

RESOLUTION NO. 2020 - 3

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF DIABLO WATER DISTRICT
AMENDING AND RESTATING THE MEMORANDUM
OF UNDERSTANDING FOR DEVELOPMENT OF A
GROUNDWATER SUSTAINABILITY PLAN**

WHEREAS, the District adopted Resolution No. 2017-4 To Execute a Memorandum of Understanding (MOU) and Become a Groundwater Sustainability Agency Under the Sustainable Groundwater Management Act; and

WHEREAS, subsequently a First Amended MOU was executed; and

WHEREAS, in 2018 the East Contra Costa Sub-basin submitted a basin modification request to separate from the Tracy Sub-basin; and

WHEREAS, in 2019 the East Contra Costa Sub-basin received the California Department of Water Resources approval of the basin modification request to separate from the Tracy Sub-basin; and

WHEREAS, the California Department of Water Resources requires the MOU to reflect the current sub-basin name and number; and

WHEREAS, an amended and restated MOU is provided in Attachment A, here-in referenced and incorporated;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Diablo Water District:

1. Amend and Restate the Memorandum of Understanding for Development of the Groundwater Sustainability Plan, as shown in Attachment A.

*

*

*

*

*

I hereby certify that the foregoing is a true and complete copy of a resolution duly and regularly adopted by the Board of Directors of Diablo Water District at a meeting thereof held on January 22, 2020, by the following vote:

AYES: Hobbs, de Fremery, Crockett, and Seger

NOES: None

ABSENT: None

DATED: January 22, 2020



Dan Muelrath, Secretary



Attachment A

Amended and Restated GSP MOU

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

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

7 This Amended and Restated Memorandum of Understanding for the Development of a
8 Groundwater Sustainability Plan for the East Contra Costa Subbasin, (DWR Basin 5-22.19, San
9 Joaquin Valley) (“**MOU**”) is entered into and effective this ____ day of _____,
10 2020 (“**Effective Date**”) by and among the City of Antioch (“**Antioch**”), City of Brentwood
11 (“**Brentwood**”), Byron-Bethany Irrigation District (“**BBID**”), Contra Costa Water District
12 (“**CCWD**”), Contra Costa County (“**County**”), Diablo Water District (“**DWD**”), East Contra
13 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 all 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.) The Parties desire for each Party to be the GSA
30 within all or a portion of that Party’s boundary. The Parties further desire to develop a governance
31 structure for the Basin to be considered during development of the groundwater sustainability plan
32 (a “**GSP**”) for the Basin (the “**Basin GSP**”). The Parties further desire to resolve areas of
33 jurisdictional overlap so that no two Parties serve as GSAs over the same area. The purpose of
34 this MOU is to coordinate the Parties’ activities related to each Party becoming a GSA,
35 development of the Basin GSP, and each Party’s future consideration of whether to adopt the Basin
36 GSP.

37 D. The Parties wish to collaborate in an effort to ensure sustainable groundwater
38 management for the Basin, manage the groundwater basin as efficiently as practicable balancing
39 the financial resources of the agencies with the principles of effective and safe groundwater
40 management, while retaining groundwater management authority within their respective
41 jurisdictions. The Parties desire to share responsibility for Basin management under SGMA. The
42 Parties recognize that the key to success in this effort will be the coordination of activities under
43 SGMA, and the collaborative development of the Basin GSP, which each Party may consider
44 adopting and implementing within its GSA management area.

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

F. This MOU amends and restates the original Memorandum of Understanding, dated May 9, 2017, and as amended on November 16, 2017. This MOU also recognizes changes that reflect DWR’s determination that, for purposes of SGMA, the Basin is separate and distinct from other portions of the Tracy Subbasin located in San Joaquin and Alameda Counties. The Basin is located entirely within Contra Costa County. The Parties wish to memorialize and restate their commitments by means of this MOU.

Understandings

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

2. *Development of the GSP*

a. *Parties to Become GSAs.* Each Party, except Contra Costa Water District, agrees to take the necessary actions to become the GSA for all or a portion of that area of the East CC Basin that it overlies, as shown on Exhibit A, attached hereto, no later than April 1, 2017, or shortly thereafter. The Parties shall jointly submit the Parties’

individual elections to become GSAs and this MOU to DWR prior to April 1, 2017, or shortly thereafter. The Parties further agree to develop a governance structure for the Basin to be considered during development of the Basin GSP

b. *Single GSP.* The Parties will collaborate to develop a single Basin GSP that, at a minimum, satisfies the GSP requirements in the SGMA and the regulations promulgated under the SGMA. The Basin GSP must include an analysis of implementation costs and revenue sources, and must include an analysis of governance structure options. The Basin GSP shall be drafted in a manner that preserves, and does not purport to supersede, the land use authority of each city or county, or the statutory authority of each special district, that is a party to this MOU. The Basin GSP must include provisions for consultation between a GSA and any public agency that the GSA overlaps before the GSA takes any action that may relate to that public agency's exercise of its statutory authority. Unless the Parties later agree otherwise, it is intended that the Basin GSP will be implemented by each Party within its respective GSA management area, and that the Parties will coordinate their implementation of the Basin GSP.

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

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

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

(1) *Contracting with Consultant.*

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

B. Annual Budgets and Scopes of Work. Not later than each February 15, 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 45 days of receipt.

(2) *Cost-Share for Basin GSP.* The costs associated with developing the 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 limited to mapping, graphics, and database management services. The County will provide written notice to the other Parties by the March 15 immediately preceding the fiscal year stating either that the County will pay its share of GSP Costs in the fiscal year, or that the County will provide in-kind services in lieu of paying its share of GSP Costs in the fiscal year. In the case of payments to Consultant or other vendors where the County wishes to substitute in-kind services for direct payments, Brentwood shall allocate such invoices equally among the Parties other than the County. Notwithstanding anything to the contrary contained herein, no Party shall be obligated to pay the County for the value of any in-kind services provided by the County, and the value of any in-kind services provided by the County shall only act as a credit towards the County's share of GSP Costs, as more particularly described in 2(e)(2)(B).

B. Annual Accounting. Brentwood shall prepare an annual accounting by October 1 that shows all GSP Costs for the previous fiscal year and that identifies in-kind services provided by the County and the County's calculation of the value of those in-kind services. By July 30th following the end of a fiscal year, the County will provide

Brentwood an accounting of the County's in-kind services during the prior fiscal year, and any carry-over value of in-kind services provided during any fiscal years preceding the prior fiscal year. The value of the County's in-kind services will be calculated based on (1) the then-current fully-burdened hourly rates for County staff time, benefits, and overhead, and (2) the County's actual costs for any materials or supplies required to provide the in-kind services.

i. Upon written notice to the other Parties no later than 15 days after receiving Brentwood's annual accounting, any Party other than the County may dispute the County's calculation of the value of the in-kind services that the County provided during the fiscal year for which the accounting is prepared, but no Party may challenge the value of in-kind services that were carried over from any fiscal year preceding the fiscal year for which the accounting is prepared. In the event that one or more Parties provide notice of a dispute under this subparagraph, the Parties shall promptly meet and confer in an effort to resolve the dispute to the satisfaction of all Parties. The County's obligation to make any payments to other Parties under Paragraph 2(e)(2)(B)(ii) shall be tolled until the County receives, from each disputing Party, written notice that the dispute has been resolved to the disputing Party's satisfaction.

ii. Except as expressly provided in Paragraph 2(e)(2)(B)(i), in the event that Brentwood's annual accounting shows that the value of the in-kind services provided by the County during the fiscal year for which the accounting is prepared, plus any carry-over value for in-kind services provided in any preceding fiscal years, is less than the individual contributions of the other Parties during the fiscal year for which the annual accounting is prepared, the County shall provide, by the November 30 following receipt of the annual accounting, payments to each of the other Parties sufficient to equalize the values of the

Parties' contributions during the fiscal year for which the accounting is prepared. In the event that Brentwood's annual accounting shows that the value of the in-kind services provided by the County during the fiscal year for which the accounting is prepared, plus any carry-over value for in-kind services provided in any preceding fiscal years, is greater than the individual contributions of the other Parties, Brentwood shall credit the County with the difference and carry over that excess contribution to be credited towards the value of the County's in-kind services provided in the subsequent fiscal year.

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

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

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

a. A Party shall not be fiscally liable for expenditures following its withdrawal from this MOU, provided that the Party provides written notice at least sixty (60) days prior to the effective date of the withdrawal. A withdrawal shall not terminate, or

182 relieve the withdrawing Party from, any express contractual obligation to another
183 Party to this MOU or to any third party incurred or encumbered prior to the
184 withdrawal.

- 185 b. In the event of a Party's withdrawal, this MOU shall continue in full force and effect
186 among the remaining Parties. Further, a Party's withdrawal from this MOU does
187 not, without further action by that Party, have any effect on the withdrawing Party's
188 decision to be a GSA. A withdrawing Party shall coordinate the development of its
189 groundwater sustainability plan with the other Parties to this MOU.

- 190 5. *CEQA.* Nothing in this MOU commits any Party to undertake any future discretionary
191 actions referenced in this MOU, including but not limited to electing to become a GSA and
192 adopting the Basin GSP. Each Party, as a lead agency under the California Environmental
193 Quality Act ("CEQA"), shall be responsible for complying with all obligations under
194 CEQA that may apply to the Party's future discretionary actions pursuant to this MOU,
195 including electing to become a GSA and adopting the Basin GSP.

- 196 6. *Books and Records.* Each Party shall have access to and the right to examine any of the
197 other Party's pertinent books, documents, papers or other records (including, without
198 limitation, records contained on electronic media) relating to the performance of that
199 Party's obligations pursuant to this Agreement, *providing that* nothing in this paragraph
200 shall be construed to operate as a waiver of any applicable privilege and *provided further*
201 that nothing in this paragraph shall be construed to give either Party rights to inspect the
202 other Party's records in excess of the rights contained in the California Public Records Act.

- 203 7. *General Provisions*

- a. *Authority.* Each signatory of this MOU represents that s/he is authorized to execute this MOU on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this MOU and to perform all obligations under this MOU.
- b. *Amendment.* This MOU may be amended or modified only by a written instrument executed by each of the Parties to this MOU.
- c. *Jurisdiction and Venue.* This MOU shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this MOU shall be brought and maintained to the extent allowed by law in the County of Contra Costa, California.
- d. *Headings.* The paragraph headings used in this MOU are intended for convenience only and shall not be used in interpreting this MOU or in determining any of the rights or obligations of the Parties to this MOU.
- e. *Construction and Interpretation.* This MOU has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this MOU. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this MOU.
- f. *Entire Agreement.* This MOU constitutes the entire agreement of the Parties with respect to the subject matter of this MOU and supersedes any prior oral or written

225 agreement, understanding, or representation relating to the subject matter of this
226 MOU.

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

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

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

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

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

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

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

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

City of Antioch

City Manager

P.O. Box 5007

Antioch, CA 94531-5007

Telephone: (925) 779-7011

Facsimile: (925) 779-7003

270 **City of Brentwood**

271 City Manager

272 150 City Park Way

273 Brentwood, CA 94513

274 Phone: (925) 516-5400

275 Fax: (925) 516-5441

276

277 **Byron Bethany Irrigation District**

278 General Manager

279 7995 Bruns Road

280 Byron, CA 94514-1625

281 Telephone: (209) 835-0375

282 Facsimile: (209) 835-2869

283

284 **Contra Costa Water District**

285 General Manager

286 Contra Costa Water District

287 P. O. Box H20

288 Concord, CA 94524

289 Phone (925) 688-8032

290 Fax (925) 688-8197

291

292

293

294 **Contra Costa County**
295 Director, Department of Conservation and Development
296 30 Muir Road
297 Martinez, CA 94553
298 Phone (925) 674-7866

299

300 **Diablo Water District**
301 Attn: General Manager
302 P.O. Box 127
303 87 Carol Lane
304 Oakley, CA 94561
305 Phone: (925) 625-3798
306 Fax: (925) 625-0814

307

308 **East Contra Costa Irrigation District**
309 General Manager
310 1711 Sellers Avenue
311 Brentwood, CA 94513
312 Phone: (925) 634-3544
313 Fax: (925) 634-0897

314

315

316

317

318 **Discovery Bay Community Services District**

319 C/O: General Manager

320 1800 Willow Lake Road

321 Discovery Bay, CA 94505-9376

322 Telephone: (925) 634-1131

323 Facsimile: (925) 513-2705

324

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

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

327

328 **CITY OF ANTIOCH**

329

330 By: _____ Date: _____

331 Rowland E. Bernal Jr., City Manager

332 **APPROVED AS TO FORM:**

333

334 By: _____ Date: _____

335 Thomas Lloyd Smith, City Attorney

336

337 **CITY OF BRENTWOOD**

338

339 By: _____ Date: _____

340 Terrence Grindall, Interim City Manager

341

342 **APPROVED AS TO FORM:**

343

344 By: _____ Date: _____

345 Damien Brower, City Attorney

346

347 **BYRON BETHANY IRRIGATION DISTRICT**

348

349 By: _____ Date: _____

350 Rick Gilmore, General Manager

351

352 **CONTRA COSTA WATER DISTRICT**

353

354 By: _____ Date: _____

355 Stephen J. Welch, General Manager

356

357

358

359 APPROVED AS TO FORM:

360

361 By: _____ Date: _____

362 District Legal Counsel

363

364 **CONTRA COSTA COUNTY**

365

366 By: _____ Date: _____

367 John Kopchik, Director of

368 Conservation and Development

369 APPROVED AS TO FORM:

370 Sharon L. Anderson, County Counsel

371

372 By: _____ Date: _____

373 Deputy County Counsel

374

375 **DIABLO WATER DISTRICT**

376

377 By: _____ Date: _____

378 Dan Muelrath, General Manager

379

380 **EAST CONTRA COSTA IRRIGATION DISTRICT**

381

382 By: _____ Date: _____

383 Aaron Trott, General Manager

384

385 **DISCOVERY BAY COMMUNITY SERVICES DISTRICT**

386

387 By: _____ Date: _____

388 Michael R. Davies, General Manager

389

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

