

## **SECOND AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING**

**This Second Amended and Restated Memorandum of Understanding (“MOU”)** is entered into on this 4th day of June, 2020 (“Effective Date”), by and between the South Tahoe Public Utility District (“**District**”) and the El Dorado County Water Agency (“**EDCWA**”) (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 the City of South Lake Tahoe and portions of El Dorado County, California;

**B.** The EDCWA is a body politic and corporate pursuant to Water Code, Appendix Section 96-1, et. seq., and performs countywide water planning and participates in statewide water planning;

**C.** Together, the District and the EDCWA overlie the entirety of the Tahoe South Subbasin (designated basin number 6-005.01 in the California Department of Water Resources’ Bulletin 118) (“TVS Basin”);

**D.** The District and EDCWA previously entered into a Memorandum of Understanding, dated September 15, 2016 and an Amended and Restated Memorandum of Understanding, dated June 14, 2017, (collectively “Prior MOUs”) with respect to management of the TVS Basin;

**E.** The District and the EDCWA 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 GMP”) and the update to the 2000 GMP in 2014 (“2014 GMP”);

**F.** For many years, the District and the EDCWA have worked 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;

**G.** In 2014, the California Legislature adopted, and the Governor signed into law, the Sustainable Groundwater Management Act (“Act”), which authorizes local agencies overlying all or a portion of a groundwater basin to manage groundwater in a sustainable manner;

**H.** 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 boundary 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 (“South Tahoe Public Utility District GSA”);

I. Shortly thereafter, the District also adopted Resolution No. 3040-16 electing to be the GSA for the portion of the TVS Basin outside its service area boundary 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 (“South Tahoe Public Utility District GSA-2”);

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

K. To mitigate this potential risk, and pursuant to discussions between the District and the EDCWA, the EDCWA adopted Resolution No. WA-11-2017 electing to be the GSA for the portion of the TVS Basin outside of the District’s service area boundary on June 14, 2017, submitted its GSA Formation Notification to the DWR on June 15, 2017 (“2017 GSA Formation Notification”), and was recognized as the exclusive GSA for this portion of the TVS Basin on September 13, 2017 (“El Dorado County Water Agency GSA”);

L. In anticipation of the EDCWA becoming the El Dorado County Water Agency GSA for the portion of the TVS Basin outside of the District’s service area boundary, the District submitted a notice of intent to withdraw as the South Tahoe Public Utility District GSA-2, which became effective upon the El Dorado County Water Agency GSA being recognized as the exclusive GSA for this area;

M. The District and the EDCWA intend to continue to cooperatively manage the TVS Basin and agree to implement the Act in the TVS Basin;

N. To this end, the District prepared and submitted to DWR, with the EDCWA’s support, both the 2014 GMP and an analysis of basin conditions as alternatives to a Groundwater Sustainability Plan (“GSP”);

O. On July 17, 2019, DWR determined that the 2014 GMP satisfied the objectives of the Act and approved it as an existing plan alternative to a GSP (“DWR Approved Alternative”); and,

P. The intent of this MOU is to formalize the District and the EDCWA’s agreement to continue to cooperatively and sustainably manage groundwater resources within the TVS Basin and to jointly implement the DWR Approved Alternative in accordance with the Act.

**NOW, THEREFORE**, in consideration of the above recitals, the District and the EDCWA agree as follows:

1. **Purpose.** This MOU memorializes the intent of the Parties to coordinate and cooperate in the implementation of the Act within their respective jurisdictions of the TVS Basin. This MOU is intended to encourage coordination and cooperation regarding sustainable management of the TVS Basin and to improve and maintain overall communication between the

Parties. It is anticipated that coordination and information sharing among the Parties will assist in achieving their respective goals to sustainably manage the TVS Basin.

**2. Information Sharing.** The District and the EDCWA are both involved in studying and developing information and data regarding water supplies in the TVS Basin and El Dorado County. The District and the EDCWA agree to share all such information and data related to the TVS Basin, particularly as it relates to monitoring information for the TVS Basin. The sharing of this information will assist both the District and the EDCWA to coordinate sustainable management of the TVS Basin and to ensure that the TVS Basin remains in compliance with the Act.

**3. Implementation of the Act.** The District and the EDCWA agree to implement the Act as follows:

3.1. Revise and update the DWR Approved Alternative (“Updated Alternative”) in accordance with the DWR Recommended Actions as provided in the DWR Sustainable Groundwater Management Program Alternative Assessment Staff Report of the TVS Basin, Dated July 17, 2019 and such other revisions as the District and EDCWA deem necessary or appropriate (“resubmitted Alternative”);

3.2. Adopt the Updated Alternative for implementation in their respective jurisdictional portions of the TVS Basin in accordance with Water Code section 10753, et. seq;

3.3. Adopt new or amended ordinances establishing rules and regulations to implement and enforce the Updated Alternative pursuant to Water Code section 10753.9;

3.4. Resubmit the Updated Alternative to DWR for review and approval no later than January 1, 2022; and,

3.5. Take any actions necessary or appropriate to implement the Updated Alternative, as may be revised or updated in the future, and comply with the Act.

**4. Activities.** The District and EDCWA agree to perform the activities required to accomplish the purpose of this MOU, and will cooperate to implement activities consistent with the Act in the TVS Basin including, but not limited to:

4.1. Preparing and maintaining a list of interested parties;

4.2. Conducting public outreach and engagement;

4.3. Conducting investigations and analyzing and sharing data;

4.4. Approving and collecting groundwater management fees, as necessary;

4.5. Pursuing financial assistance through grants or similar opportunities;

4.6. Obtaining third-party consultant services for groundwater modeling, data collection, reports, and other related tasks; and,

4.7. Any other activities necessary or appropriate to comply with the Act.

5. **Costs.** The District shall be responsible for the costs of development and implementation of the Updated Alternative, including future revisions and updates, throughout the TVS Basin, including those portions outside of the District's service area boundary. The EDCWA agrees to provide funding for activities under the Act within the EDCWA's boundary in accordance with EDCWA's Cost Share Program, when applicable, or other policies and agreements for cost participation.

6. **Term.** This MOU shall remain in full force and effect until either the District or the EDCWA terminates this MOU in writing upon 30 days prior written notice to the other Party.

7. **Mutual Indemnification and Protection.** Except as otherwise described in this MOU, each Party (the "Indemnifying Party") covenants and agrees to indemnify and 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.

8. **Dispute Resolution.** The District and EDCWA agree to meet and confer in good faith for the purposes of resolving any dispute under this MOU prior to bringing any action for enforcement.

9. **Points of Contact.**

9.1 **District/EDCWA.** The District shall be the point of contact for DWR for both the District and EDCWA with regards to implementation of the Act within the TVS Basin. The District will provide the specific contact information to DWR. The District will share with EDCWA all information received from DWR.

9.2 **DWR.** The point of contact information for the SGMA Liaison at the DWR is Department for Water Resources, North Central Region Office, 3500 Industrial Blvd, West Sacramento, CA 95691, with regards to implementation of the Act within the TVS Basin.

10. **General Provisions.**

10.1 **Force and Effect.** This MOU shall supersede and replace the Prior MOUs, which shall be of no further force or effect with respect to the management of the TVS Basin.

10.2 **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.

10.3 **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).

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8 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.

10.9 Entire Agreement and Amendment. This MOU contains the entire 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.

10.10 Waiver. No waiver of any provision of this MOU 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.

10.11 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 the same in a United States post office with first class postage prepaid and addressed to the Parties as set forth below.

To: EDCWA

El Dorado County Water Agency  
4330 Golden Center Drive, Suite C  
Placerville, CA 95667  
Attn: General Manager

With a copy to:

DeeAnne M. Gillick  
Sloan Sakai Yeung & Wong, LLP  
555 Capitol Mall, Suite 600  
Sacramento, CA 95814

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  
1021 Anacapa Street, Second Floor  
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**

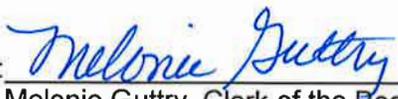
**El Dorado County Water Agency**

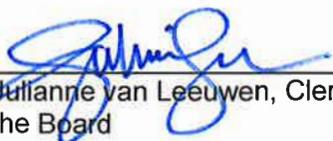
By:   
\_\_\_\_\_  
Randy Vogelgesang, President

By:   
\_\_\_\_\_  
Brian K. Veerkamp, Chair

**ATTEST:**

**ATTEST:**

By:   
\_\_\_\_\_  
Melonie Guttry, Clerk of the Board

By:   
\_\_\_\_\_  
Julianne van Leeuwen, Clerk of the Board