

**AGREEMENT TO FORM A JOINT POWERS AUTHORITY
EAST KAWEAH GROUNDWATER SUSTAINABILITY AGENCY**

THIS AGREEMENT ("Agreement") is made December 8th, 2016, by and between LINDMORE IRRIGATION DISTRICT ("LID"), LINDSAY-STRATHMORE IRRIGATION DISTRICT ("LSID"), EXETER IRRIGATION DISTRICT ("EID"), IVANHOE IRRIGATION DISTRICT ("IID"), STONE CORRAL IRRIGATION DISTRICT ("SCID"), the CITY OF LINDSAY ("City of Lindsay"), and the COUNTY OF TULARE ("County"), (hereinafter referred to individually as "Member" and collectively as "Members"), in light of the following:

RECITALS

- A. During September 2014, Governor Brown signed three bills (SB 1168, SB 1319, and AB 1739) into law creating the Sustainable Groundwater Management Act ("SGMA").
- B. SGMA authorizes the formation of an entity called a Groundwater Sustainability Agency ("GSA"), one or more of which are authorized to be responsible for implementing provisions of SGMA as to each groundwater basin and subbasin falling within the provisions of SGMA.
- C. The Members overlie the Kaweah Subbasin (5-22.11 of the Department of Water Resources Bulletin 118 classifications) ("Subbasin") of the San Joaquin Valley Basin, an adjudicated groundwater basin, portions of which underlie the jurisdictional boundaries of each Member.
- D. Each of the Members to this Agreement is a local government entity with either water supply, water management, or land use responsibilities within the Subbasin and is qualified individually to serve as a GSA under the provisions of SGMA.
- E. Under SGMA, a combination of local agencies may elect to form a GSA through a joint powers agreement.
- F. The Members intend by this Agreement to create a joint powers authority that will elect to become a GSA for their jurisdictional areas covering a portion of the Subbasin.
- G. Under SGMA, each GSA will be responsible for assuming its regulatory role by June 30, 2017, and for submitting a Groundwater Sustainability Plan ("GSP") to the Department of Water Resources by January 31, 2020.
- H. The Members intend to work cooperatively with other GSAs in the Subbasin for purposes of developing a GSP and entering into a Coordination Agreement if necessary.

I. The Members desire, once successfully electing to be a GSA, to begin collecting and organizing data, engaging and retaining experts and consultants, and soliciting feedback from beneficial users, users of groundwater and interested parties within the portion of the Subbasin subject to their jurisdiction, for the purpose of preparing a GSP and for the purpose of negotiating Coordination Agreements with the other GSAs in the Subbasin.

J. The Members intend by this Agreement to provide for the management and funding commitments reasonably anticipated to be necessary for the above purposes.

K. The Members intend by this Agreement to provide a framework for cooperative efforts for all entities and individuals within the Authority's jurisdictional area and to implement SGMA in the most effective, efficient, and fair way reasonably possible, and at the lowest reasonable cost.

NOW THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the Members hereby agree as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.01. Creation of Authority. Pursuant to California Government Code Section 6500 *et seq.*, there is hereby created a public entity to be known as the "East Kaweah Groundwater Sustainability Agency" (hereinafter referred to as the "Authority"), which shall be a public entity separate and apart from the Members, and shall administer this Agreement.

Section 1.02. Purpose. The purposes of this Agreement are:

- (a) To create a Joint Powers Authority separate from its Members that will elect to be the GSA for a portion of the Subbasin;
- (b) To develop, adopt, and implement a GSP in order to implement SGMA's requirements and achieve sustainability goals outlined in SGMA; and
- (c) To enter into a Coordination Agreement or similar agreement with other GSAs in order to meet the sustainability requirements outlined in SGMA.

ARTICLE II

POWERS

Section 2.01. Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of all powers authorized under SGMA and necessary to satisfy the requirements of SGMA.

Section 2.02. Restrictions on the Exercise of Powers. Pursuant to Government Code Section 6509 *et seq.*, the powers of the Authority shall be exercised and restricted in the same manner as those imposed upon the County.

Section 2.03. Obligations of the Authority. No debt, liability or obligation of the Authority shall constitute a debt, liability or obligation of any of the Members, appointed members of the Board of Directors, or committee members.

Section 2.04. Water Right. As provided in Water Code Section 10720.5 of SGMA, the Authority and all of its Members confirm that groundwater management under this Authority shall be consistent with Section 2 of Article X of the California Constitution and that any groundwater sustainability plan adopted by the Authority shall not determine or alter surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

ARTICLE III

GOVERNING BODY

Section 3.01. Governing Board. The Authority shall be administered by a Board of Directors (“Board”), composed of Directors and alternate Directors as described herein, to serve at the pleasure of their appointive governing body. All voting power of the Authority shall reside in the Board.

(a) The Board shall consist of Directors who shall be appointed as follows:

- (1) One elected member of the governing body of each Member entity.
- (2) Two representatives of a mutual water company or water corporation regulated by the Public Utilities Commission as defined in Water Code Section 10723.6(b), servicing an area within the Authority’s jurisdiction, nominated by their respective governing body, and appointed by the Board of Directors.
- (3) One representative from a landowner and groundwater user in a “white area,” appointed by the County. A “white area” shall be defined as such area where the County of Tulare is the only public agency with jurisdiction as defined by SGMA.
- (4) One At Large representative nominated and appointed by the Board of Directors.

(b) Each Member shall appoint one person, who is either an elected member of the governing body of the Member entity or on the staff of such Member entity, to serve as an alternate Director of the Board in the same manner as the Director is appointed by the Member. In addition mutual water companies or water corporations regulated by the Public Utilities Commission, shall nominate and the Board of Directors shall appoint an alternate for the seats described in Section 3.01(a)(2). The County shall in addition to appointing one

representative as described in Section 3.01(a)(3), appoint an alternate for said seat. Lastly, the Board of Directors in addition to nominating and appointing an At Large representative, shall appoint an alternate for said seat. Any such alternates shall be empowered to cast votes in the absence of the regular Directors or, in the event of a conflict of interest preventing the regular Director from voting, to vote because of such conflict of interest.

(c) Directors and alternate Directors may be removed or replaced as follows:

- (1) Directors appointed by Members as described in Section 3.01(a)(1) may be removed or replaced at any time by their governing board; and
- (2) Appointees of the Board as described in Section 3.01(a)(2) may be removed or replaced by their governing body at any time.
- (3) Appointees of the Board as described in Section 3.01(a)(3) may be removed or replaced by the County at any time.
- (4) Appointees of the Board as described in Section 3.01(a)(4) may be removed or replaced by the Board of Directors at any time.
- (3) A Director who is no longer either an elected member of the governing body of the entity or on the staff of such entity that qualified such director to serve on the Board shall be deemed automatically removed from the Board.

Section 3.02. Meetings of the Board. The Board shall provide for calling and conducting its regular meetings and special meetings, in accordance with Government Code Section 54950 *et seq.*

Section 3.03. Minutes. The Secretary shall cause to be kept summary minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the summary minutes to be forwarded to each Director and to each of the Members.

Section 3.04. Voting. Each Director shall have one vote.

Section 3.05. Quorum; Required Votes; Approval. A quorum of the Board for convening of any meeting shall consist of a majority of all Member Directors, or in the absence of a Member Director, such Director's designated alternate. A quorum of the Board must be present at the time of any vote on any matter before the Board. An affirmative vote of at least a majority of all Directors, or designated alternate Director, present in a quorum of the Board, shall be required for any action of the Board. Notwithstanding the foregoing, approval of certain types of matters shall require the approval of a Super Majority defined as seven (7) Directors of the Board and a majority of all Member Directors. The items requiring approval of a Super Majority are budget approval, assessments, the initiation of litigation, the hiring or termination of the chief executive

officer, the adoption of the GSP, the adoption of an intra-basin coordination agreement, the addition of new Members, and the termination of Members. At the discretion of the majority of the Board of Directors, directors representing a Member who is delinquent in any past or present monetary contributions shall abstain from voting on all matters until the delinquency is brought current.

Section 3.06. Bylaws. The Board may adopt bylaws and governing regulations consistent with this Agreement, which may be amended from time to time, for the conduct of its meetings as are necessary for the purposes hereof. Approval of bylaws, governing regulations, and any amendments thereof shall require approval of the Super Majority as defined in Section 3.05.

Section 3.07. Terms of Office. The term of office for LID, LSID, EID, and the City of Lindsay, representatives serving on the Board, and the appointed representatives as described in Section 3.01(a)(2), is four (4) years. For the purpose of providing staggered terms of office, the initial term of the Directors appointed by the County, IID, and SCID, the appointed representatives as described in Section 3.01(a)(3) and Section 3.01(a)(4), shall be for a period of two (2) years. Thereafter, the term of office for each representative appointed by the County, IID, SCID, and Sections 3.01(a)(3),(4), shall be for a period of four (4) years.

ARTICLE IV

COMMITTEES

Section 4.01. Committee Formation. Committees shall be formed by the Board in order to advise the Board on matters that fall within the scope of the particular committee's assignment. Committees may be standing committees or *ad hoc* committees. Committees shall meet as often as directed by the Board or, if no such direction is given, as often as necessary, as determined by the Chair of the committee. Two standing committees shall be formed as soon as reasonably practical, but in no event later than one hundred and twenty (120) days of formation of the Authority. They are as follows:

- (a) Advisory Committee. Committee members shall fall within categories of interested persons or representatives of interested entities as described in SGMA. Committee members shall be appointed by the Board from among applicants. The Advisory Committee shall make recommendations to the Board.
- (b) Technical Advisory Committee. Each Director shall be entitled to appoint one technical person to be a member of the Technical Advisory Committee.

ARTICLE V

OFFICERS AND EMPLOYEES

Section 5.01. Chair and Vice-Chair. The Board shall elect a Chair and a Vice-Chair from among the Directors to serve for two years. The Chair and the Vice-Chair shall serve at the pleasure of the Board and shall perform the duties normally required of said offices.

- (a) The Chair shall (1) preside at and conduct each meeting of the Board, (2) represent the Board as directed by the Board, (3) be an ex-officio member of each committee established by the Board, and (4) perform such other duties as may be imposed by said Board;
- (b) The Vice-Chair shall act and perform all of the Chair's duties in the absence of the Chair; and
- (c) The Chair or Vice-Chair may sign all contracts and agreements as approved by the Board.

Section 5.02. Secretary. The Board shall appoint a Secretary from among the employees of the Authority, or if no such employees exist, a consultant. The Secretary shall serve at the pleasure of the Board. The Secretary shall act on behalf of the Authority and perform such other duties as may be imposed by the Board. The Secretary may sign agreements for the Authority when authorized by the Board.

Section 5.03. Treasurer and Auditor.

- (a) LID shall be the depository, shall have custody of all the money of the Authority from whatever source, and shall have the duties and obligations of the Treasurer as set forth in Government Code Sections 6505 and 6505.5. LID shall be responsible for receiving quarterly reports from the Secretary and verifying the balance of this report with respect to the balance as maintained by the records.
- (b) LID shall assure strict accountability of all receipts and disbursements of the Authority and shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

Section 5.03. Officers in Charge of Records; Funds; and Accounts. Pursuant to Government Code Section 6505.1, LID shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 5.04. Employees and Consultants. The Board may hire employees and consultants, including engineers, accountants and attorneys, to provide services and leadership to the Authority to accomplish the purposes of the Authority.

ARTICLE VI

ACCOUNTS AND REPORTS; FUNDS

Section 6.01. Accounts and Reports. LID shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times by the public and representatives of the Members. LID, within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members.

Section 6.02. Annual Budget. The Board shall adopt a budget for the Authority. Members shall make contributions which shall be included in the budget adopted by the Board. A Director's affirmative vote to approve a budget does not constitute consent to finance or otherwise participate in any project or projects within that budget.

Section 6.03. Intention for Reimbursement for Expenditures from Grant Proceeds. It is the intention of the Members that the advancement of monies by any Members for expenses of the operational needs of the Authority shall be reimbursed from the proceeds of grants, if grant funds are obtained and such reimbursement is allowable under the terms of any grant agreement.

Section 6.04. Assessment of Members. The Board may vote to assess Members and/or entities within its jurisdiction for a share of costs incurred by the Authority or which are anticipated to be incurred by the Authority. The Board shall comply with all State requirements for the imposition of such assessments. At the discretion of a majority of the Board of Directors, any Member or entity failing to timely pay an assessment shall lose its privilege to vote on any item presented to the Board, until such assessment is paid.

ARTICLE VII

MEMBERSHIP

Section 7.01. Other Members. The Board may vote to approve other entities to be a Member of the Authority with representatives serving as Director and alternate Director on the Board. The Board may vote to remove any Member as a member of the Authority.

ARTICLE VIII

TERM; WITHDRAWAL; TERMINATION

Section 8.01. Term. The Members hereby agree to establish the Authority to last in perpetuity. This Agreement may be rescinded and the Authority terminated by unanimous written consent of all Members.

Section 8.02. Withdrawal of Member. A Member may terminate its membership in the Authority at any time upon giving written notice of the withdrawal to the Authority. The effective date shall be the conclusion of the first board meeting date following the written notice. Any Member who withdraws shall remain obligated to pay its share of all debts, liabilities, and obligations incurred or accrued through the effective date.

Section 8.03. Disposition of Assets. Upon termination of the Authority, any assets shall be returned to the Members in the same proportion said Members have funded such reserves or surplus, in accordance with California Government Code Section 6512. The disposition of assets shall be calculated by quantifying the total contributions made by the Members since the inception of the Authority, and not based on contributions received in the last calendar year prior to termination.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.01. Amendments. This Agreement may be amended at any time by the written agreement of all parties to it.

Section 9.02. Indemnification. The Authority shall indemnify, defend, and save harmless the Members, their officers, agents, and employees, and appointed members of the Board of Directors, their officers, agents, and employees, and committee members, their officers, agents, and employees, from and against any and all claims and losses whatsoever, occurring or resulting to persons, firms, or corporations furnishing or supplying work, services, materials or supplies to the Authority in connection with the performance of this Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm or corporation, for damage, injury, or death arising out of or connected with the Authority's performance of its obligations under this Agreement. Nothing herein shall limit the right of the Authority to purchase insurance or to create a self-insurance mechanism to provide coverage for the foregoing indemnity.

Section 9.03. Insurance. The Authority shall obtain insurance for all Members, appointed members, and committee members, including but not limited to directors and officers liability insurance and general liability insurance containing policy limits in such amounts as the Board of Directors shall determine will be necessary to adequately insure against the risks of liability that may be incurred by the Authority.

Section 9.04. Severability. If any provision of this Agreement 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.

Section 9.05. Secretary of State Filing Requirements. The Chairman of the Board of Directors of the Authority shall file a Notice of this Agreement with the Office of the California Secretary of State within thirty (30) days of its effective date, as required by Government Code Section 6503.5 and within seventy (70) days of its effective date as required by Government Code Section 53051.

Section 9.06. Legal Counsel. The Board shall appoint legal counsel as it deems appropriate.

IN WITNESS WHEREOF, the Members hereto execute this Agreement to be effective on the date first written above.

County: COUNTY OF TULARE By: <u>Mike Ennis</u> Mike Ennis, Chairman Board of Supervisors	LID: LINDMORE IRRIGATION DISTRICT By: <u>John Arnold</u> John Arnold, President
LSID: LINDSAY-STRATHMORE IRRIGATION DISTRICT By: <u>Jeffrey Reed</u> , President	EID: EXETER IRRIGATION DISTRICT By: <u>Thom Whelan</u> , President
IID: IVANHOE IRRIGATION DISTRICT By: <u>Thom Whelan</u> , President	SCID: STONE CORRAL IRRIGATION DISTRICT By: <u>George M. J.</u> , President
CITY OF LINDSAY By: <u>Paul Kimbree</u> , Mayor	APPROVED AS TO FORM: COUNTY COUNSEL By: <u>Joanna</u> Deputy # 20161403