

AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN THE SOUTH TAHOE PUBLIC UTILITY DISTRICT AND THE EL DORADO COUNTY WATER AGENCY

This Amended and Restated Memorandum of Understanding (“MOU”) is entered into on this 14th day of June 2017, by and between the South Tahoe Public Utility District (“District”) and the El Dorado County Water Agency (“County Water Agency”) (each a “Party” and collectively the “Parties”), at South Lake Tahoe, California, with reference to the following facts and intentions:

A. The District is a California Public Utility District, formed pursuant to the California Public Utility District Act (Cal. Pub Util. Code, § 15501, et seq.) and owns and operates public water and sewer systems and provides water and sewer services to residential and commercial customers situated within El Dorado County, California; and

B. The County Water Agency is a body politic and corporate pursuant to Water Code, Appendix Section 96-1 et seq; and

C. Both the District and the County Water Agency overlie the Tahoe Valley South Groundwater Basin (designated basin number 6-5.01 in the California Department of Water Resources’ CASGEM groundwater basin system) (“TVS Basin”); and

D. The District and the County Water Agency are committed to the sustainable management of the groundwater resources within the TVS Basin, as shown by, among other actions, their collaborative development and implementation of both the original Groundwater Management Plan for the TVS Basin, adopted in 2000 (“2000 GWMP”), and update to the 2000 GWMP in 2014 (“2014 GWMP”); and

E. The District and the County Water Agency also work collaboratively to sustainably manage the TVS Basin in multiple other ways, including creating and participating in the Stakeholder Advisory Group (“SAG”), dividing monitoring responsibilities for the TVS Basin and sharing the resulting information, and jointly funding and implementing multiple other studies and monitoring program activities; and

F. In 2014, the California Legislature adopted, and the Governor signed into law, the Sustainable Groundwater Management Act (“Act”), which authorizes local agencies to manage groundwater in a sustainable fashion; and

G. The District adopted Resolution No. 2986-15 electing to be the Groundwater Sustainability Agency (“GSA”) for the portion of the TVS Basin within its service area boundaries on July 16, 2015, submitted its GSA Formation Notification to the Department of Water Resources (“DWR”) on August 12, 2015 (“2015 GSA Formation Notification”), and was recognized as the exclusive GSA for this portion of the TVS Basin on November 17, 2015 (“District Territorial GSA”); and

H. The District adopted Resolution No. 3040-16 electing to be the GSA for the portion of the TVS Basin outside its service area boundaries on September 15, 2016, submitted its GSA Formation Notification to DWR on September 16, 2016 (“2016 GSA Formation Notification”), and was recognized as the exclusive GSA for this portion of the TVS Basin on December 28, 2016 (“District Extraterritorial GSA”); and

I. Recent discussions with the State Water Resources Control Board ("SWRCB") have raised concerns about a local agency forming a GSA outside of its service area boundaries. These concerns raise a risk that the 2016 GSA Formation Notification may be considered invalid and that the TVS Basin could potentially be designated as "probationary" by the SWRCB and be put under the SWRCB management; and

J. To mitigate this potential risk, the County Water Agency held a public hearing on June 14, 2017 to consider whether it should elect, and as a result of that hearing it did elect, to become the GSA for the portion of the TVS Basin outside of the District's service area boundaries; and

K. In anticipation of the County Water Agency becoming the GSA for the portion of the TVS Basin outside of the District's service area boundaries, the District intends to withdraw as the District Extraterritorial GSA effective upon the County Water Agency being recognized as the exclusive GSA for the portion of the TVS Basin outside the District's service area boundaries; and

L. The District and the County Water Agency intend to continue to cooperatively manage the TVS Basin and agreeing to implement the Act in the TVS Basin; and

M. To this end, the District prepared and submitted, with the County Water Agency's support, two alternatives in lieu of a Groundwater Sustainability Plan (" Alternative GSP"); and

N. The intent of this MOU is to formalize the District and the County Water Agency's agreement to continue to cooperatively manage groundwater resources and to coordinate implementation of the Act throughout the TVS Basin.

NOW, THEREFORE, in consideration of the foregoing, the District and the County Water Agency agree as follows:

1. **Information Sharing.** The District and the County Water Agency are both involved in studying and developing information and data regarding water supplies in El Dorado County. The District and the County Water Agency agree to share all such information and data related to the TVS Basin, particularly as it relates to monitoring information from portions of the Basin outside of the District's service area boundaries. The sharing of this information will assist both the District and the County Water Agency to coordinate management of the TVS Basin and to ensure that the TVS Basin remains in compliance with the Act.

2. **Implementation of the Act.** In the event that neither Alternative GSP is accepted by DWR, the District intends to develop a Groundwater Sustainability Plan ("GSP") for the entire TVS Basin in collaboration with the County Water Agency. Upon the development of a GSP, and in compliance with the requirements of the Act, both the District and the County Water Agency agree to adopt and implement the GSP within their respective service area boundaries.

3. **Costs.** The District shall be responsible for the costs of development and implementation of the GSP throughout the entire TVS Basin, including those portions outside of the District's service area. However, the County Water Agency agrees, through its Cost Share

Program, to provide funding for activities under the Act in accordance with the County Water Agency's policies for cost sharing within the Agency's boundaries.

4. **Term.** This MOU shall remain in force until either the District or the County Water Agency terminates this MOU in writing upon 30 days prior written notice to the other Party.

5. **Mutual Indemnification and Protection.** Except as otherwise described herein, each Party (the "Indemnifying Party") covenants and agrees to indemnify and to hold harmless the other Party and its successors and assigns (the "Indemnified Party") for, from and against any and all third party claims, liabilities and expenses (including, but not limited to, reasonable attorneys' fees, court costs, expert witness fees and other litigation-related expenses) which may be claimed or asserted against the Indemnified Party on account of the exercise by the Indemnifying Party of the rights granted to it under this MOU; provided, however, in no event shall the Indemnifying Party be responsible to the Indemnified Party for any claims, liabilities or expenses that may be claimed or asserted against the Indemnified Party relating to the gross negligence or willful misconduct of the Indemnified Party or any of its employees, directors, officers, trustors, trustees, agents, affiliates, personal representatives, heirs, legatees, successors or assigns.

6. **Dispute Resolution.** The District and County Water Agency agree to meet and confer in good faith for the purposes of resolving any dispute under this agreement prior to bringing any action for enforcement.

7. **General Provisions.**

7.1 **Recitals.** The recitals stated at the beginning of this MOU of any matters or facts shall be conclusive proof of the truthfulness thereof and the terms and conditions of the recitals, if any, shall be deemed a part of this MOU.

7.2 **Cooperation.** The Parties shall, whenever and as often as reasonably requested to do so by the other party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting party to carry out the intent and purposes of this MOU, provided that the requesting Party shall bear the cost and expense of such further instruments or documents (except that each Party shall bear its own attorneys' fees).

7.3 **Authority.** The individuals executing this MOU represent and warrant that they have the authority to enter into this MOU and to perform all acts required by this MOU, and that the consent, approval or execution of or by any third party is not required to legally bind either party to the terms and conditions of this MOU.

7.4 **Construction.** The provisions of this MOU should be liberally construed to effectuate its purposes. The language of all parts of this MOU shall be construed simply according to its plain meaning and shall not be construed for or against either Party, as each Party has participated in the drafting of this document and had the opportunity to have their counsel review it. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

7.5 Successors and Assigns. This MOU shall be binding on and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

7.6 Severability. If any term, provision, covenant or condition of this MOU is determined to be unenforceable by a court of competent jurisdiction, it is the Parties' intent that the remaining provisions of this MOU shall remain in full force and effect and shall not be affected, impaired or invalidated by such a determination.

7.7 Counterparts. This MOU may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

7.8 Entire Agreement and Amendment. This MOU contains the entire amended and restated understanding and agreement of the Parties with respect to the matters considered, and there have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature binding except as stated in this MOU. This MOU may be altered, amended or modified only by an instrument in writing, executed by the parties to this MOU and by no other means. Each Party waives their future right to claim, contest or assert that this MOU was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

7.9 Waiver. No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Party to provide a waiver in the future except to the extent specifically stated in writing. Any waiver given by a Party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested. No waiver shall be binding unless executed in writing by the Party making the waiver.

7.10 Notices. All notices, requests, demands, and other communications required to or permitted to be given under this MOU, shall be in writing and shall be conclusively deemed to have been duly given (1) when hand delivered to the other Party; or (2) when received by facsimile at the address or number below, provided, however, that notices given by facsimile shall not be effective unless a duplicate copy of such facsimile notice is promptly given by depositing same in a United States post office with first class postage prepaid and addressed to the Parties as set forth below.

To: County Water Agency

El Dorado County Water Agency
4110 Business Drive, Suite B
Shingle Springs, CA 95682
Attn: General Manager

To: District

South Tahoe Public Utility District
1275 Meadow Crest Drive
South Lake Tahoe, California 96150
Attention: General Manager

With a copy to:

Gary M. Kvistad
Brownstein Hyatt Farber Schreck, LLP
1020 State Street
Santa Barbara, CA 93101

Each Party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph and that any person to be given notice actually receives such notice. A Party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section by giving the other Party written notice of the new address in the manner set forth above.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first stated above.

South Tahoe Public Utility District

El Dorado County Water Agency

By: 

Randy Vogelgesang, President

By: 

Brian K. Veerkamp, Chair