

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is entered into effective July 1, 2019 (“Effective Date”) by and between the Santa Ynez River Water Conservation District (“SYRWCD”), the Santa Barbara County Water Agency (“County Water Agency”), the Santa Ynez River Water Conservation District, Improvement District No.1 (“ID No.1”), and the City of Solvang, (“City”), referred to herein collectively as the “Parties” or individually as a “Party.”

WHEREAS, the Parties respectively overlie all or portions of the Santa Ynez River Valley Groundwater Basin, designated by California Department of Water Resources (“DWR”) Bulletin 118 as Groundwater Basin Number 3-15 (the “Basin”); and

WHEREAS, the Basin has been designated by DWR as a medium priority basin for purposes of the Sustainable Groundwater Management Act (“SGMA”) and, accordingly, the Basin is subject to the requirements of SGMA; and

WHEREAS, the Parties previously entered the “Memorandum of Agreement for Formation of a Groundwater Sustainability Agency for the Eastern Management Area in the Santa Ynez River Valley Groundwater Basin under the Sustainable Groundwater Management Act” (the “MOA”), effective April 27, 2017, wherein, among other things, the Parties established a Groundwater Sustainability Agency (“GSA”) for the Eastern Management Area (“EMA”) of the Basin pursuant to SGMA, and where the Parties are coordinating and cooperating by and through the GSA to implement the requirements of SGMA for the EMA and the Basin; and

WHEREAS, in various instances, historically and currently, issues have been raised by members of the public and other stakeholders with regard to the quantity, quality, and other aspects of groundwater and water resource management in the Basin area; and

WHEREAS, the Parties desire to discuss issues that are of common interest to the Parties relating to compliance with the requirements of SGMA and related surface and groundwater issues in the EMA and Basin area (collectively, “SGMA Issues”); and

WHEREAS, the Parties recognize that legal and/or administrative proceedings could arise under the SGMA process that could involve all or some of the Parties (collectively, “Proceedings”); and

WHEREAS, notwithstanding other agreements that may exist, the Parties intend for this Agreement to provide additional and separate rights, privileges, and protections as between the Parties with respect to the SGMA Issues and the Proceedings as set forth in this Agreement; and

WHEREAS, after independent consultation with their respective legal counsel, the Parties believe that certain communications regarding the SGMA Issues and the Proceedings should remain confidential and privileged, and that, while the Parties may have separate interests in the SGMA Issues and the Proceedings, they have significant common interests in sharing certain legal analyses, administrative draft materials, deliberative work product, and other information relating to the SGMA Issues and/or the Proceedings. The confidential and privileged communications and disclosures made under this Agreement are made in advancement of this common interest, and the Parties anticipate that

they would assert one or more common defenses and/or legal arguments in connection with the SGMA Issues and the Proceedings; and

WHEREAS, the Parties believe that their common interests are best served by confidentially sharing certain communications, information, and materials related to the SGMA Issues and/or the Proceedings which, independent of this Agreement, would be protected from disclosure to third-parties pursuant to the attorney-client privilege, attorney work product privilege, common defense doctrine, joint defense doctrine, common interest doctrine, the California Public Records Act, and/or other applicable privileges, confidentiality, exemptions, rules, doctrines and provisions of law (collectively, the "Privileges and Protections"), which materials may include, but are not limited to, legal analyses, legal research, administrative draft materials, and deliberative work product (collectively "Confidential Materials"); and

WHEREAS, the Parties desire to maintain applicable Privileges and Protections with respect to Confidential Materials and ensure that exchanges and disclosures of Confidential Materials between the Parties do not, by virtue of such exchanges or disclosures pursuant to this Agreement, waive any applicable Privileges and Protections.

NOW, THEREFORE, the Parties agree as follows:

1. The Recitals set forth above are incorporated as part of this Agreement.
2. In accordance with this Agreement, the Parties agree that Confidential Materials may be exchanged and disclosed between and among themselves to further their common interests. Such exchanges and disclosures ordinarily would not be made but for the confidentiality established by this Agreement and the advancement of the common interests and legal representation of the Parties. It is the mutual understanding of the Parties and their respective legal counsel that such exchanges or disclosures are not intended to diminish and shall not diminish in any way the Privileges and Protections to which the Confidential Materials are entitled. As further provided herein, this Agreement and its contents shall constitute Confidential Materials and shall remain confidential and privileged in accordance with the protections of this Agreement, except as required under Section 14 of this Agreement.
3. A Party's participation in this Agreement and any previous and subsequent sharing of Confidential Materials with any other Party shall in no way be construed as a waiver of any applicable Privileges and Protections that may be asserted individually by a Party, either pursuant to or independent of this Agreement.
4. Each Party expects that Confidential Materials exchanged or disclosed pursuant to this Agreement will remain fully confidential, privileged, and protected in accordance with this Agreement. Thus, the sharing of Confidential Materials pursuant to this Agreement does not waive any applicable Privileges and Protections that may be asserted individually by a Party, either pursuant to or independent of this Agreement. The Parties agree that Confidential Materials exchanged or disclosed under the terms of this Agreement will not be further disclosed to any non-Party, except as provided by this Agreement or as required by law.
5. Notwithstanding the general provisions of Government Code section 6254.5, no Party that discloses Confidential Materials pursuant to this Agreement intends to waive any privileges, protections, or other exemptions from disclosure of public records that are otherwise available under

the California Public Records Act. Pursuant to Government Code section 6254.5(e), each Party intends that all materials disclosed in accordance with this Agreement are to be treated as and shall remain confidential between the Parties, and shall not be considered or deemed public records subject to disclosure by any of the Parties under the Public Records Act, except as provided by this Agreement or otherwise required by law. The Parties recognize and agree that the protections of confidentiality and the information and materials shared confidentially pursuant to Section 6254.5(e) and this Agreement may be broader than other privileges and protections covered by this Agreement. For purposes of Section 6254.5(e), persons within ID No.1 that are authorized to obtain information confidentially exchanged under this Agreement include members of the Board of Trustees, the General Manager, the Assistant General Manager, the Water Resources Manager, the Government Affairs and Policy Manager, the ID No.1 Engineer, ID No.1's legal counsel, and consultant(s) retained by ID No.1 or ID No.1's legal counsel in connection with the SGMA Issues and/or the Proceedings. For purposes of section 6254.5(e), persons within the Parent District that are authorized to obtain information confidentially exchanged under this Agreement include members of the Board of Directors, the General Manager, the Groundwater Program Manager, the Parent District's legal counsel, and consultant(s) retained by the Parent District or the Parent District's legal counsel in connection with the SGMA Issues and/or the Proceedings. For purposes of section 6254.5(e), persons within the County Water Agency that are authorized to obtain information confidentially exchanged under this Agreement include members of the Santa Barbara County Water Agency Board of Directors, the Public Works Director, the Deputy Public Works Director – Water Resources, the County Water Agency Manager, the Water Resources Program Manager, County Counsel, and consultant(s) retained by the County Water Agency in connection with the SGMA Issues and/or the Proceedings. For purposes of section 6254.5(e), persons within the City that are authorized to obtain information confidentially exchanged under this Agreement include members of the City Council, the City Manager, the City Attorney, the Public Works Director, the Water Division Supervisor, and the City's legal or professional consultant(s) retained by the City in connection with the SGMA Issues and/or the Proceedings. If at any time any Party receives a request for production of documents pursuant to the Public Records Act that seeks any materials provided or received by the Party pursuant to this Agreement, such Party shall promptly notify the other Parties, and the Parties and their respective legal counsel shall coordinate and cooperate in good faith to formulate a determination and response to the Public Records Act request in accordance with applicable law and this Agreement.

6. Any Party providing written Confidential Materials pursuant to this Agreement should, but need not, take reasonable steps to identify itself as the producing Party by including its initials or name on the Confidential Materials, and clearly mark "Administrative Draft" and/or "Confidential and Privileged" on the face of any exchanged Confidential Materials.

7. Except as otherwise expressly provided by this Agreement, no Party shall disclose Confidential Materials received from any other Party under this Agreement to any non-Party without the written consent of each Party that may be entitled to claim any privilege or protection with respect to such materials. Any unauthorized disclosure of any Confidential Materials to any non-Party shall not constitute a waiver of any applicable confidentiality, privilege, protection, defense, or exemption from disclosure. Nothing in this Agreement, however, prohibits any Party from using or disclosing information or materials without the consent of any other Party to the extent such information or materials are available in the public forum or otherwise obtained independently of this Agreement and without violation of this Agreement.

8. Each Party shall take all reasonable steps necessary to permit and protect the assertion of all applicable Privileges and Protections with respect to Confidential Materials. Each Party agrees

that it has no right to waive any Privileges and Protections held by any other Party. A Party compelled by law to disclose information that is otherwise intended to be protected from disclosure under this Agreement shall provide (1) immediate and advance written notice to the other Parties and their respective legal counsel prior to any such disclosure, and (2) reasonable opportunity for the other Parties to oppose and prevent such disclosure.

9. Any inadvertent disclosure of Confidential Materials by any Party shall not constitute a waiver of any Privileges and Protections provided by applicable law and this Agreement, and any Party that inadvertently discloses any Confidential Materials shall (1) immediately provide written notice to the other Parties and their respective legal counsel, and (2) immediately demand in writing the return of the Confidential Materials inadvertently disclosed.

10. Nothing in this Agreement is intended to (1) limit or prohibit any Party from using or developing for its own use, any information, technical, legal, or other work product, to be used for any purpose, (2) preclude any Party from communicating confidentially with its own legal counsel, consultants, or experts, (3) require any Party or its legal counsel, consultants, or experts to share any independently generated privileged or confidential information, communication, documentation, or work product, or (4) limit or constrain the use by any Party of information that was prepared solely by that Party, its legal counsel, consultants, or experts in a context unrelated this Agreement. This Agreement does not require a Party to disclose Confidential Materials or other information to another Party. Each Party retains full discretion as to what Confidential Materials, if any, it discloses through this Agreement. Any disclosing Party that has disclosed Confidential Materials to a receiving Party under this Agreement may request in writing for the return of Confidential Materials, in which case such materials shall be returned to the disclosing Party within a reasonable time and without being copied or otherwise reproduced in any way by the receiving Party.

11. Each Party extends the following waivers to the other Parties and their respective legal counsel: (A) the fact that legal counsel, consultants, or experts for a Party may advise and assist another Party in relation to this Agreement shall not be used as a basis for seeking to disqualify such legal counsel, consultants, or experts from representing a Party in connection with the SGMA Issues, the Proceedings, or any other present or future matter(s), and each Party hereby waives the right to object to, or seek disqualification of, legal counsel, consultants, or experts for the other Parties from continued representation of their respective client by reason of having shared or received Confidential Materials under this Agreement; and (B) legal counsel for a Party shall not be disqualified from examining another Party, or its consultant(s) or expert(s) who testifies at any proceeding simply and solely because of such legal counsel's participation in relation to this Agreement.

12. Nothing in this Agreement, nor the Agreement itself, creates an attorney-client relationship or a duty of loyalty between any attorney and anyone other than the client of that attorney, and no such relationship will be deemed to arise by implication as a result of this Agreement and/or the resulting exchanges of Confidential Materials. This Agreement simply serves to create a duty of confidentiality between the Parties regarding Confidential Materials exchanged pursuant to this Agreement. Each Party shall be free and reserves all rights to maintain separate positions, to obtain additional information or material, and to independently represent their individual interests as they may see such interests without restriction or impairment by this Agreement.

13. Except as otherwise provided in this Agreement, this Agreement shall remain in full force and effect until such time as the Parties agree in writing to terminate the Agreement. Any Party may elect to withdraw from this Agreement. In the event of such withdrawal (1) the withdrawing Party shall provide ten (10) days advance written notification to the other Parties and their respective legal counsel, (2) within thirty (30) days of providing written notice of withdrawal, the withdrawing Party shall return any and all Confidential Materials in its possession that have been provided by any of the other Parties or their respective legal counsel, including any and all materials received by the withdrawing Party after a withdrawing event, and (3) upon the return of all Confidential Materials, this Agreement shall no longer be operative as to a withdrawing Party; provided, however, that upon a withdrawing event or upon termination of this Agreement, all Parties and their respective legal counsel shall remain subject to an ongoing and enforceable obligation to protect, in accordance with the terms of this Agreement, all previous disclosures of Confidential Materials and all Confidential Materials that are not returned by or to any Party as provided herein.

14. Nothing in this Agreement is designed to suppress non-privileged information that would otherwise be disclosable or to violate public policy.

15. The Parties hereto acknowledge and agree that the rights, privileges and interests to be protected by this Agreement are unique, that violation of this Agreement would result in irreparable harm and injury, and that no adequate remedy is available at law for a breach of this Agreement. In addition to any other remedies available, specific performance of this Agreement may be ordered or a breach hereof may be enjoined, or both. This Agreement shall be construed in accordance with the laws of the State of California.

16. Each Party shall be responsible for payment of all fees and expenses incurred by its respective legal counsel, consultants, experts, contractors, and other agents, it being understood and acknowledged by the Parties that no Party will have any obligations to pay or contribute to the fees or expenses incurred by any other Party in relation to activities under this Agreement, unless otherwise agreed upon in writing.

17. No Party, nor its respective elected officials, officers, employees, consultants, experts, contractors, legal counsel, or other agents shall by reason of this Agreement be responsible for any damage or liability occurring by reason of anything done or omitted to be done by any other Party or its respective elected officials, officers, employees, consultants, experts, contractors, legal counsel, or other agents under or in connection with this Agreement.

18. This Agreement may be executed in counterparts (including verifiable facsimile and electronic formats), each of which shall be deemed a binding original, and all of which taken together shall constitute one and the same Agreement.

19. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue to be fully operative, to the extent possible.

20. No amendment, modification, assignment, or waiver of this Agreement shall be binding unless made in writing and signed by the Parties and their respective legal counsel.

21. This Agreement is binding upon the successors and assigns of each of the Parties.

22. Each Party to this Agreement represents and warrants that its signatory to this Agreement has the authority to bind that Party.

IN WITNESS WHEREOF, the Parties have entered this Agreement as of the Effective Date.

SANTA YNEZ RIVER WATER CONSERVATION DISTRICT
("PARENT DISTRICT")

By: _____
Kevin Walsh, General Manager

APPROVED AS TO FORM:

YOUNG WOOLDRIDGE, LLP

By: _____
Steve Torigiani, General Counsel for Parent District

ATTEST:
MONA MIYASATO,
COUNTY EXECUTIVE OFFICER
Ex Officio Clerk of the Board of Directors
of the Santa Barbara County Water Agency

ACCEPTED AND AGREED:
SANTA BARBARA COUNTY WATER AGENCY

By: _____
Deputy

By: _____
Gregg Hart, Chair, Board of Directors

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By: 
Deputy

By: 

SANTA YNEZ RIVER WATER CONSERVATION DISTRICT,
IMPROVEMENT DISTRICT NO. 1 ("ID NO.1")

By: _____
Paeter Garcia, General Manager

APPROVED AS TO FORM:

BROWNSTEIN HYATT FARBER SCHRECK

By: _____
Gary Kvistad, General Counsel for ID No.1

CITY OF SOLVANG ("CITY")

By: _____
Xenia Bradford, Acting City Manager

APPROVED AS TO FORM:

PRICE, POSTEL & PARMA LLP

By: _____
Chip Wullbrandt, City Attorney for City of Solvang