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MEMORANDUM OF UNDERSTANDING BETWEEN SANTA CLARA VALLEY WATER DISTRICT AND SAN BENITO COUNTY WATER DISTRICT FOR SUSTAINABLE GROUNDWATER MANAGEMENT ACT COMPLIANCE

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made in the State of California on ___, 2017, is by and between the Santa Clara Valley Water District ("SCVWD"), and the San Benito County Water District ("SBCWD"), each a "Party" and collectively the "Parties."

This MOU sets forth the respective roles and responsibilities of the Parties regarding coordination to sustainably manage groundwater in the Hollister Area Subbasin and San Juan Bautista Area Subbasin.

RECITALS

WHEREAS, the SCVWD, an independent special district created by the Legislature of the State of California, manages groundwater and is the primary water resource agency for Santa Clara County, supplying wholesale water, providing flood protection and serving as environmental steward for clean, safe creeks and healthy ecosystems; and

WHEREAS, the SBCWD, a water conservation and flood control district, preserves the economic and environmental health and well-being of San Benito County through the control, management and conservation of waters and the provision of water services in a practical, cost-effective and responsible manner; and

WHEREAS, the State of California enacted the Sustainable Groundwater Management Act ("Act,") pursuant to which certain local agencies may become a Groundwater Sustainability Agency ("GSA") and adopt a Groundwater Sustainability Plan ("GSP") to manage groundwater in underlying groundwater basins; and

WHEREAS, the Act and this MOU define "basin" as a basin or subbasin identified and defined in California Department of Water Resources (DWR) Bulletin 118; and

WHEREAS, the Act requires that the entirety of each medium- and high-priority basin, as defined by DWR, be covered by a GSA by June 30, 2017 to avoid potential state intervention; and

WHEREAS, the service area of each Party overlies two common groundwater basins as defined by the Act and DWR: the Hollister Area Subbasin (DWR Basin 3-3.03) and the San Juan Bautista Area Subbasin (DWR Basin 3-3.04), collectively the "Common Basins"; and

WHEREAS, the SBCWD manages groundwater within San Benito County, including the majority of the Common Basins and the entirety of the Bolsa Area Subbasin (DWR Basin 3-3.02); and

WHEREAS, small portions of the Common Basins are located within Santa Clara County; and

WHEREAS, in terms of surface area, Santa Clara County contains less than ten percent of the Hollister Area Subbasin and less than one percent of the San Juan Bautista Area Subbasin; and

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WHEREAS, the SCVWD has not previously conducted groundwater management activities in the Santa Clara County portions of the Common Basins other than permitting the construction, modification, and destruction of wells; and

WHEREAS, following a public hearing on February 8, 2017, the SBCWD Board of Directors adopted Resolution 2017-03 establishing the SBCWD as the GSA for the portions of the Common Basins located within San Benito County; and

WHEREAS, following a public hearing on June 13, 2017, the SCVWD Board of Directors adopted Resolution 17- establishing the SCVWD as the GSA for the portion of the Common Basins in Santa Clara County; and

WHEREAS, the action of each Party to adopt a resolution to become the GSA and submit related notification to DWR ensures the entirety of the Common Basins is covered by a GSA with no areas of overlap; and

WHEREAS, each Party is a local agency qualified to prepare and adopt a GSP under the Act; and

WHEREAS, the entirety of each basin subject to the Act that is not in a condition of critical overdraft must be addressed by a GSP by January 31, 2022; and

WHEREAS, if there are multiple GSAs within a basin, the GSAs can develop a single GSP for the entire basin or separate GSPs, provided there is a related coordination agreement; and

WHEREAS, GSAs are responsible for ensuring long-term groundwater sustainability through implementation of a GSP; and

WHEREAS, the Parties wish to provide a framework for cooperative groundwater management efforts in the Common Basins to ensure the Act is implemented effectively, efficiently, fairly, and at the lowest reasonable cost.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties expressed herein, the Parties agree as follows:

1. Purpose

The purpose of this MOU is to establish an understanding between the Parties with regard to preparing a GSP for the Common Basins, including responsibilities and funding obligations.

2. Term

- a) This MOU shall become effective upon its execution by both Parties.
- b) This MOU will terminate when the Parties agree, in writing, that the GSP is complete to the satisfaction of DWR.
- c) Payment obligations under Article 6, Cost Sharing and Payment, and Article 11, Cancellation, shall survive discharge or termination of this MOU until obligations are

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satisfied.

3. Responsibilities of the Parties

General responsibilities of the Parties regarding the Common Basins are as follows:

- a) Ensure all required GSA filings are complete and submitted to DWR by the June 30, 2017 statutory deadline.
- b) Develop a schedule to prepare a GSP for both Common Basins or a GSP for each Common Basin for consideration by the Board of Directors of both Parties.
- c) Share relevant data on geology, hydrogeology, operations, or other information that may be needed to develop or implement a GSP.
- d) Coordinate to conduct stakeholder outreach related to GSP development and adoption.
- e) Submit the GSP(s) to DWR by the January 31, 2022 statutory deadline.
- f) Ensure all work related to this MOU is performed in accordance with the California Environmental Quality Act and other applicable laws.
- g) Coordinate to respond to public comments on the GSP(s) for the Common Basins, as applicable.
- h) Address any issues or deficiencies raised by DWR during their review of the GSP(s) within the required time.
- i) Explore the role of each Party in implementing the GSP(s) to ensure long-term sustainability and compliance with the Act. The role of each Party will be documented in a future MOU or other agreement. This MOU does not obligate either Party to implement specific groundwater management actions in the Common Basins.

The Parties hereby designate SBCWD as the contracting entity under this MOU. Subject to approval by SBCWD's authorized representative, SBCWD shall be responsible for executing any Consultant Contract(s) to undertake development of the GSP(s). SBCWD shall conduct a consultant procurement process that satisfies its own internal consultant procurement policies/criteria.

4. Responsibilities of SBCWD

- a) Share relevant data and information with SCVWD as requested.
- b) Notify SCVWD of the Consultant(s) selected to develop the GSP(s).
- c) Solicit SCVWD comments on any Consultant Contract(s) related to GSP development prior to execution.
- d) Review Consultant invoices for approval and report disputes, if any, to SCVWD within five (5) working days of receipt of invoice. Pay approved invoices and provide copies

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of invoices to SCVWD with requests for reimbursement as described in Article 6.

- e) Solicit SCVWD comments on Consultant deliverables prior to acceptance.

5. Responsibilities of SCVWD

- a) Share relevant data and information with SBCWD as requested.
- b) Provide comments on proposed Consultant Contract(s) within five (5) working days of receipt.
- c) Provide comments on Consultant deliverables within five (5) working days, or other schedule as mutually agreed upon. The SCVWD technical review period for the draft GSP(s) will be a minimum of ten (10) working days.
- d) Reimburse SBCWD in accordance with Article 6.

6. Cost Sharing and Payment

The estimated Consultant cost to develop a GSP(s) for the Common Basins is expected to be less than \$250,000. Additional Consultant work may be needed to respond to issues raised during DWR review of the GSP(s). SCVWD agrees to reimburse SBCWD for 10% of the total Consultant cost, with a maximum contribution of \$35,000, unless additional funding is authorized in writing through an amendment pursuant to Article 8 of this MOU.

- a) SBCWD shall request reimbursement from SCVWD by submitting invoice(s) for incurred Consultant contract costs no more than once a calendar quarter. The invoice(s) shall clearly indicate the SCVWD cost share and shall be accompanied by adequate supporting documentation of related Consultant contract costs, including the hourly rates, hours spent, and information on activities performed in support of the scope of services specified in the Consultant contract(s).
- b) Following review and approval of an invoice by SCVWD, SCVWD shall disburse to SBCWD the approved amount within thirty (30) days of receipt of the invoice.
- c) An invoice may be rejected by SCVWD only if the invoice contains a material error or paying the invoice would result in SCVWD exceeding its maximum contribution described in this Article. SCVWD shall notify SBCWD of any invoice so rejected, and the reasons therefore.
- d) Costs incurred by SBCWD for "in-kind" services including staff time and overhead costs, as well as costs for Consultant oversight, meetings, travel, and incidental expenses shall not be reimbursable by SCVWD.

7. Hold Harmless, Indemnification, Remedies, and Insurance

To the extent permitted by California State law and in proportion to fault, each Party will indemnify, defend, and hold all other Parties and their directors, officers, agents, and employees safe and harmless from any and all claims, suits, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering

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fees, expert fees, and any other professional fees) that arise from or are related in any way to each Party, its employees, officers, or other agents in the operation and/or performance of this MOU; provided, however, that no Party shall indemnify or hold harmless another Party for that Party's own negligent acts, errors, or omissions, or willful misconduct, in the operation and/or performance of this MOU or the performance of the Consultant(s).

Notwithstanding the preceding paragraph, where more than one Party is named in a suit challenging the GSP(s) regarding the Common Basins, or made subject to a claim or penalty regarding the same, the Parties shall coordinate and undertake a joint defense, utilizing a joint defense agreement to the extent possible, subject to the approval of the Parties. Each Party agrees that, to the greatest extent practicable, it shall cooperate in such defense and execute any waivers and/or tolling agreements that may be necessary in order to provide for a single joint defense of such a suit, claim, or imposition of penalty. Any communications between the Parties and any of their respective consultants and attorneys engaged in the joint defense shall be privileged as joint defense communications. Work performed during the joint defense by Consultants or attorneys, to the extent allowed by law, shall be considered attorney work product. Nothing in this paragraph is intended to require a joint defense under circumstances where it would be legally impermissible or under circumstances where it is wholly impractical.

This indemnity provision shall survive the termination of this MOU and the termination of any Party's participation in this MOU. Further, each Party will be liable to the other Party for attorneys' fees, costs, and expenses, and all other costs and expenses whatsoever, which are incurred by the other Party in enforcing this indemnity provision.

In all Consultant contracts funded in whole or part by the Parties, SBCWD shall name the SCVWD and its respective officers, agents, and employees as additional insureds and additional indemnitees in the insurance coverage and indemnity provisions customarily used in the SBCWD professional service contracts.

8. Disputes

Any claim that a Party may have against the other Party regarding the performance of this MOU including, but not limited to, claims for compensation will be submitted to such other Party. The Parties will attempt to negotiate a resolution of such claim and if necessary process an amendment to this MOU or a settlement agreement to implement the terms of any such resolution.

9. Cancellation

If a Party elects to terminate its participation in this MOU, it may do so by delivering to the other Party a written notice of intention to terminate. Termination shall take effect thirty days following the receipt of notice by the other Party. No portion of the terminating Party's financial contribution provided under this MOU shall be refunded to the terminating Party.

10. Maintenance and Inspection of Books, Records, and Reports

The Parties will, upon reasonable advance written notice, make available for inspection by the other Party all records, books, and other documents directly relating to the GSP(s) or groundwater management for the Common Basins. Prior to release of such documents

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(other than in response to a request under the California Public Records Act, a subpoena, or court order), all draft information shall be approved by both Parties for finalization and release.

11. MOU Not a Precedent

The Parties intend that the provisions of this MOU will not bind the Parties as to the provisions of any future agreement between them. This MOU was developed specifically for the specified MOU term and purpose.

12. Notices

Any notice, demand, or request made in connection with this MOU must be in writing and will be deemed properly served if delivered in person or sent by United States mail, postage prepaid, to the addresses specified herein.

Santa Clara Valley Water District
Attention: Garth Hall, Deputy Operating Officer, Water Supply
5750 Almaden Expressway
San Jose, CA 95118

San Benito County Water District
Attention: Jeff Cattaneo, District Manager
30 Mansfield Road, PO Box 899
Hollister, CA 95024

Any Party may change such contact or address by notice given to the other Party as provided herein.

13. Amendments

The MOU may be amended in the form of written amendment executed by both Parties.

14. Assignment

No Party shall assign, sublet, or transfer this MOU or any of the rights or interests in this MOU without the written consent of the other Party.

15. Severability

The partial or total invalidity of one or more parts of this MOU will not affect the intent or validity or remaining parts of this MOU.

16. Governing Law

This MOU will be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws.

17. Interpretation

This MOU shall be deemed to have been prepared equally by both Parties, and its

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individual provisions shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

18. Contractual Restriction on Consultant's Use of Study Materials

Each Party shall ensure that reasonable contractual restrictions on the consultant's use of the study material and handling of confidential material are included in a written agreement with the consultant.

19. No Third-Party Beneficiaries

This MOU does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

In WITNESS WHEREOF, the parties have executed this MOU as of the effective date.

San Benito County Water District

Approved as to Form

NAME
General Counsel

Jeff Cattaneo
General Manager

Date

Santa Clara Valley Water District

Approved as to Form

Erick Soderlund
Assistant District Counsel

Norma Camacho
Interim Chief Executive Officer

Date

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