

MEMORANDUM OF AGREEMENT TO ESTABLISH A GROUNDWATER SUSTAINABILITY AGENCY FOR THE SPADRA GROUNDWATER BASIN

This Memorandum of Agreement ("MOA") is entered into as of February 28, 2017 ("Effective Date") by and between the City of Pomona ("City") and Walnut Valley Water District ("WVWD") to collaborate to meet the requirements of the Sustainable Groundwater Management Act of 2014 in establishing a collaborative management structure for the Spadra Basin ("Basin"). The City and WVWD are collectively referred to herein as "Parties" and individually as a "Party."

RECITALS

WHEREAS, on September 16, 2014 Governor Jerry Brown signed into law Senate Bills 1168 and 1319 and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act of 2014, Water Code Sections 10720 et seq. ("Act"); and

WHEREAS, the Act went into effect on January 1, 2015; and

WHEREAS, the intent of the Act is to provide sustainable management of groundwater basins, to enhance local management of groundwater, to establish minimum standards for sustainable groundwater management, and to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater; and

WHEREAS, each Party is a governmental entity that produces groundwater from the Basin; and

WHEREAS, the Act requires that all basins not currently managed be managed through the development of Groundwater Sustainability Plans pursuant to the Act; and

WHEREAS, the Basin is not currently managed and the Parties desire to collectively, with other interested stakeholders, develop and implement a Groundwater Sustainability Plan to sustainably manage the Basin's water resources pursuant to Water Code Sections 10727 et seq.;

NOW, THEREFORE, it is mutually understood and agreed as follows:

Section 1: Purpose and Authorities. This MOA is entered into by the Parties for the purpose of establishing a Groundwater Sustainability Agency under the Act and a framework to develop and implement a Groundwater Sustainability Plan to sustainably manage the Basin in compliance with the Act's requirements. The Parties hereby create the Spadra Basin Groundwater Sustainability Agency ("Agency").

Section 2: Definitions. In addition to the terms previously defined, the following terms, whether used in the singular or plural, and when used with initial capitalization, shall have the meanings specified herein:

A. "Executive Committee" refers to the working group created in Section 4(A), below.

B. "Governing Body" means the legislative bodies, i.e. governing boards, of the Parties to this MOA.

C. "Groundwater Sustainability Agency" or "GSA" refers to the agencies created pursuant to Chapter 4 of the Act (Water Code Sections 10723 through 10724, inclusive), including the Agency created hereunder, to implement the Act's provisions.

D. "Groundwater Sustainability Plan" or "GSP" is the basin plan for the Basin, which the Parties are seeking to develop and implement through this MOA in accordance with the Act.

E. "Implementation Team" refers to the Parties' staff members who will collaborate in developing the Groundwater Sustainability Plan, as provided in Section 4(B), below.

Section 3: Powers of the Agency: The Agency shall have all powers available to a Groundwater Sustainability Agency under Chapters 5 through 9, inclusive of the Act (Water Code Sections 10725 through 10732, inclusive), which statutes are incorporated herein by this reference. The foregoing powers include the power under Water Code Section 10730 to impose fees on groundwater production to fund the preparation of a Basin study to provide information necessary to develop the GSP.

Section 4: Establishment of the Agency's Executive Committee and Related Processes:

A. Establishment of the Spadra Basin Groundwater Sustainability Agency Executive Committee.

1. The Parties hereby establish the Spadra Basin GSA Executive Committee. Each Party shall appoint a member to the Executive Committee. To provide for consistent and effective communication among the Parties, each Party agrees that its designated Executive Committee representative is its central point of contact on matters relating to this MOA. The Executive Committee may select an Administrative Officer from among the Parties' staffs to act as the chief administrative officer of the Agency. Additional representatives may be appointed to serve as points of contact on specific actions or issues.

2. Each Executive Committee member's compensation for their service on the Executive Committee will be the responsibility of the Party who appoints that member and on whose behalf that member serves.

3. Each Executive Committee member shall serve at the pleasure of the Party that appointed that member, and may be removed from the Executive Committee by that appointing Party at any time.

4. The Executive Committee will meet periodically as needed to carry out the activities described below, but at least annually. The Executive Committee shall establish policies and procedures regarding the conducting of its meetings, including, but not limited to, establishing notice requirements, quorum and required votes on Executive Committee decisions. The Executive Committee will prepare and maintain minutes of its meetings.

5. The Executive Committee shall direct the Implementation Team and any consultants in connection with the development of the Basin's Groundwater Sustainability Plan in accordance with Water Code Sections 10727.2 and 10727.4.

6. The Executive Committee will provide information, guidance, and advice to the Implementation Team regarding the Basin's GSP, on matters such as: (a) developing a GSP that achieves the goals and objectives outlined in the Act; (b) implementing the actions undertaken pursuant to this MOA and resolving any issues related to these actions; (c) measures that may be implemented in the event insufficient or unsatisfactory progress is being made in developing or implementing the Groundwater Sustainability Plan; and (d) to the extent deemed appropriate, developing a stakeholder participation plan (including establishment of an advisory committee) that involves the public and area stakeholders in developing and implementing the GSP.

7. Before a Party may withdraw from this MOA as provided below, the Parties agree to bring any disputes over any of the activities discussed in this MOA to the Executive Committee.

B. Establishment of the Implementation Team.

1. The Parties hereby establish the Implementation Team that will develop a process to direct and coordinate GSP activities, including the development, planning, financing, environmental review, permitting, implementation, and long-term monitoring of the GSP.

2. The Implementation Team will be selected by the Executive Committee from among the staffs of the Parties. Each Implementation Team member shall serve at the pleasure of the Executive Committee and may be removed by majority vote of the Executive Committee at any time.

3. Notwithstanding subdivision 2, above, the Executive Committee may appoint an outside consultant not employed by any Party to serve on the Implementation Team. In that event, the Executive Committee shall determine how the costs for that

consultant are to be equitably allocated among the Parties or among the producers of groundwater from the Basin.

4. Subject to subdivision 3, above, each Implementation Team member's compensation for their service on the Implementation Team is the responsibility of the Party who regularly employs that member.

5. The Implementation Team shall develop and implement, with input and oversight from the Executive Committee, a stakeholder participation plan and related outreach that involves the public and area stakeholders in developing and implementing the GSP. That plan shall include the establishment of an advisory committee pursuant to Water Code Section 10727.8(a) to include representatives of California State Polytechnic University, Pomona and Rowland Water District.

C. Implementation Team Meetings.

1. The Implementation Team will establish a meeting schedule for regular meetings to discuss GSP development and implementation activities, assignments, and ongoing work progress.

2. The Implementation Team may establish committees as it deems necessary to address particular issues and may schedule meetings of committees as it sees fit to coordinate development and implementation of the GSP.

3. Attendance at all Executive Committee and Implementation Team meetings may be augmented to include staff or consultants to ensure that the appropriate expertise is available.

4. The Implementation Team will meet at least quarterly with the Executive Committee, and more frequently as needed, to provide status updates and discuss matters covered in this MOA.

Section 5: Roles and Responsibilities of the Parties:

A. The Parties will work collectively to meet the objectives of this MOA.

B. The Parties will appoint representatives to the Executive Committee and Implementation Team in a timely manner.

C. The Parties will each be responsible for implementing the GSP in their respective jurisdictions.

D. The Parties will coordinate all activities related to fulfillment of the objectives of this MOA. The Parties shall cooperate with one another and work as efficiently as possible in the pursuit of all activities and decisions described in this MOA and those that are not particularly described but which are related to or arise out of the activities that are described.

E. As requested by the Executive Committee or Implementation Team, each of the Parties will provide expertise, guidance, and data on those matters for which it has specific expertise or authority, as needed to carry out the objectives of this MOA.

F. After execution of this MOA, the Implementation Team, with input from the Executive Committee, shall develop a plan that describes the anticipated tasks to be performed under this MOA and a schedule for performing said tasks. That plan and schedule shall become part of this MOA as an exhibit that is incorporated by reference. That plan and schedule may be amended as necessary to conform to developing information, permitting, and other requirements related to development of the GSP. Therefore, the exhibit setting forth that plan and schedule may be revised from time to time upon agreement of the Executive Committee without constituting an amendment to this MOA.

G. The Parties will provide support to the Executive Committee and Implementation Team by contributing staff time, information, and facilities within available resources.

Section 6: Funding:

A. WVWD shall serve as the treasurer for purposes of this MOA. WVWD shall hold all monies to be contributed by the Parties hereunder and shall, upon approval of the Executive Committee, pay all invoices and bills relating to work undertaken and/or services rendered in connection with this MOA.

B. Within seven (7) days after execution of this MOA by the last of the Parties to sign it, each Party shall contribute to the Agency, by payment to WVWD, an initial sum of \$2,500 to provide startup funding for the Agency's initial operations.

C. The Executive Committee shall establish an annual budget and shall determine an equitable cost sharing arrangement among the Parties for work to be undertaken under this MOA. Other than the initial startup contributions set forth in subparagraph B, above, both the budget and cost sharing agreement shall be determined before any further contributions of the Parties shall be required.

Section 7: Termination and Withdrawal:

A. Terminating the Agreement. This MOA may be terminated upon unanimous written consent of all Parties. Upon the termination of this MOA, any remaining funds, after payment of all of the Agency's liabilities, shall be distributed to the Parties in the proportion that each Party contributed to the Agency.

B. Withdrawal. A Party may unilaterally withdraw from this MOA without causing or requiring termination of the MOA, effective upon thirty (30) days' written notice to the remaining Parties' designated addresses as listed in Section 10, below. A Party that has withdrawn from this MOA shall remain obligated to pay its share of expenses and obligations as

outlined in the budget and cost sharing agreement incurred or accrued up to the date the Party's withdrawal is completed.

Section 8: Amendments: This MOA may be amended only by a subsequent writing, approved and signed by all Parties. Approval from a Party is valid only after that Party's Governing Body approves the amendment at a public meeting. Executive Committee Members, Implementation Team Members, and individual Governing Board members do not have the authority, express or implied, to amend, modify, waive or in any way alter the terms and conditions of this MOA.

Section 9: Indemnification: No Party, nor any officer or employee of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this MOA. The Parties further agree, pursuant to California Government Code section 895.4, that each Party shall fully indemnify and hold harmless each other Party and its agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by such Party under this MOA.

Section 10: Notices: Any written communication required or permitted to be given hereunder will be deemed received upon personal delivery, including by overnight delivery, delivery via e-mail or by fax (provided that any e-mail or fax notice must be confirmed telephonically); or forty-eight (48) hours after deposit in any United States mail depository, first class postage prepaid, and addressed to the Party for whom intended as follows:

If to City: City of Pomona
Attn: Director of Public Works
505 South Garey Avenue
Pomona, CA 91766

If to WVWD: Walnut Valley Water District
Attn: General Manager
271 South Brea Canyon Road
Walnut, CA 91789

Section 11: Miscellaneous:

A. Execution in Counterparts. This MOA may be signed in counterparts, or by signatures transmitted by electronic or fax transmission. Such electronic or faxed signatures shall be considered as valid as a wet ink signature.

B. Term of MOA. The term of this MOA is indefinite and will cease existence only upon termination by the Parties pursuant to Section 7 of this MOA.

C. Signing Authority. Each of the Parties represent that the persons signing this MOU have the appropriate authority to execute this MOU and bind the respective Party to the terms contained herein.

D. Governing Law. This MOA is governed by and is to be construed in accordance with the laws of the State of California.

E. Severability. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

F. Entire Agreement. This MOA constitutes the sole, entire, integrated and exclusive agreement between the Parties regarding the contents herein. Any other contracts, agreements, terms, understandings, promises or representations not expressly set forth or referenced in this writing are null and void and of no force and effect.

G. Construction and Interpretation. The Parties agree and acknowledge that this MOA has been developed through negotiation, and that each party has had a full and fair opportunity to revise the terms of this MOA. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this MOA.

IN WITNESS WHEREOF, the Parties have agreed to execute this MOU as of February 28, 2017.

City of Pomona

By: Linda C. Young
Name:
Its:

Walnut Valley Water District

By: Michael Holmes
Name: Michael K. Holmes
Its: General Manager