

MEMORANDUM OF UNDERSTANDING
FORMING
THE MERCED IRRIGATION-URBAN GROUNDWATER SUSTAINABILITY AGENCY

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into on _____, by and between the **MERCED IRRIGATION DISTRICT**, an irrigation district ("MID" herein), **CITY OF MERCED**, a municipal corporation ("Merced" herein); **CITY OF ATWATER**, a municipal corporation ("Atwater" herein); **CITY OF LIVINGSTON**, a municipal corporation ("Livingston" herein); **LE GRAND COMMUNITY SERVICES DISTRICT**, a community services district, ("LGCS" herein); **PLANADA COMMUNITY SERVICES DISTRICT**, a community services district ("PCSD" herein); and **WINTON WATER AND SANITARY DISTRICT**, a sanitary district, ("WWSD" herein), each a "Party" and collectively the "Parties."

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 ("SGMA"); and

WHEREAS, the purpose of SGMA is to create a comprehensive management system in the State of California by creating structure to manage groundwater at the local level, while providing authority to the State to oversee and regulate, if necessary, the local groundwater management system; and

WHEREAS, Parties overlie a portion of the Merced Subbasin (Basin Number 5-22.04, DWR Bulletin 118) within the San Joaquin Valley Basin, a DWR-designated high-priority and critically overdrafted basin; and

WHEREAS, SGMA empowers local agencies to adopt Groundwater Sustainability Plans ("GSP") that are tailored to the resources and needs of their communities to provide for sustainable groundwater management providing a buffer against drought and contributing to reliable water supply for the future; and

WHEREAS, Water Code Section 10723.6 authorizes a combination of local agencies overlying a groundwater basin to elect to become a Groundwater Sustainability Agency ("GSA") by using a memorandum of agreement or other legal agreement; and

WHEREAS, Parties are each qualified to become a GSA under SGMA as they are all local agencies with water supply and/or water management responsibilities, being public water conveyors, within the Basin; and

WHEREAS, in 2016, Parties entered into an agreement entitled Memorandum of Understanding Setting Forth Certain Items of Agreement Among Agencies within the Merced Groundwater Subbasin Following the Sustainable Groundwater Management Act, to begin a consensus-seeking discussion regarding GSA formation and SGMA compliance; and

WHEREAS, the Parties desire through this Agreement to establish a multi-agency Groundwater Sustainability Agency ("GSA") for the Merced Subbasin to be advised and coordinated by a committee of their representatives, but with GSA actions subject to approval by each of the Parties.

WHEREAS, the Parties intend to work collaboratively with other interested agencies to develop and implement a Merced Subbasin Groundwater Sustainability Plan to sustainably manage the Basin pursuant to SGMA, including funding under SGMA, and collection of GSP fees.

NOW, THEREFORE, incorporating the above recitals herein, it is mutually understood and agreed as follows:

1. DEFINITIONS

1.1 **“Agreement”** shall mean this Agreement.

1.2 **“Basin” or “Merced Subbasin”** shall mean the Merced Subbasin (Basin Number 5-22.04, DWR Bulletin 118) of the San Joaquin Valley Basin.

1.3 **“Merced Irrigation-Urban Groundwater Sustainability Agency” or “MIUGSA” or “this GSA”** shall mean the multi-agency Groundwater Sustainability Agency formed pursuant to this Agreement.

1.4 **“Merced Subbasin Groundwater Sustainability Plan” or “GSP”** shall mean the Groundwater Sustainability Plan that the Parties intend, through this GSA, to develop, adopt and implement under this Agreement for the Merced Subbasin in coordination with other GSA’s whose service areas overlie the Merced Subbasin.

1.5 **PURPOSE of AGREEMENT.** The purpose of this Agreement is to provide the principles and terms under which the parties will cooperate in the establishment and functioning of the multi-agency Merced Irrigation-Urban Groundwater Sustainability Agency that will allow compliance with SGMA and applicable State law(s).

2. MERCED IRRIGATION-URBAN GROUNDWATER SUSTAINABILITY AGENCY. The Parties hereby establish and become members of the Merced Irrigation-Urban Groundwater Sustainability Agency to manage the portion of the Basin as set forth in Exhibit A hereto.

3. ADDITIONAL AGENCIES. Additional agencies with service area boundaries outside the jurisdiction of the Parties may join and become a Party to this Agreement and incorporate their service area boundaries or portions thereof into MIUGSA upon the mutual consent of all Parties and execution of this Agreement by the new Party’s legislative body, and in compliance with SGMA. Upon the execution of this Agreement by additional Parties, Exhibit A shall be accordingly amended to reflect the new jurisdictional boundaries of the MIUGSA.

4. POWERS

4.1 In addition to any other action, power or authorities available to implement SGMA, including the development, adoption and implementation of a GSP, the MIUGSA may perform the following functions:

(a) Adopt standards for measuring and reporting water use.

- (b) Adopt rules, regulations, policies and procedures to govern the adoption and implementation of the GSP, as authorized by SGMA including funding of the GSA, and the collection of fees or charges as may be applicable.
- (c) Develop and implement conservation best management practices.
- (d) Develop and implement metering, monitoring and reporting related to groundwater pumping.
- (e) Hire consultants as determined necessary or appropriate by the Parties
- (f) Prepare a budget.

5. DECISION MAKING PROCESS

- 5.1 With the exceptions noted herein, it is the goal of the Parties that all actions undertaken by the MIUGSA are done by unanimous consent of the Parties; however, if unanimous consent is not possible, a majority vote of the Parties is required. The Merced Irrigation District and each of the Cities shall be entitled to one (1) vote, and the community service districts shall collectively be entitled to one (1) vote
- 5.2 In the event of an impasse or disagreement, the Parties shall use their best efforts to find a mutually agreeable result. To this effect, the Parties shall consult and negotiate with each other in good faith in an attempt to reach a solution that is mutually satisfactory. If the Parties do not reach a solution, then the matter shall be submitted to non-binding arbitration or mediation within a reasonable period of time.

6. ROLES AND RESPONSIBILITIES OF THE PARTIES

- 6.1 The Parties will work jointly to fulfill the Purpose of this Agreement, SGMA, and the development and implementation of a GSP within the boundaries of the MIUGSA.
- 6.2 The Parties will meet regularly to discuss SGMA, GSP development and implementation activities, assignments, and ongoing work progress. Each party agrees to designate an individual to serve as the central point of contact on all matters related to this Agreement.
- 6.3 The Parties may form committees as necessary from time to time discuss issues that impact the MIUGSA.
- 6.4 The Parties will form a Technical Committee to assist in the development, and then evaluate and measure implementation of the Merced Subbasin Groundwater Sustainability Plan. The Parties designate MID to act as the primary agent for purposes of developing technical information, as well as the point of contact and designated representative for MIUGSA for coordination with GSAs within the Merced Subbasin and adjacent basins.
- 6.5 Except for the MID, each Party of the MIUGSA is responsible for implementation of the GSP in all areas of the MIUGSA that are within their respective jurisdictional boundaries. MID is responsible for implementing the GSP in areas of the MIUGSA within MID's

jurisdictional boundaries and outside the jurisdiction of all other Parties to the MIUGSA. As other Parties' jurisdictional boundaries expand in the future, it is anticipated that MID's area of responsibility may decrease.

- 6.6 Following implementation of the Merced Subbasin Groundwater Sustainability Plan, the Parties designate MID to complete necessary documentation, analyses and reporting for submission to the DWR and SWRCB on behalf of the MIUGSA as needed.
- 6.7 A Party will promptly take action on any item where approval, adoption or implementation by a Party is required.
7. **FUNDING.** Parties agree to share proportionally in the costs of the MIUGSA according to participation percentages. The participation percentages shall be allocated based on each Party's proportionate share of the volume of groundwater pumped from the Merced Subbasin excluding resident recharged water under a Party's existing surface water rights or acquired under contract, as set forth in Exhibit B. The participation may be evaluated by the Parties from time to time to order consider new information. Any revised participation percentages approved by the Parties shall be dated and attached as Exhibit B to this Agreement and effective upon the date approved by all Parties, without any further amendment of this Agreement being required.
8. **TERM.** This Agreement shall remain in full force and effect until amended, rescinded, superseded or terminated by the mutual written consent of the Parties and as allowed by State law. Any Party may terminate membership and withdraw from the MIUGSA upon sixty (60) days written notice of termination to the MIUGSA. Whenever a Party withdraws from the MIUGSA, it is the intent of the Parties and of the MIUGSA that the withdrawal shall remove the area within the Party's water service area from further management by the MIUGSA, provided that the withdrawal shall be in accordance with the requirements of SGMA and shall leave no area within the Basin unmanaged.
9. **EFFECT OF WITHDRAWAL.** A Member may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement, effective upon sixty (60) days written notice to the remaining Members. Upon withdrawal, a Member agrees that it has a continuing obligation to comply with the Act and shall, if prior to June 30, 2017, and prior to the MIU GSA becoming an exclusive GSA, notify DWR that it shall act as its own GSA or join an alternate GSA that has entered into or will enter into a Coordination Agreement with the Agency in order to avoid an adverse effect upon the continuing Members. If after July 1, 2017, that withdrawing Member shall remain subject to the terms of the GSP that is prepared by the Agency so as to not put the Merced Groundwater Subbasin in jeopardy, unless a mutually agreed upon resolution is reached between the MIU GSA, DWR, and the withdrawing Member. This obligation shall survive withdrawal from this Agreement, is for the express benefit of the remaining Members, and is subject to the indemnification provisions of Section 12 of this Agreement. A withdrawing Member shall in all events remain liable for its proportionate share of (i) the amount of any fiscal year budget approved prior to the date the withdrawing Member provides its notice of withdrawal; and (ii) any call for funds or assessment levied by the Authority prior to the date the withdrawing Member provides its notice of withdrawal.

10. **AMENDMENT.** This Agreement and exhibits hereto may only be amended by a subsequent writing, approved and signed by all Parties.
11. **INDEMNIFICATION.** Each Party agrees that it shall indemnify each other Party from the costs losses, damages, claims or liabilities arising from such Party's performance or non-performance of its obligations under this Agreement.
12. **ASSIGNMENT.** Except as otherwise provided herein, the rights and duties of the Parties may not be assigned without the written consent of the other Parties. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Parties then in effect. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties.
13. **COUNTERPARTS.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.
14. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California.
15. **SEVERABILITY.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties that the remainder of the Agreement shall not be affected thereby.
16. **SIGNATURE AUTHORIZATION.** Each Party represents that the representative executing this Agreement on its behalf has been duly authorized to execute this Agreement on behalf of the Party.

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

DATE: _____

DATE: _____

By: _____

John Sweigard
Merced Irrigation District

By: _____

Steve Carrigan
City of Merced

APPROVED AS TO FORM:

 4-12-2017
City Attorney Date

APPROVED AS TO CONTENT
City of Atwater

DATE: _____

By: _____

Print Name and Title

APPROVED AS TO CONTENT
City of Livingston

DATE: _____

By: _____

Print Name and Title

APPROVED AS TO CONTENT
Winton Water and Sanitary District

DATE: _____

By: _____

Print Name and Title

APPROVED AS TO CONTENT
Planada Community Services District

DATE: _____

By: _____

Print Name and Title

APPROVED AS TO CONTENT
Le Grand Community Services District

DATE: _____

By: _____

Print Name and Title

Exhibit B

Any values shown in this exhibit are intended solely to proportion cost allocation to the MOU members as discussed in article 8. The management of groundwater and related allocations shall be subject to the approved Groundwater Sustainability Plan (GSP) adopted by the MOU members.

The distribution of funds is based on the following principles:

1. Natural Yield: The amount of groundwater that can be sustainably extracted, absent surface water deliveries into the basin. Natural unimpaired flows are assumed in creeks and rivers (Merced River and San Joaquin River)
2. The first groundwater pumped by any agency, in any given year, is assumed to be from the natural yield, regardless of recharge efforts.
3. Each agency will contribute a proportionate share of funds based on the groundwater extracted minus recharge, but no less than its share of the natural yield.
4. An agency may contribute to funding a proportion less than the natural yield, if its annual groundwater pumping is less than the natural yield.
5. Funding contributions will be adjusted annually based on natural yield, and on groundwater pumping and recharge by each agency.

Example:

Assume Natural Yield = 0.5 Acre-Foot (AF)/ Acre

Agency	Agency Area		Natural Yield	Actual Pumping	AF to be Chg'd	% Cost Contribution
	Acres	% Acres	AF	AF	AF	
MID	130,000	85%	65,000	90000	65000*	61%
Merced	14,925	10%	7,462	24000	24000	23%
Atwater	3,901	3%	1,951	7000	7000	7%
Livingston	2,378	2%	1,189	7000	7000	7%
CSDs	2,000	1%	1,000	3400	3400	3%
Total	153,204			131,400	106,400	

* MID charges more than 120,000 AF annually and pumps on Average 90,000 AF. MID still contributes full proportion of natural yield.