written agreement,
193 understanding, or representation relating to the subject matter of this MOU.

194 g. *Partial Invalidity.* If, after the date of execution of this MOU, any provision of this
195 MOU is held to be illegal, invalid, or unenforceable under present or future laws effective during
196 the term of this MOU, such provision shall be fully severable. However, in lieu thereof, there shall
197 be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may
198 be possible and be legal, valid and enforceable.

199 h. *Waivers.* Waiver of any breach or default hereunder shall not constitute a
200 continuing waiver or a waiver of any subsequent breach either of the same or of another provision

201 of this MOU and forbearance to enforce one or more of the remedies provided in this MOU shall
202 not be deemed to be a waiver of that remedy.

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

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

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

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

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

217 n. *Notices.* All notices, requests, demands or other communications required or
218 permitted under this MOU shall be in writing unless provided otherwise in this MOU and shall be
219 deemed to have been duly given and received on: (i) the date of service if served personally or
220 served by electronic mail or facsimile transmission on the Party to whom notice is to be given at
221 the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express,
222 U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as

223 provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to
224 be given by first class mail, registered or certified, postage prepaid, addressed as follows:

225

226 **City of Antioch**

227 City Manager

228 P.O. Box 5007

229 Antioch, CA 94531-5007

230 Telephone: (925) 779-7011

231 Facsimile: (925) 779-7003

232

233 **City of Brentwood**

234 City Manager

235 150 City Park Way

236 Brentwood, CA 94513

237 Phone: (925) 516-5400

238 Fax: (925) 516-5441

239

240 **Byron Bethany Irrigation District**

241 General Manager

242 7995 Bruns Road

243 Byron, CA 94514-1625

244 Telephone: (209) 835-0375

245 Facsimile: (209) 835-2869

246

247 **Contra Costa Water District**

248 General Manager

249 Contra Costa Water District

250 P. O. Box H20

251 Concord, CA 94524

252 Phone (925) 688-8032

253 Fax (925) 688-8197

254

255 **Contra Costa County**

256 Director, Department of Conservation and Development

257 30 Muir Road

258 Martinez, CA 94553

259 Phone (925) 674-7866

260

261 **Diablo Water District**

262 Attn: General Manager

263 P.O. Box 127

264 87 Carol Lane

265 Oakley, CA 94561

266 Phone: (925) 625-3798

267 Fax: (925) 625-0814

268

269

270

271 **East Contra Costa Irrigation District**

272 General Manager

273 1711 Sellers Avenue

274 Brentwood, CA 94513

275 Phone: (925) 634-3544

276 Fax: (925) 634-0897

277

278 **Discovery Bay Community Services District**

279 C/O: General Manager

280 1800 Willow Lake Road

281 Discovery Bay, CA 94505-9376

282 Telephone: (925) 634-1131

283 Facsimile: (925) 513-2705

284

285 8. *Signatures.* The Following signatures attest each Party's agreement hereto.

286 **[Remainder of page left blank. Signatures on next pages.]**

287

288 **CITY OF ANTIOCH**

289

290 By: _____

Date: _____

291 Rowland E. Bernal Jr., City Manager

292 APPROVED AS TO FORM:

293

294 By: _____

Date: _____

295 Thomas Lloyd Smith, City Attorney

296

297 **CITY OF BRENTWOOD**

298

299 By: _____

Date: _____

300 Tim Y. Ogden, City Manager

301

302 APPROVED AS TO FORM:

303

304 By: _____

Date: _____

305 Damien Brower, City Attorney

306

307 **BYRON BETHANY IRRIGATION DISTRICT**

308

309 By: _____

Date: _____

310 Rick Gilmore, General Manager

311

312 **CONTRA COSTA WATER DISTRICT**

313

314 By: _____

Date: _____

315 Stephen J. Welch, General Manager

316

317

318

319 APPROVED AS TO FORM:

320

321 By: _____ Date: _____

322 District Legal Counsel

323

324 **CONTRA COSTA COUNTY**

325

326 By: _____ Date: _____

327 John Kopchik, Director of

328 Conservation and Development

329 APPROVED AS TO FORM:

330 Mary Ann McNett Mason, County Counsel

331

332 By: _____ Date: _____

333 Deputy County Counsel

334

335 **DIABLO WATER DISTRICT**

336

337 By: _____ Date: _____

338 Dan Muelrath, General Manager

339

340 **EAST CONTRA COSTA IRRIGATION DISTRICT**

341

342 By: _____ Date: _____

343 Aaron Trott, General Manager

344

345 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

346

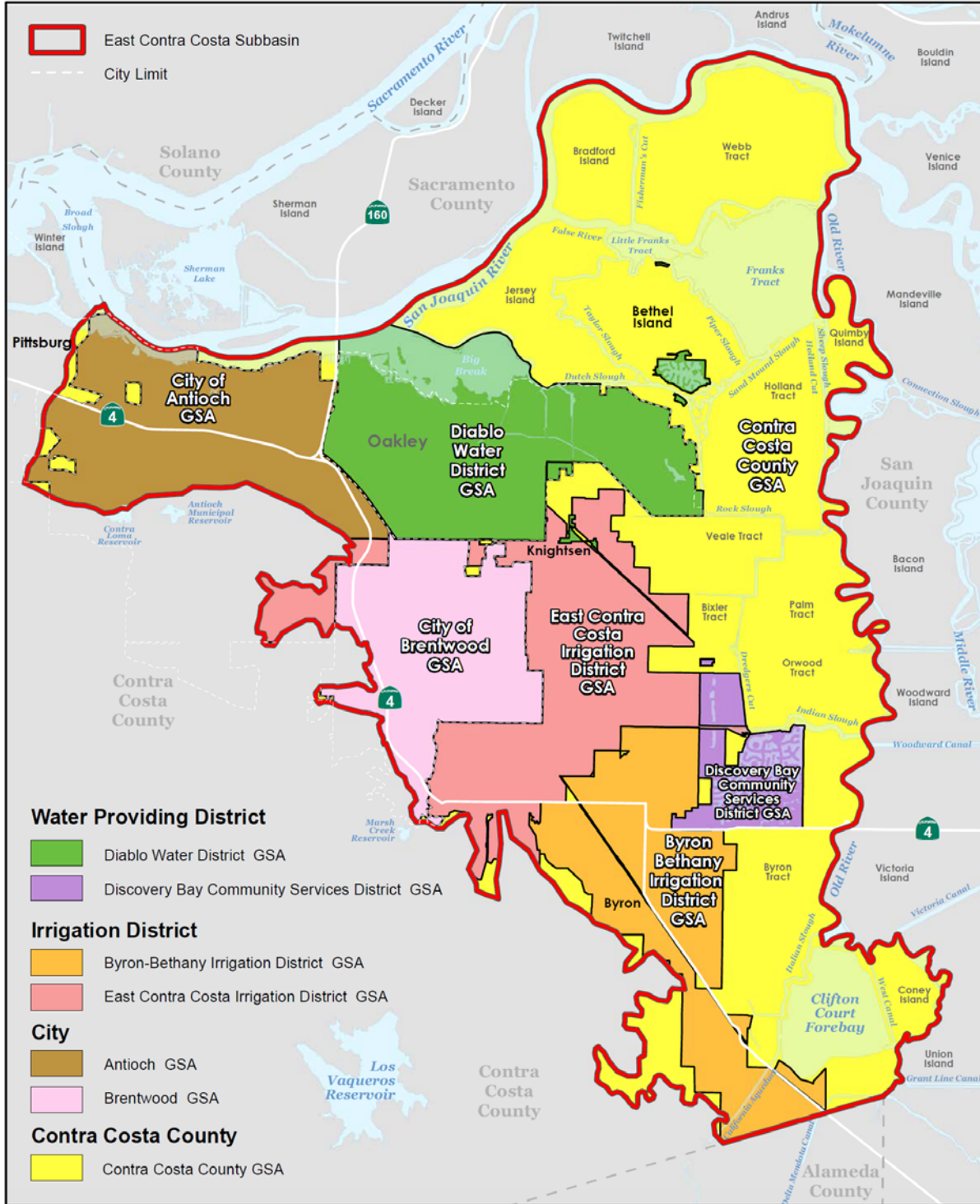
347 By: _____ Date: _____

348 Dina Breitstein, General Manager

349

EXHIBIT A

Groundwater Sustainability Agencies in the East Contra Costa Subbasin (5-022.19)



Map created 08/26/2019
 by Contra Costa County Department of
 Conservation and Development, GIS Group
 30 Muir Road, Martinez, CA 94553
 37.59-41.791N 122.07.03.756W

This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.



EXHIBIT B**Fall 2021 to June 2022, ECC GSP Implementation Budget**

Category	Cost	Comment
Community Outreach & Education		
Quarterly GSA virtual ¹ meetings (Feb and May at \$200* 2hrs) + prep (\$800)	\$3,200	
Update ECC Online Visualization for public viewing of most recent groundwater levels (2 times/year*\$1,000 each)	\$1,000	Two times/year this cost is for April 2022.
Board notifications (two at 2 hours x \$200=\$400)	\$800	Quarterly, Feb and May 2022
Total	\$5,000	
GSP Monitoring and Data Management		
Monitoring² and Well Maintenance		
Groundwater Elevation: nine new wells, take manual measurements March 2022.	\$5,000	
Total Monitoring and Well Maintenance	\$5,000	
Data Management		
Data Management System update: Spring DMS update only includes groundwater level measurements (note fall update is an extensive data collected from all sources).	\$500	
Data analysis including graphing and upload 2x/yr. to DWR Portal (March and October)	\$3,000	
Total Data Management	\$3,500	
Total GSP Monitoring and Data Management	\$8,500	
GSP Reporting		
GSP Annual Reporting³		
Prepare excel files of: groundwater extraction (by GSA and methods), surface water supply, total water use, change in storage, and elements guide.	\$5,000	
Executive summary and narrative describing findings and recommendations for the period.	\$12,000	
Upload to Annual Report Module/Report Submittal	\$3,000	
Total GSP Annual Reporting	\$20,000	
Contingency (10%)	\$3,350	
TOTAL GSP Expenses Oct 2021 to June 2022	\$36,850	

1. Quarterly meetings are assumed to be conducted virtually. If meetings transition to in-person there will be an additional cost.

2. Assumes that each member agency will continue to monitor its own wells for groundwater levels and quality using its own resources. Only groundwater levels and quality from the nine new monitoring wells, that would not otherwise be conducted by the individual member agencies, is assumed to be covered by the ECC member agencies.

3. Assumes the first annual report covers 2019 to 2022.