

JOINT EXERCISE OF POWERS AGREEMENT ESTABLISHING THE COSUMNES GROUNDWATER AUTHORITY

*(This version shows all changes made based on October 6 Working Group discussions and the
October 14 Long-Term Governance Meeting)*

THIS AGREEMENT is made and entered into this _____ day of _____ 2021 pursuant to the Joint Exercise of Powers Act, California Government Code §§ 6500, et seq., by and between Galt Irrigation District (“Galt ID”), Omochumne-Hartnell Water District (“OHWD”), Clay Water District (“Clay”), The City of Galt (“City”), Sloughhouse Resource Conservation District (“Sloughhouse RCD”) Amador County Groundwater Management Authority (“Amador”) and the Sacramento County Groundwater Sustainability Agency (“County”), each of which is a “Member” of this Agreement. The term “Members” shall also include any additional Members that join this Agreement, but shall exclude any Members that withdraw from this Agreement in accordance with its terms.

RECITALS

This Agreement is made with reference to the following facts:

- A. In 2014 the State Legislature adopted the Sustainable Groundwater Management Act (SGMA) which requires the sustainable management of groundwater in the State of California for groundwater basins of medium or high priority. SGMA allows local agencies to form Groundwater Sustainability Agencies (GSAs) to manage groundwater at the local level.
- B. The Members to this Agreement are each exclusive GSAs in the San Joaquin Valley, Cosumnes Subbasin, Basin Number 5-2216, as identified in Department of Water Resources (DWR), Bulletin 118 (“Basin” or “Subbasin”), as depicted on Exhibit 1 to this Agreement.
- C. In 2018, the Members each ratified the Cosumnes Subbasin SGMA Working Group Framework Agreement to Guide Near-Term Working Group Deliberations (“Framework Agreement”). The Framework Agreement is a voluntary agreement providing a decision-making structure for the Members to use during the development of a single groundwater sustainability plan covering the entire Subbasin known as the “Cosumnes Subbasin GSP” or “GSP”.
- D. By way of the Framework Agreement, the Members agreed to submit the Cosumnes Subbasin GSP to DWR no later than the SGMA deadline of January 31, 2022, at which time the Members will begin implementation of the GSP; provided, that the governing boards of each Member shall have the right to approve the GSP, as described in the Framework Agreement.

E. The Members now desire to enter into this joint exercise of powers agreement establishing the Cosumnes Groundwater Authority as a joint powers authority in order to achieve the following goals:

1. Work collaboratively to comply with SGMA.
2. Create a unified voice to advocate and respond to legislative, regulatory and policy matters of importance to the Basin.
3. Develop a process for Members to discuss, prioritize and act on matters of priority and interest relating to management of the Basin.
4. Implement the GSP for the Basin that has been adopted by the governing bodies for the GSAs, and otherwise provide for and ensure the ongoing sustainability of the Basin.
5. Seek and secure grant or other funding to implement the GSP.
6. Work collaboratively with the GSA's or other entities managing the adjoining South American and Eastern San Joaquin basins to achieve the goals of the Groundwater Sustainability Plan.

AGREEMENT

ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

- a. "Agency Managed Area" means those lands located within the Members' respective boundaries that overlie the Subbasin and are depicted in Exhibit A.
- b. "Agreement" shall mean this Joint Exercise of Powers Agreement for the Cosumnes Groundwater Authority.
- c. "Authority" shall mean the Cosumnes Groundwater Authority, the separate public entity created by this Agreement.
- d. "Basin" or "Subbasin" shall mean the San Joaquin Valley, Cosumnes Subbasin, Basin Number 5-2216, as identified in DWR Bulletin 118.
- e. "Board of Directors" or "Board" shall mean the governing body of the Authority as described in Article IV, section 4.2 of this Agreement.
- f. "Bonds" shall mean any bonds, loans, notes or other evidence of indebtedness of the Authority (excluding warrants and checks), authorized and issued pursuant to law.
- g. "Brown Act" means Chapter 9, Division 2, Title 5 of Government Code of the State of California (commencing at section 54950) and any subsequent amendments of those provisions.
- h. "Budget" shall mean the approved budget for the Authority.

- i. “Director” shall mean a member of the Authority Board of Directors.
- j. “Fiscal Year” shall mean an accounting period running from July 1 through June 30 of each year
- k. “JPA Act” shall mean the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.*
- l. “Groundwater Sustainability Agency” or “GSA” shall mean an agency authorized by SGMA to regulate a portion of the Subbasin cooperatively with all other Groundwater Sustainability Agencies in the Basin, in compliance with the terms and provisions of the Cosumnes GSP.
- m. “Members” – Shall mean each qualifying entity that becomes a Member to this Agreement accepting the rights, responsibilities and obligations of the Authority Members hereunder, including any entity executing an addendum to this Agreement as hereinafter provided.
- n. “Operating Rules and Regulations” - Shall mean rules, regulations, policies, bylaws and procedures governing the operation of the Authority, adopted by the Authority.
- o. “Plan Manager” - is an employee or authorized representative of the Authority who has been delegated management authority for implementing the GSP and serving as the point of contact between the Authority and DWR.
- p. “Supermajority Vote” – Shall mean the vote required of the Members to take the actions described in Article IV, Section 4.2 of this Agreement and shall constitute at least 2/3 vote of all Members.
- q. “SGMA” means the Sustainable Groundwater Management Act (SB 1168, SB 1319 and AB 1739) that collectively comprise the Act and all regulations adopted under the legislation, as that legislation and those regulations may be amended from time to time.
- r. “Subbasin” means the Cosumnes Groundwater Basin.
- s. “Water Assets” means all surface water rights and supplies, water facilities, water operations, groundwater rights and supplies, and any other water.
- t. “6/7 Vote” – Shall mean the vote required of all Members to take the actions described in Article VI of this Agreement, and shall constitute at least 6/7 vote of all Members.

ARTICLE II

GENERAL PROVISIONS

Section 2.1 Incorporation of Recitals. The foregoing recitals are hereby incorporated herein by reference.

Section 2.2 Certification. Each signatory to this Agreement certifies and declares that it is a public agency (as defined in the JPA Act) that is authorized to be a party to a joint exercise of powers agreement and contract with each other for the joint exercise of any common power under the JPA Act and is an exclusive GSA under SGMA.

Section 2.3 Purpose. The Members agree to establish the Authority for the primary purpose of creating financial and other efficiencies beneficial for the Members, all of which will retain their individual GSA powers, to implement certain aspects of SGMA and the

GSP, as defined over time by the Authority Board of Directors, on a collective basis. By this Agreement, the Member Agencies do not intend for the Authority to become a GSA for the Basin; rather, each of the Members intend to retain their GSA status over their respective Agency Managed Areas and to convey to the Authority only such power as is set forth in the Agreement. The Members also do not intend to provide the Authority with any power over the Water Assets of any Member except as may be specifically conveyed to the Authority by agreement of the affected Member. The Authority is intended to have the power to adopt, impose and collect fees and charges while the Member GSAs also retain and may independently exercise those same powers for SGMA-related purposes, including but not limited to funding of the Authority.

Section 2.4 Principles. The Members agree to the following principles:

- a. The Members intend to work together in a constructive manner to comply with SGMA and implement a GSP that respects local jurisdictions while focusing on a basin-wide approach.
- b. The Members recognize the value of all sectors and stakeholders in supporting a vibrant region and will work to foster dialogues on SGMA, groundwater, and related issues that acknowledge and build on this interdependence.
- c. All Members intend to work together to pursue funding for SGMA-related projects.

ARTICLE III **CREATION OF THE AUTHORITY**

Section 3.1 Creation. There is hereby created, pursuant to the JPA Act, a public entity to be known as the “Cosumnes Groundwater Authority” (“Authority”). The Authority shall be a public entity separate from the Members.

Section 3.2 Term. This Agreement shall be effective from the date first above-written, after being approved and executed by all Members listed above, and shall remain in effect until dissolved pursuant to Article IX or pursuant to mutual agreement of all Members; provided, however, that either the Authority (if not terminated pursuant to Article IX) or its successor (if the Authority is terminated pursuant to Article IX) shall continue to exist for the purposes of: disposing of all claims, payment of debt services with respect to Bonds which have been issued or which have been authorized for issuance and satisfaction of other covenants contained in the resolution and trust indenture relating to said Bonds, reimbursement owed to financial institutions which have secured such Bonds or other parties advancing funds to the Authority and, satisfaction of other covenants contained in reimbursement agreements with such financial institutions and distribution of assets and all other functions necessary to conduct the affairs of the Authority.

Section 3.3 Boundaries of the Authority. The geographic boundaries of the Authority shall be the same as the boundaries for the Cosumnes Subbasin, as shown in Exhibit A, as may be modified from time to time in DWR Bulletin No. 118.

Section 3.4 Purpose. The purpose of this Agreement is to provide for the joint exercise, through the Authority, of powers common to each of the Members to assist in the implementation of the GSP for the Basin pursuant to California, including:

- a. To assist in compliance with SGMA.
- b. To receive funds from Member GSAs in support of SGMA compliance.
- c. To facilitate implementation of Basin conjunctive use.
- d. To implement projects and management actions to mitigate conditions of Basin groundwater overdraft.
- e. To conduct monitoring and reporting on behalf of Members in support of SGMA compliance
- f. To help mitigate any Basin groundwater contamination migration.
- g. To develop relationships with State and Federal agencies.
- h. To develop a public outreach and education program.
- i. To coordinate with adjacent groundwater basins as needed on behalf of Members.

Section 3.5 Other Officers and Employees. Upon the requisite vote of the Board of Directors, the Authority may, among other things:

- a. Engage one or more Members, Authority employees, or third parties, to act as Plan Manager and management staff to manage any or all of the business of the Authority on terms and conditions acceptable to the Board of Directors as specified in a separate written contract. To the extent that a Plan Manager of the Authority is appointed, and consistent with this Section 3.5(a), the Plan Manager shall at all times maintain exclusive control over any employees of or contractors of the Authority, including, but not limited to, matters related to hiring, probationary periods, disciplinary action, termination, benefits, performance evaluations, salary determinations, promotions and demotions, and leave accruals of Authority employees.
- b. Employ one or more persons to serve in such positions as may be approved by the Board of Directors.

Section 3.6 Powers. In fulfillment of the stated goals and purposes, the Authority shall have and may exercise the common powers of its members as permitted by law, and as approved by the Board of Directors, from time to time in the manner hereinafter set forth. For clarity, OHWD shall be the member designated under Government Code section 6509, related to restrictions on the exercise of shared powers, and any such restrictions shall be the same as those applicable to OHWD under the “California Water District Law,” Water Code, sections 34000, et seq.

Subject to the approval of the Board of Directors as to specific actions or projects, the Authority’s powers shall include the power in the Authority’s own name to do any of the following:

- a. To make and enter contracts within its authority to provide for the ongoing sustainability of the Basin.
- b. To employ such other persons as it deems necessary to accomplish its duties and powers. Any employee may be on a full-time, part-time or consulting basis, as the Board determines.

- c. To exercise jointly the common powers of its Members in studying, planning and implementing ways and means to provide reasonable and financially feasible projects, programs and cooperative operations activities for Members using agreed upon principles, provided that no project, program, or operation shall be carried out in any Agency Managed Area without the approval of the Member with GSA status over that area.
- d. To share information relating to the Basin with Members, DWR or other stakeholders as appropriate and as the Board determines.
- e. To investigate and advise its Members with respect to legislation and proposed legislation affecting the Basin and to make appearances on behalf of its Members regarding such matters.
- f. To act as a central point for the collection and dissemination of information involving the Basin and related matters. To act as Plan Manager for the GSP and point of contact to DWR for the basin.
- g. To cooperate, act in conjunction and contract with the United States, the State of California, or any agency thereof, counties, municipalities, public and private corporations of any kind (including, without limitation, investor-owned utilities), and persons, or any of them, for any and all purposes necessary or convenient for the full exercise of the powers of the Authority.
- h. To apply for, accept and receive licenses, permits, water rights, approvals, agreements, grants, loans, gifts, contributions, donations, or other aid from any agency of the United States of America, the State of California or other public or private person or entity necessary for the Authority's full exercise of its powers.
- i. To acquire and to hold and dispose of property as necessary to the full exercise of its powers, and, subject to the limitations set forth herein, to dispose of property and any other assets.
- j. Subject to the limitations set forth herein and by law, to incur debts, liabilities, or obligations, to issue bonds, notes, certificates of participation, guarantees, equipment leases, reimbursement obligations and other indebtedness. to pledge, mortgage, assign, encumber and hypothecate assets and revenues of the Authority, to assess Members, to impose and collect user fees and charges that are approved by the Members in whose Agency Managed Areas the fees and charges are imposed and collected, and to enter into leases, installment sales and installment purchase contracts all as hereinafter provided.
- k. To sue and be sued in its own name.
- l. To provide for the prosecution of, defense of, or other participation in actions or proceedings at law or in public hearings in which it may have an interest and may employ counsel and other expert assistance for these purposes.
- m. To appoint agents for filings or other legal matters.
- n. To adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority ("Operating Rules and Regulations").
- o. To accumulate appropriate reserve funds for the purpose of herein mentioned and subject to the laws of the State of California.
- p. To recommend changes to this Agreement to the Members.
- q. To perform all incidental acts necessary or proper to carry out fully the purposes of this Agreement.

- r. To exercise all other incidental powers necessary and incidental to the implementation of the powers set forth herein.

Nothing set forth in this Agreement is intended to impede or abrogate the powers of any Member, including but not limited to the Member's police power or land use authority, if any.

Each Member shall be individually responsible for its own covenants, obligations, and liabilities related to its own groundwater management activities. No Member shall be under the control of or shall be deemed to control any other Member. No Member shall be precluded from independently pursuing any of the activities contemplated in this Agreement, providing such activities do not preclude other members or the Authority from complying with the requirements of SGMA or the GSP. No Member shall be the agent or have the right or power to bind any other Member without such Member's express written consent, except as expressly provided in this Agreement.

ARTICLE IV **INTERNAL ORGANIZATION**

Section 4.1 Membership. The Members of the Authority shall be the entities which have executed, hereafter execute, or hereafter amend this Agreement, and which have not withdrawn from the Authority as herein provided.

Section 4.2 Governing Body

- a. Members on the Board of Directors. The business of the Authority shall be conducted by a Board of Directors consisting of one appointed Director by each of the Members. Each Director shall be appointed by the Member Agency governing board in accordance with any Member Agency requirements. Each Director of the Authority shall be a member of the governing board of the Member or GSA for the duration of his or her term as a Director of the Authority. Each Director shall serve a four-year term, or until his or her role on the Member's governing board ends, if sooner. Each Director shall hold office until his or her successor is elected and qualifies for office, unless earlier removed by the governing board of the appointing Member. Each Director may be appointed to serve one or more additional four-year terms at the discretion of the appointing Member governing board.
- b. Alternate Directors. The Alternate Director shall serve in the capacity of the Director if the Director is unable to conduct the business of the authority. Alternate Directors of the Authority need not be a member of the governing board of the Member or GSA. Each Alternate Director shall serve a four-year term, or until their role on the Member's governing board ends, if sooner. Each Alternate Director shall hold office for four years, unless earlier removed by the governing board of the appointing Member. Each Alternate Director may be appointed to serve one or more additional four-year terms at the discretion of the appointing Member governing board.

- c. Notification of Appointment to Board of Directors. Each Member shall notify the Authority in writing of its designated representative and alternate on the Board of Directors.
- d. Officers.
 - i. Board Chairperson and Vice-Chairperson~ A Board Chairperson and Vice-Chairperson shall be elected from the membership of the Board, and shall hold office for a period of one year commencing on or about July 1 of each year; provided however, that the first Chairperson and Vice-Chairperson shall hold office from the date of their appointment to June 30 of the ensuing year, or if his/her term on the Member governing board ends or until their successors take office, whichever is later; and provided, however, that the office shall be declared vacant if the person serving dies, resigns, or is removed by his or her Member as its representative on the Authority, or if his or her Member withdraws from this Agreement pursuant to any of the provisions hereof. The Vice-Chairperson will serve as Board Chairperson in the Board Chairperson's absence.
 - ii. Secretary. The Board shall appoint a Secretary, who shall be responsible for keeping and providing to all Members a copy of the minutes of all meetings of the Board and all other official records of the Authority. The Secretary may also be the Treasurer. The Secretary need not be a member of the governing board of a Member. The Secretary may be a consultant contracted by the Authority. The compensation of the Secretary shall be set by the Board.
 - iii. Treasurer. The Board shall appoint a Treasurer of the Authority from among the officers or employees of the Authority, who shall be the depository of funds and shall have custody of all money of the Authority, from whatever source. The Treasurer shall perform the duties specified in Government Code section 6505.5, Article V, section 5.3, and Article VII herein, and shall draw all warrants and pay demands against the Authority approved by the Board. The Treasurer may also be the Secretary. The Treasurer need not be a member of the governing board of a Member. The Treasurer may be a consultant contracted by the Authority. The compensation of the Treasurer shall be set by the Board.
 - iv. Legal Counsel. The Board may appoint legal counsel, who shall report to the Board of Directors.
 - v. Management Staff. The Board may hire a Plan Manager or other Authority lead to report to the Board of Directors.
 - vi. Additional Officers. The Board shall have the power to appoint such additional officers, as it deems necessary.
- e. Ad hoc and Standing Committees. From time to time, specific issues may arise that may require, in the view of the Board Chairperson, specialized or detailed efforts outside the routine activities of the Board of Directors meetings. At such times, the Board Chairperson may establish an ad hoc or standing committee to address those issues, appoint representatives to that committee and provide that

committee with a specific mission or charter. Such committees shall meet as necessary at locations and times determined by their membership.

- f. Powers and Limitations. All the powers and authority of the Authority shall be exercised by the Board, subject however, to the rights reserved by the Members as herein set forth.
- g. Quorum/Board Action. A majority of all the Board shall (1) constitute a quorum of the purposes of transaction the Authority's business, and (2) be required for an affirmative vote for the Board to take action. Except as to actions identified in Section 4.3, below, requiring a Supermajority vote, and 6/7 vote for bond issuance, the Board of Directors will conduct all business, once a quorum is established, by vote of a majority of the Directors present, and each Director shall have one (1) vote
- h. Principal Office. The Board of Directors shall establish the principal office of the Authority. The Board is hereby granted full power and authority to change its principal office from one location to another within the boundaries of the Authority. Any change shall be noted by the Secretary, but shall not be considered an amendment to this agreement.
- i. Meetings. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board. A copy of such resolution shall be furnished to each Member. The Board shall meet monthly. Special meetings of the Board of Directors for any purpose may be called at any time by the Board Chairperson, the Vice Chairperson, the Secretary or any two Directors. All meetings shall be called, held, noticed, and conducted in the manner provided in the Brown Act.
- j. Minutes. The Secretary of the Authority shall cause to be kept minutes of all meeting of the Board. A copy of the approved minutes shall be forwarded to each member and made available on the Authority website.
- k. Operating Rules and Policies. The Board may adopt Operating Rules and Policies, and if adopted, shall supplement but not be in conflict with this Agreement, and may contain policies and procedures for the efficient operation of the Authority. In the event of conflict between this Agreement and other rules or procedures, the provisions of this Agreement shall govern.
- l. New Members. The Board shall have the authority, upon the approval of a Member Supermajority Vote to (1) approve new Members to the Authority, and (2) remove a Member, in which case the Board shall execute an addendum to this Agreement for those purposes. Any local agency that is a GSA within the Subbasin pursuant to Water Code section 10723, and which was not a Member of the Authority at the time of the Effective Date, is eligible to become a Member of the Authority subject to the requirements described herein. **The Board of Directors may provide that a new Member shall be liable only for obligations that existed from or after the effective date of the action approving the new Member.** Upon submittal of an application for membership, new Members shall be admitted to the Agency so long as: 1) the new Member is located or has jurisdictional boundaries within the Basin; 2) the new Member is a local public agency or another entity authorized by SGMA that is qualified to join the Authority under the provisions of SGMA and the Act; and 3) the

new Member agrees to the terms of this Agreement, including applicable financial obligations as determined by the Authority. Once an application is accepted by the Board of Directors, this Agreement is executed by an authorized representative of the new Member, and the new Member satisfies any applicable financial obligation of the new Member, the membership roster of the JPA shall be amended to reflect the new Member. A new Member shall be responsible for its share of Authority expenses as determined by the Authority/JPA Board at such time as a potential new member petitions for membership.

- m. Status of Officers and Employees. The public officer or officers or employees of the Authority who have charge of any funds or securities of the Authority shall be bonded and the Board shall designate the amount of their bond. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits that apply to the activity of officers, agents or employees of any of the Members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents or employees appointed by the Board shall be deemed by reason of their employment by the Authority, to be employed by any of the Members, or by reason of their employment by the Authority to be subject to any of the requirements of such Members. All employees shall be at will.
- n. Liability of Board and Officers. The funds of the Authority may be used to defend, indemnify and hold harmless the Authority, any Director, officer, employee, or agent for actions taken within the scope of the authority of the Authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide such coverage as is hereinabove set forth. Members, Directors, officers, agents and employees of the Authority, if any, shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. To the fullest extent permitted by law, the Authority shall hold harmless, defend and indemnify the Members and their officers, employees and agents, and Directors, from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising out of the activities of the Authority or its Board, officers, employees or agents under this Agreement, up to the amount of the insurance carried by the Authority. These indemnification obligations shall continue beyond the Term of this Agreement as to any acts or omissions occurring before or under this Agreement or any extension of this Agreement. However, to the extent that a claim for indemnification is made, and the liability associated with such request exceeds the insurance limits carried by the Authority, there shall be no obligation on the part of the Authority to make additional assessments against the other Members of the Authority in order to indemnify a Member that has tendered a claim for indemnification.”

Section 4.3 Member Supermajority Vote. A Supermajority Vote of the Members, as defined by Article I, section 1.1(p) is required for the following business of the Authority:

- approval or removal of new Members as provided for in Article IV, section 4.2(1);
- rescission or termination of this Agreement as provided for in Article IX, section 9.1;
- amendment of this Agreement as provided for in Article X, section 10.1;
- amendments to the annual budget, consistent with Article 5;
- decisions concerning property acquisition and ownership;
- decisions related to the expenditure or reimbursement of funds by the Authority beyond expenditures approved in the Authority's annual budget, and concerning contracts exceeding monetary thresholds previously determined by the Board;
- adoption of Authority rules, regulations, policies, ordinances, bylaws and procedures, and any amendments thereto;
- decisions related to the establishment of the Members' funding obligations for payment of the Authority's operating and administrative costs;
- initiation or resolution of litigation or claims against the Authority; and
- assignment or delegation of the rights and duties of the Members as provided for in Article X, section 10.2.

ARTICLE V **BUDGETS AND PAYMENTS**

Section 5.1 Budget. Each Fiscal Year, the Board shall adopt a Budget for the Authority for the ensuing Fiscal Year. The Budget shall be introduced to the Board in May and adopted in June of each year. The Budget must be adopted by a Supermajority Vote of the Board. Promptly following full execution of this Agreement, the Members agree to negotiate a separate funding agreement regarding the Initial Year budget, which shall be applicable from the Effective Date of this Agreement through June 30, 2022. The separate funding agreement may also address funding and related issues which may arise after June 30, 2022, including a Member's consent to providing its share of the operating and administrative costs of the Authority through a groundwater fee program implemented by the Authority.

Section 5.2 Contributions and Expenses:

- a. Members shall share in the general operating and administrative and project costs of operating the Authority, as outlined in the annual budget documents. Each Member shall be responsible for contributing their respective share of such costs either: a) through an agreed upon contribution; b) as determined by any groundwater fee program for the Cosumnes Subbasin that may be developed by the Authority and implemented pursuant to Section 3.6j; or c) as otherwise agreed upon either thru amendment to this agreement, or by way of a separate funding agreement, as described in Section 5.1, above.
- b. The Board of Directors may approve, from time to time, an advance or contribution to proposed projects or program specific activities. The

reimbursement of these startup costs or contributions from subscribing Members will be required once the contemplated project or program is implemented as contained in the project/program agreement, unless of the Board of Directors determines otherwise.

- c. Project or program specific expenses, performed at the request of, or on behalf of Members shall have dedicated funding sources as described and contained in the project/program agreement.
- d. It is understood that the Board may arrange for the payment of the expenses of the Authority through some other source, including but not limited to State or federal grants or loans.
- e. In accordance with Government Code section 6512.1, repayment or return to the Members of all or part of any contributions made by the Members may be directed by the Board at such time, and upon such terms as may be consistent with any indebtedness incurred by the Authority. The Authority shall hold title to all funds and property acquired by it during the term of this Agreement.
- f. Each Member's share of costs of the Authority, not otherwise covered by fees directly collected by the Authority, shall be assessed twice yearly, ordinarily in January and May. Such amount shall be delivered to the Treasurer. Members shall pay assessments within thirty days of receiving assessment notice from the Treasurer.

Section 5.3 Depositary:

- a. The Board shall designate the Treasurer of the Authority, who shall be the depositary and have custody of all money of the Authority, from whatever source, subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent. All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Member or any other person or entity.
- b. The Treasurer shall perform the duties specified in Government Code sections 6505 and 6505.5.
- c. The Board may transfer the responsibilities of Treasurer to any person or entity as the JPA Act may provide for, from time to time.
- d. All funds of the Authority, shall be strictly, and separately, accounted for; and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the Fiscal Year. The books and records of the Authority shall be open to inspection by the Members at all reasonable times, and by bondholders and lenders as and to the extent provided by resolution or indenture.
- e. The compensation of the Treasurer, if any, shall be set by the board.
- f. All expenditures within the designations and limitations of the applicable approved Budget shall be made upon the approval of any officer so authorized by the Board in accordance with the Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the approval and written order of the Board. The Board shall requisition the payment of funds

only upon approval of claims or disbursements and requisition for payment in accordance with rules, regulations, policies, procedures and bylaws adopted by the Board.

ARTICLE VI **FINANCING**

Section 6.1 Member Authorization & Required Vote. The power of the Authority to issue revenue bonds or to incur other forms of indebtedness shall not be exercised until authorized by the Members, as set forth in Article 2, Title 1, Division 7 of the Government Code of the State of California (commencing at section 6540). A 6/7 Vote of the Members, as defined by Article I, Section 1.1(t), is required for the Authority to issue Bonds or other indebtedness.

Section 6.2 Other Indebtedness. The Board shall have the power and authority to issue bonds, notes and other indebtedness, and to execute leases, installment sale contracts or installment purchase contracts for the purposes and in accordance with procedures and requirements as permitted by law, and subject to the voting requirements set forth in Section 6.1.

ARTICLE VII **ACCOUNTING AND AUDITS**

Section 7.1 Accounting Procedures. Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Authority's Treasurer shall comply strictly with requirements of the JPA Act.

Section 7.2 Audit. A qualified firm, serving in the capacity of auditor, shall audit the records and the accounts of the Authority annually in accordance with the provisions of section 6505 of the JPA Act. Copies of such audit reports shall be filed with the State Controller and each Member within six months of the end of the Fiscal Year under examination.

ARTICLE VIII **PROPERTY RIGHTS**

Section 8.1 Property. All property owned or acquired by the Authority shall be held in the name of the Authority for the benefit of the Members in accordance with the terms of this Agreement.

Section 8.2 Liabilities. As provided in Government Code, section 6508.1, the debts, liabilities and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the Members to this Agreement.

ARTICLE IX
RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT

Section 9.1 Rescission or Termination. This Agreement and the Authority may be terminated by a Supermajority Vote of the Members except during the outstanding term of any Authority indebtedness. Nothing in this Agreement shall prevent the Members from withdrawing as provided in this Agreement, or from entering into other joint exercise of power agreements.

Section 9.2 Disposition of Property Upon Termination. Upon termination of this Agreement, any surplus funds on hand shall be returned to the then Members in proportion to the contributions made. The Authority shall first offer any property, rights or interests in the Authority for sale to the Members for good and adequate considerations. If no such sale is consummated, the Authority shall offer such property, rights and interests for sale for any governmental agency, or other entity for good and adequate consideration. The net proceeds from any sale shall be distributed among the Members in proportion to the contributions made. If no such sale is consummated, then the property, rights and interests of the Authority shall be allocated to the Members in the same manner as the allocation of the net proceeds from a sale, unless otherwise agreed to by the Members.

Section 9.3 Withdrawal.

- a. A Member may unilaterally withdraw from this Agreement without requiring termination of this Agreement, effective upon ninety days' written notice to the Authority, provided that the withdrawing Members shall remain responsible for any indebtedness incurred by the Member, and further provided that the withdrawing Member pays or agrees to pay its share of debts, liabilities and obligations incurred by the Authority prior to the effective date of such withdrawal.
- b. In the event the withdrawing Member has any rights in any property or has incurred obligations to the Authority, the Member cannot sell, lease or transfer such rights or be relieved of its obligations, except in accordance with a written agreement executed by it and the Authority. The Authority may not sell, lease, transfer or use any rights of a Member who has withdrawn without first obtaining the written consent of the withdrawing Member.
- c. No refund or repayment of the initial commitment of funds shall be made to a Member ceasing to be a Member to this Agreement whether pursuant to this Section or any other Section of this Agreement. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made, or other agreement of the Authority and withdrawing Member.
- d. Upon withdrawal, any Member shall be entitled to use any data or other information owned and/or controlled by the Authority during its time as a Member. Further, should a Member withdraw from the Authority after adoption of the GSP by the Authority, it shall be entitled to utilize the GSP for implementation of SGMA within its boundaries to the extent otherwise

authorized by SGMA in a manner that does not prevent the other Members from complying with SGMA. Any withdrawing Member shall be responsible for incurring the full cost of transferring any data such withdrawing Member requests.

- e. A Member may be involuntarily removed as a Member by Supermajority Vote of the Members as provided for in Article IV, section 4.2(1) of this Agreement.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 10.1 Amendments. This Agreement may be amended from time to time by Supermajority Vote of the Members.

Section 10.2 Binding on Successors. Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without a Supermajority Vote by the Members. 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 Authority then in effect. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto.

Section 10.3 Special Projects. Members may enter into special project agreements amongst themselves and with the Authority to achieve any of the purposes or activities authorized by this Agreement, and to share in the expenses and costs of such special project, for example, to share in funding infrastructure improvements within the boundaries of particular Members. Special project agreements must be in writing and documentation must be provided to each of the Members to this Agreement. No special project agreement undertaken pursuant to this Section 10.3 shall conflict with the terms of this Agreement or the GSP.

Members that enter into special project agreements agree that any special project expenses incurred for each such special project are the costs of the special project participants, respectively, and not of the Authority or any other Members to this Agreement not participating in the special project. All special project expenses shall be paid by the Members to the respective special project agreements and such participating Members shall indemnify, defend and hold harmless the Members who are not party to such Special Project Agreement.”

Section 10.4 Notice. Any notice or instrument required to be given or delivered under this Agreement may be made by: (a) depositing the same in any United States Post Office, postage prepaid, and shall be deemed to have been received at the expiration of 72 hours after its deposit in the United States Post Office; (b) transmission by facsimile copy to the addressee; (c) transmission by electronic mail; or (d) personal delivery.

Section 10.5 Counterparts. This Agreement may be executed by the Members in separate counterparts, each of which when so executed and delivered shall be an original. All such counterparts shall together constitute but one and the same instrument.

Section 10.6 Choice of Law. This Agreement shall be governed by the laws of the State of California.

Section 10.7 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement is held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

Section 10.8 Headings. The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Members to this Agreement.

Section 10.9 Construction and Interpretation. This Agreement has been arrived at through negotiation and each Member has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Member shall not apply in the construction or interpretation of this Agreement.

Section 10.10 Dispute Resolution. Should any controversy arise between the Members concerning this Agreement or the rights and duties of any Member under this Agreement, the Members shall submit the matter to an independent mediator or mediation service to mediate the dispute. Each Member in the dispute shall submit the names of three acceptable mediators, none of which can be an employee or agent of any Member, and who has knowledge of and experience in the management of Groundwater resources. The disputing Members shall agree on an acceptable mediator, and if they cannot agree, the mediator shall be appointed by the Chair of the Board from the list of mediators submitted by the disputing Members. The appointed mediator shall render a non-binding decision on the matter in dispute and will be compensated by the Agency. In the resolution of any such dispute, the principles set forth in Sections 2.3 and 2.4 of this Agreement shall guide the mediator(s). The costs of the mediator shall be equally borne by all Members involved in the mediation.

IN WITNESS WHEREOF, the Members have executed this Exercise of Joint Powers Agreement on the day and year first above-written.