

ATTACHMENT A

AGREEMENT FOR FINANCIAL CONTRIBUTION TO THE
SALINAS VALLEY BASIN GROUNDWATER SUSTAINABILITY AGENCY

between

THE COUNTY OF MONTEREY

and

THE SALINAS BASIN AGRICULTURAL WATER ASSOCIATION

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THIS AGREEMENT FOR FINANCIAL CONTRIBUTION TO THE SALINAS VALLEY BASIN GROUNDWATER SUSTAINABILITY AGENCY (“Agreement”) is made and entered into as of, by and among the County of Monterey (“County”) and the Salinas Basin Agricultural Water Association (“SBAWA”), (collectively, the “Parties” and individually a “Party”), with reference to the following facts and intentions:

WHEREAS, in the fall of 2014 the California legislature adopted, and the Governor signed into law, three bills (SB 1168, AB 1739, and SB 1319) collectively referred to as the “Sustainable Groundwater Management Act” (“SGMA”), that initially became effective on January 1, 2015, and that has been amended from time-to-time thereafter; and

WHEREAS, the stated purpose of SGMA, as set forth in California Water Code section 10720.1, is to provide for the sustainable management of groundwater basins at a local level by providing local groundwater agencies with the authority, and technical and financial assistance necessary, to sustainably manage groundwater; and

WHEREAS, SGMA requires the designation of Groundwater Sustainability Agencies (“GSAs”) for the purpose of achieving groundwater sustainability through the adoption and implementation of Groundwater Sustainability Plans (“GSPs”) or an alternative plan for all medium- and high-priority basins as designated by the California Department of Water Resources; and

WHEREAS, SBAWA is a mutual benefit corporation formed and funded by a wide variety of agricultural businesses and interests operating in the Salinas Valley Groundwater Basin (“Basin”); and

WHEREAS, the County of Monterey and SBAWA have been participating with GSA eligible entities, stakeholders and other interested parties in a collaborative workgroup process (“CWG”) to form a single GSA for the Basin; and

WHEREAS, the CWG has reached consensus that a joint powers authority (“JPA”) is the appropriate entity to be formed and declare its intent to be the GSA; and

WHEREAS, the CWG has also reached consensus on the material terms for the agreement to form the JPA (“JPA Agreement”), to be called the Salinas Valley Basin Groundwater Sustainability Agency (“SVBGSA”) and has recommended to the various GSA eligible entities within the Basin to approve the JPA Agreement to form the SVBGSA and to become Members; and

WHEREAS, the Directors of the SVBGSA have been designated in the JPA Agreement to represent the variety of interests that SGMA requires a GSA to consider when implementing a GSP; and

WHEREAS, SBAWA is not a public entity nor a GSA eligible entity as defined by SGMA, and cannot be a Member, but has been designated in the JPA Agreement to nominate to

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the County Board of Supervisors persons to fill four Director positions on the Board of the SVBGSA to represent agricultural interests within the Basin; and

WHEREAS, the terms of the JPA Agreement require that the Members make annual contributions to fund the SVBGSA during its first two full fiscal years (July 1, 2017 – June 30, 2018, and July 1, 2018 – June 30, 2019) (each an “Initial Funding Contribution”); and

WHEREAS, as of the date of this agreement the County, the Water Resources Agency of the County, the Cities of Salinas, Gonzales and Soledad, the Castroville Community Services District, and the Monterey Regional Water Pollution Control Agency have elected to become Members; and

WHEREAS, while SBAWA cannot be a Member, it desires to contribute to the funding of the SVBGSA during the JPA’s first two fiscal years;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and SBAWA agree as follows:

1. Effective Date and Term.

This agreement shall be effective upon the date last signed by a Party, which date is _____, and shall terminate upon the payment made by the SBAWA set forth in Paragraph 4 (B), below.

2. Condition Precedent.

The obligations of the Parties set forth herein are conditioned upon A) the SVBGSA being formed, and B) the SVBGSA filing a Notice of Intent to form a GSA, as required by SGMA, with the California Department of Water Resources no later than June 30, 2016.

3. SBAWA Obligations.

SBAWA shall contribute to the County’s Initial Funding Contribution in the following manner (the “SBAWA Contribution”):

A. No later than July 7, 2017, SBAWA shall pay to the County the sum of two hundred fifty thousand dollars (\$250,000).

B. No later than July 6, 2018, SBAWA shall pay to the County the sum of two hundred fifty thousand dollars (\$250,000), which may be made in installment payments so long as the total sum has been paid no later than July 6, 2018.

SBAWA shall not be required to contribute or pay any further or additional sum for the funding of the SVBGSA other than the SBAWA Contribution specified in this Paragraph 3 unless agreed to in writing either with the County or the SVBGSA.

4. County Obligations.

A. All funds received by the County from the SBAWA Contribution shall be used as part of the County’s Initial Funding Contribution.

B. The County shall serve as the Appointing Authority for SBAWA’s nominees to the SVBGSA Board of Directors as more fully described in the JPA Agreement.

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5. Refund of SBAWA Contributions.

If at any time in the future, the County is reimbursed by the SVBGSA or any other source, including but not limited to government grants, in any amount, for the County's Initial Funding Contribution ("County Refund"), the County shall refund to the SBAWA all or a portion of the County Refund proportionate to the percentage that the SVBGSA Contribution bears to the total of the County's Initial Funding Contribution.

6. County Default and Remedy.

The County shall be in default of its obligations herein if the County does not utilize the SBAWA Contribution as part of the County's Initial Funding Contribution, or the Board of Supervisors does not comply with the appointment and nomination procedures as set forth in the JPA Agreement regarding Agricultural Director Positions.

Should the County be in default of its obligations, as set forth above, SBAWA shall provide written notice to the County. The County shall have 21 days from the date of the notice to remedy the default by removing any Directors it has appointed to the SVBGSA Board of Directors not in compliance with the procedures in the JPA Agreement. Should County fail to remedy the default within the time specified, SBAWA shall be entitled to any and all remedies available in law and equity, including specific performance.

7. SBAWA Default and Remedy.

SBAWA shall be in default of its obligations herein if it does not make the SBAWA Contributions in the amounts and by the dates indicated in paragraph 3.

Should the SBAWA be in default of its obligations, as set forth above, the County shall provide written notice to SBAWA. SBAWA shall have 21 days from the date of the notice to remedy the default by making the required payment. Should SBAWA fail to remedy the default within the time specified, the Board of Supervisors shall be entitled to any and all remedies available in law and equity, including specific performance.

8. Miscellaneous Provisions.

A. Execution in Counterparts.

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the Members hereto. Facsimile or electronic signatures shall be binding.

B. Complete Agreement.

The foregoing constitutes the full and complete agreement of the Parties. This agreement supersedes all prior agreements and understandings, whether in writing or oral, related to the subject matter of this agreement that are not set forth in writing herein.

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C. Amendment.

This agreement may be amended from time-to-time upon mutual consent of the Parties. Such amendments shall be in the form of a writing signed by each Party.

D. Notices.

Notices authorized or required to be given pursuant to this agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth below:

For County:

County Administrative Officer
168 W. Alisal St.
Salinas, CA 93901

Copy to:

County Counsel
168 W. Alisal St.
Salinas, CA 93901

For SBAWA:

Norm Groot
Monterey County Farm Bureau
P.O. Box 1449
Salinas, CA 93902-1449

Copy to:

Russell M. McGlothlin
Brownstein Hyatt Farber Schreck LLP
1020 State Street
Santa Barbara, CA 93101

E. Assignment or Delegation.

The rights and duties of the Parties may not be assigned or delegated without the written consent of the other Party. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of any contracts, resolutions or indentures of the Parties then in effect.

F. Third-Party Beneficiary.

The SVBGSA and each of its Members that make initial financial contributions to the SVBGSA during its first two full fiscal years shall be intended third-party beneficiaries of this agreement, and shall be entitled to enforce the terms herein against either or both of the County and the SBAWA. Except as specifically set forth herein, no other person or entity shall be a third-party beneficiary of this agreement.

G. Applicable Law.

The laws of the State of California shall govern the validity, performance and enforcement of this Agreement.

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H. Construction.

The Parties acknowledge that the Parties and their counsel have reviewed this agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this agreement.

I. Severability and Validity of Agreement.

Should any part, term or provision of this Agreement, be decided by the courts or the legislature to be illegal, in excess of either Party's authority, in conflict with any law of the State, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each Party hereby agrees it would have entered into this Agreement upon the same remaining terms as provided herein.

J. Time of the Essence.

Time is of the essence of this agreement and of each and every one of the provisions contained herein.

K. Definitions.

Capitalized terms not defined herein shall have the meaning given them in the draft JPA Agreement.

COUNTY OF MONTEREY

SALINAS BASIN AGRICULTURAL
WATER ASSOCIATION

By _____
Mary Adams
Chair, Board of Supervisors

By _____

Dated: _____, ____, 2017

Dated: _____, ____, 2017

APPROVED AS TO FORM

CHARLES J. MCKEE, County Counsel

By _____
Leslie J. Girard
Chief Assistant County Counsel