

MEMORANDUM OF UNDERSTANDING FORMING THE STANISLAUS AND TUOLUMNE RIVERS GROUNDWATER BASIN ASSOCIATION GROUNDWATER SUSTAINABILITY AGENCY

_____ 2017

1. **PARTIES.** The Parties to this Memorandum of Understanding (MOU) are: the County of Stanislaus, a political subdivision of the State of California; the Oakdale Irrigation District, a California irrigation district; the City of Oakdale, a California public agency; the City of Riverbank, a California public agency; the City of Modesto, a California public agency; the City of Waterford, a California public agency; and the Modesto Irrigation District, a California irrigation district (each referred to individually as a "Party" or collectively as the "Parties").

2. **RECITALS.** This MOU is entered into with regard to the following facts and circumstances, among others:

- 2.1 Groundwater and surface water resources within the Modesto Sub-basin of the San Joaquin Valley Groundwater Basin (DWR Bulletin 118 No. 5-22.02) ("Sub-basin") are vitally important resources, in that they provide the foundation to maintain and fulfill current and future environmental, agricultural, domestic, municipal and industrial needs, and to maintain the economic viability, prosperity, and sustainable management of the Sub-basin.
- 2.2 Agriculture has been prominent in making Stanislaus County one of the world's foremost agricultural areas, and has played a major role in the development of the economy of Stanislaus County; in an era of increasing competition for the area's finite water resources, it is important to understand and plan for the local area's economic well-being.
- 2.3 Although each of the Parties overlies and has rights to extract groundwater from the Sub-basin, each Party's individual surface and groundwater rights, historical groundwater production, and groundwater recharge and conveyance activities vary greatly from one another.
- 2.4 The California Legislature has adopted, and the Governor has signed into law, the Sustainable Groundwater Management Act ("SGMA"), which authorizes local agencies to manage groundwater in a sustainable fashion.
- 2.5 The Parties intend to enter into this MOU in order to ensure that the Sub-basin remains locally and sustainably managed.
- 2.6 SGMA requires groundwater basins designated as either medium or high-priority to be managed by one or more Groundwater Sustainability Agencies ("GSA") by June 30, 2017 and that GSAs adopt a groundwater sustainability plan ("Plan") by January 31, 2022.
- 2.7 The Sub-basin is currently designated as a high-priority basin, and thus must comply with the deadlines in the previous recital.

- 2.8 Pursuant to SGMA, a combination of local agencies may form a GSA through a memorandum of understanding or other legal agreement.
- 2.9 Each of the Parties overlies a portion of the Sub-basin and is a local agency as defined by SGMA.
- 2.10 In order to coordinate groundwater management activities and to comply with SGMA, the Parties desire to form a GSA for the portion of the Sub-basin that lies within their collective jurisdictions.
- 2.11 This MOU is intended to be an agreement for formation of a GSA as authorized by section 10723.6(a)(2) of the Water Code.
- 2.12 The Parties further intend and will work cooperatively to develop a separate operating agreement for the Stanislaus and Tuolumne River Groundwater Basin Association ("STRGBA") GSA ("STRGBA GSA").
- 2.13 The Parties believe that cooperative and coordinated actions by local agencies and users within the Sub-basin will result in the continued sustainable use of the groundwater within the Sub-basin.

3. **DEFINITIONS.** The following terms, whether in the singular or the plural, and when used herein with initial capitalization, shall have the meanings specified below:

- 3.1 **Annual Budget.** The GSA budget developed annually, pursuant to Section 6.2, to fund certain project(s) to advance the goals and objectives of this MOU.
- 3.2 **Committee.** That body, consisting of one representative from each of the Parties, which governs the GSA, as established pursuant to Section 4.3 of this MOU.
- 3.3 **Coordinator.** The individual appointed by the Committee pursuant to Section 5.
- 3.4 **Funding Percentage.** A Party's Funding Percentage as set forth in Section 7.1 of this MOU.
- 3.5 **Governing Bodies.** The governing entities of the Parties to this MOU.
- 3.6 **GSA.** A Groundwater Sustainability Agency created pursuant to SGMA.
- 3.7 **MOU.** This Memorandum of Understanding creating the STRGBA GSA.
- 3.8 **Parties.** Each of those entities named in Section 1 of this MOU, or those Parties added pursuant to Section 4.5 of this MOU.
- 3.9 **Plan.** A Groundwater Sustainability Plan developed and adopted pursuant to SGMA.
- 3.10 **SGMA.** The Sustainable Groundwater Management Act of 2014.

- 3.11 Stanislaus and Tuolumne River Groundwater Basin Association GSA or STRGBA GSA.** The GSA created pursuant to this MOU to manage the Sub-basin.
- 3.12 Sub-basin.** The Modesto Sub-basin of the San Joaquin Valley Groundwater Basin (DWR Bulletin 118 No. 5-22.02), which is geographically defined as that area in the State of California bounded on the west by the San Joaquin River; on the north by the Stanislaus River, on the east by the base of the Sierra Nevada foothills; and on the south by the Tuolumne River, and includes the area of land overlying that Sub-basin and all tributaries therein as defined by the then-current Department of Water Resources Bulletin 118.
- 3.13 Voting Percentage.** A Party's Voting Percentage as set forth in Section 7.3 of this MOU.

4. THE GSA.

- 4.1 Creation of GSA.** The Parties hereby establish the STRGBA GSA to manage the portion of the Sub-basin within the Parties' collective jurisdictions.
- 4.2 Purposes and Powers.** The purposes and powers of the STRGBA GSA are as follows:
- 4.2.1** This MOU is entered into by and between the Parties to, consistent with SGMA, exert local control over the management of the Sub-basin and to facilitate a cooperative and ongoing working relationship that will allow compliance with SGMA and state law, as amended from time to time.
- 4.2.2** The STRGBA GSA shall act on behalf of its members to coordinate the Parties' activities and actions to further the sustainable management of the Sub-basin and facilitate compliance with SGMA. It shall in no way determine or modify the surface water rights or groundwater rights, if any, of any Party.
- 4.2.3** The STRGBA GSA shall determine and evaluate the Sub-basin's existing groundwater supply;
- 4.2.4** The STRGBA GSA shall promote coordination of groundwater management planning activities within the Sub-basin;
- 4.2.5** The STRGBA GSA shall evaluate the Sub-basin's need for additional or improved water extraction, storage, delivery, conservation, and recharge facilities;
- 4.2.6** The STRGBA GSA shall provide and share information and guidance for the management, preservation, protection and enhancement of groundwater quality and quantity in the Sub-basin; and
- 4.2.7** The STRGBA GSA shall have the powers and authorities granted to GSAs under SGMA.

- 4.3 Committee.** The STRGBA GSA shall be governed by a Committee whose membership and responsibilities are set forth herein.
- 4.3.1** Each Party shall designate one staff person to serve as a member of the Committee, and one or more alternates. The names of the member and alternates will be submitted to the Coordinator. Each member of the Committee, and each alternate, shall serve at the pleasure of the Party appointing such member. A Party's alternate may serve in the place of that Party's member in the absence of such member and, in such case, the alternate shall have the powers of the member.
- 4.3.2** The Committee shall elect a chair and vice chair from its members at the first meeting of each calendar year. The chair shall be responsible for presiding over meetings of the Committee, and shall notify members and the Coordinator of meetings of the Committee. The Committee shall establish a date, time and place for its regular meetings, and may hold special meetings when required for the proper transaction of business. All meetings of the Committee will be held in accordance with the provisions of the Brown Act, California Government Code Section 54950 et seq. The Committee shall prescribe such procedures for the conduct of its business as it deems appropriate.
- 4.3.3** A quorum will consist of a simple majority of the Parties, subject to the provisions of section 6.5, except that less than a quorum may adjourn meetings of the Committee from time to time. Alternatively, the Coordinator may adjourn a meeting of the Committee to a specified time, date and place if there is less than a quorum of members present for a meeting.
- 4.3.4** The Committee shall have the following duties and responsibilities:
- a.** Develop and implement activities designed to achieve the objectives of SGMA.
 - b.** Designate a Party that will enter into contracts, and approve all amendments thereto, for and on behalf of the STRGBA GSA, necessary to carry out the powers and duties of the STRGBA GSA.
 - c.** Establish an Annual Budget for the STRGBA GSA, and approve proposed revisions to such budget, provided that no action of the STRGBA GSA shall be deemed to bind any party to contribute such funds absent approval of each Party's Governing Body.
 - d.** Recommend for approval by each Party's Governing Body's Annual Budget(s) necessary to carry out proposed project(s).
 - e.** Establish such committees as may be necessary or desirable to carry out the purposes of the STRGBA GSA, and to exercise general supervision over such committees.

- 4.3.5 Except for actions for which a different approval standard is set forth in this MOU, all actions of the Committee will be approved by a majority of the members present.
- 4.4 **Staff.** The staff of the STRGBA GSA shall be composed of staff from each Party. The STRGBA GSA shall also have the authority to hire or retain agents, contractors and consultants as the Committee shall determine necessary and appropriate.
- 4.5 **New Parties.** New parties may join the STRGBA GSA, provided that they meet the requirements set forth below:
 - 4.5.1 Any county or local public agency that meets the definition of "local agency" as set forth in SGMA.
 - 4.5.2 Application for membership will be subject to simple majority approval by the Committee.
 - 4.5.3 As a condition of admission to the STRGBA GSA, any new Party to this MOU shall agree to be subject to the terms of this MOU and shall be required to first pay its proportionate share of back contributions or as otherwise determined appropriate by the Committee.

5. **COORDINATOR.**

- 5.1 **Appointment.** The Committee shall appoint a one of the Committee members as the Coordinator, who shall have the duties and responsibilities set forth in this Section 5.
- 5.2 **Duties and Responsibilities.** The Coordinator will have the following duties and responsibilities:
 - 5.2.1 Develop and submit for review and approval by the Committee a work plan and schedule of activities designed to comply with the requirements of SGMA, or as may be otherwise directed by the Committee.
 - 5.2.2 Propose an Annual Budget, and from time to time such revisions as the Coordinator may feel necessary or desirable, to the Committee for its review and approval.
 - 5.2.3 Submit to the Committee, as directed by the Committee, a progress report as to the STRGBA GSA's activities and a report which compares actual expenditures with the Annual Budget, as adopted.
 - 5.2.4 Execute and administer contracts as directed by the Committee.
 - 5.2.5 Maintain proper records and accounts of work performed by the Committee.
 - 5.2.6 Receive and disburse funds at or under the direction of the Committee.

5.2.7 Act as secretary/treasurer to the STRGBA GSA, and acting in that capacity, prepare, record and distribute minutes of all Committee meetings.

5.2.8 Perform such other actions as may be necessary or desirable to promote the work of the Committee and the STRGBA GSA.

6. **GSA BUDGET AND COSTS.**

6.1 **Budget Cycle.** The budget cycle of the STRGBA GSA shall be on a calendar year basis.

6.2 **Annual Budget.** The Coordinator shall prepare an Annual Budget for each calendar year that the Committee determines certain projects are necessary. The Coordinator's draft Annual Budget for the following year shall be delivered to the Committee members no later than June 1 of each year. The Committee shall approve or revise the draft Annual Budget and distribute the draft Annual Budget to each Party no later than July 1 of each year. The Committee shall meet to review input from the Parties' Governing Bodies no later than August 1 of each year, and shall approve a final budget no later than September 1 of each year for the following year. The respective Governing Bodies of the Parties shall review the Annual Budget no later than October 1 of each year and notify the Coordinator that it has allocated or appropriated its respective contribution to the Annual Budget no later than October 15 of each year. The Committee shall adopt and approve the Annual Budget and have it in place and effect by January 1 of each year, or as approved by the Parties.

6.3 **Allocation of Funds.** Within the Annual Budget adopted pursuant to Section 6.2, the Committee shall have the authority to make minor adjustments in the allocation of funds between budget categories; provided, however, that the cumulative change in the budget category does not exceed ten percent (10%) of the amount authorized in the Annual Budget and the total amount of the Annual Budget is not increased. Other budget adjustments require approval of the Governing Bodies.

6.4 **Budget Increases.** Increases in the total amount of a budget must be approved by the Governing Bodies of a simple majority of the Parties.

6.5 **Failure to Pay.** If any Party fails to pay its respective share of any Annual Budget or budget increase when due, whether or not that Party's Governing Body approved the Annual Budget or the budget increase, then that Party shall be ineligible to vote on any subject or issue unless such failure is excused by the Committee through formal action and majority approval of the Committee. During any period of time during which a Party is ineligible to vote on a matter by reason of the application of this Section 6.5, such Party shall not be counted as a Party in determining a quorum, or in determining a "majority" with regard to the approval of any action. In order to restore its eligibility to vote, a Party must be current on all amounts due, including any expenditures approved by the Committee while such Party was ineligible to vote.

- 6.6 Expenditures.** STRGBA GSA funds may be properly expended for all costs approved by the Committee and properly incurred in the performance of the work approved by the Committee, or under such authority as may be delegated to the Coordinator by the Committee.
- 6.7 Non Reimbursable Costs.** Costs incurred by any Party in connection with any functions of the STRGBA GSA, or any committee established by the Committee, and expenses of a Party's personnel including, without limitation, the regular and alternate members appointed by a Party to any committee while performing such functions, shall not be reimbursed by the STRGBA GSA except through formal action and majority approval of the Committee provided that a Party shall be reimbursed for the services performed by such Party's employees while serving as staff to the STRGBA GSA as approved through the Annual Budget process.

7. FUNDING AND VOTING PERCENTAGES.

- 7.1 Funding Percentage.** Each Party shall be responsible for its proportionate share of the funding requirements of the STRGBA GSA. The proportionate shares of each Party shall be determined by dividing the funding requirements of the STRGBA GSA by the number of Parties. During Committee approval of certain projects that beneficially affect the Parties disproportionately, equitable project funding shall be determined through formal action and majority approval of the Committee.

The Parties shall provide funding consistent with the Annual Budget adopted by the Committee on the schedule set forth in such budgets, or pursuant to the Coordinator's discretion. Funding needs of the STRGBA GSA payable by the Parties shall be determined by the Committee, and such funds shall be transmitted by the Party to the Coordinator within sixty (60) days of project approval. Upon receipt, the Coordinator will immediately deposit funds in an interest-bearing bank account, separate from other accounts of the Parties. The funds in such account shall remain the property of each contributing Party until spent, and interest earned thereon shall belong to each contributing Party.

- 7.2 Payment Reduction.** Each Party agrees that the Parties' respective obligations to make payments hereunder shall not be subject to any reduction, whether by offset, counter claim, recoupment or otherwise. A Party's funding contributions to the STRGBA GSA, or a portion thereof, may be reimbursed upon termination of that Party's participation in the STRGBA GSA and approval by a simple majority vote of the Committee.
- 7.3 Voting Percentage.** Each Party's representative on the Committee shall be entitled to one vote; provided however, that if a matter being decided by the Committee will have a disproportionate effect on the financial obligations of one or more Parties, as contemplated in Section 7.1, each Party shall be entitled to a weighted vote proportionate to the financial obligation or benefit of the Parties. The Voting Percentages set forth in this Section shall remain in effect only until voting percentages are established in the operating agreement for the STRGBA GSA.

7.4 **Modification by Party.** Funding Percentages and/or Voting Percentages may be changed only upon simple majority approval of the Committee.

8. **RELATIONSHIP OF PARTICIPANTS.**

8.1 **Each Party's Action Independent.** The obligation of each Party to make payments under Section 7.1 of this MOU is an individual and several obligation and not a joint obligation of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this MOU. No Party shall be under the control of or shall be deemed to control any other Party or the Parties collectively. No Party shall be the agent of or have the right or power to bind any other Party without such Party's express written consent, except as expressly provided in this MOU.

8.2 **Indemnity.** No Party, nor any officer or employee of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this MOU. The Parties further agree, pursuant to Government Code Section 895.4, that each Party shall fully indemnify and hold harmless each other Party and its agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by such Party under this MOU.

In no event, except for any claim, demand, liability, loss or damage arising out of or resulting from any action taken or not taken by one Party at the direction of its directors, officers, or employees of management or administrative responsibility, which is knowingly or intentionally taken or not taken with conscious indifference to the consequences thereof or with the intent that injury or damage would result or would probably result therefrom, shall a Party be liable to any other Party for any indirect or consequential damage claim, demand, liability, loss, expense (including attorney's fees), or damage arising out of or in any way connected with this MOU, including any negligence in connection therewith.

8.3 **No Creation of a Joint Powers Authority.** The Parties agree that by this MOU they do not intend to provide for the creation of an agency or entity which is separate from the Parties pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, relating to the joint exercise of powers.

9. **TERM OF THIS MOU.** The term of this MOU shall commence once all named parties have executed this MOU and shall remain in effect unless terminated by the mutual written consent of all Parties. Upon termination of this MOU, the Committee shall determine the assets and liabilities of the STRGBA GSA, make every effort to satisfy all obligations within sixty (60) days of the termination of this MOU, and equitably distribute any remaining fund balance to each Party in proportion to each Party's Funding Percentage.

10. **GENERAL PROVISION GOVERNING MOU.**

10.1 **Severability.** In the event that any of the terms, covenants or conditions of this MOU or the application of any such term, covenant or condition shall be held


invalid as to any Party, person or circumstance by any court of competent jurisdiction, all other terms, covenants or conditions of this MOU and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those provisions are not separable from all other provisions of this MOU.

- 10.2 No Third Party Beneficiaries.** This MOU is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties or imposing obligations on any person other than another Party.
- 10.3 Good Faith.** Subject to the right of a Party to withdraw or terminate its membership in the STRGBA GSA, each Party shall use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of the terms and provisions contained herein.
- 10.4 Withdrawal or Termination of Membership.** Except in the event of the termination of this MOU pursuant to Section 9, a Party who withdraws or terminates its membership in the STRGBA GSA shall not be entitled to a refund of its funding contributions. Any Party may terminate membership and withdraw from the STRGBA GSA upon thirty (30) days written notice of termination to the STRGBA GSA. If a Party withdraws from the STRGBA GSA when the Party is in arrears as to complying with its Funding Percentage, that Party's entitlement to use any groundwater model or other work product of the STRGBA GSA as provided for herein shall be determined by the Committee. Whenever a Party withdraws from the STRGBA GSA, it is the intent of the Parties and of the STRGBA GSA that the withdrawal shall remove the area within the Party's water service area from further management by the STRGBA GSA, provided that the withdrawal shall be in accordance with the requirements of SGMA and shall leave no area within the Basin unmanaged.
- 10.5 Amendment.** Unless provided otherwise, this MOU may be amended upon the affirmative vote of the Governing Bodies of a simple majority of the Parties.
- 10.6 Counterpart Execution.** This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 10.7 Governance.** This MOU is made under and shall be governed by the laws of the State of California. Venue of any action arising from this MOU shall be in the County of Stanislaus.
- 10.8 Reasonable Delivery of Documents.** The Parties agree to act in good faith to promptly execute any documents that are necessary, or may become necessary, to implement activities approved by the Governing Bodies in the Annual Budget, subject to the authority and the right of the Governing Bodies to terminate participation in this MOU.
- 10.9 Attorney Fees.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this MOU, the prevailing Party shall be entitled to reasonable attorney's fees and costs that may be set by

the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed, each signatory hereto represents that he has been appropriately authorized to enter into this MOU on behalf of the Party for whom he/she signs.

MODESTO IRRIGATION DISTRICT



GREG SALYER
GENERAL MANAGER

2/10/2017
DATE

ATTEST:

BY: 

ANGELA CARTISANO, BOARD SECRETARY
MODESTO IRRIGATION DISTRICT

OAKDALE IRRIGATION DISTRICT

STEVE KNELL
GENERAL MANAGER

DATE

CITY OF OAKDALE

BRYAN WHITEMYER
CITY MANAGER

DATE

ATTEST:

BY: _____
KATHY TEIXEIRA, CMC
CITY CLERK
CITY OF OAKDALE, STATE OF CALIFORNIA

APPROVED AS TO FORM:

BY: _____
TOM HALLINAN, CITY ATTORNEY

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed each signatory hereto represents that he has been appropriately authorized to enter into this MOU on behalf of the Party for whom he/she signs.

OAKDALE IRRIGATION DISTRICT



Steve Knell, P.E.
General Manager

the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.


IN WITNESS, WHEREOF, the Parties have caused this MOU to be executed, each signatory hereto represents that he has been appropriately authorized to enter into this MOU on behalf of the Party for whom he/she signs.

IN WITNESS, WHEREOF, the parties have executed this MOU on January 24, 2017. CITY


OF OAKDALE

By: 
Bryan Whitemyer, City Manager

ATTEST:

By: 
Kathy Teixeira, CMC
City Clerk
City of Oakdale, State of California

APPROVED AS TO FORM:

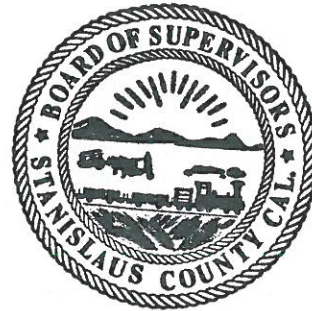
By: 
Tom Hallinan, City Attorney

MEMORANDUM OF UNDERSTANDING
Forming the Stanislaus and Tuolumne Rivers Groundwater Basin Association
Groundwater Sustainability Agency

IN WITNESS WHEREOF, the Parties hereto execute this Agreement on the last date written beside each Party representative's signature.

COUNTY OF STANISLAUS

By: *Vito Chiesa*
Vito Chiesa
Chairman of the Board of Supervisors



ATTEST:

By: *Elizabeth A. King*
Elizabeth A. King
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By: *Thomas E. Boze*
Thomas E. Boze
Assistant County Counsel

COUNTY OF STANISLAUS

TERRANCE WITHROW
CHAIR OF THE BOARD OF SUPERVISORS

DATE

CITY OF WATERFORD

DocuSigned by:


TIM OGDEN, CITY MANAGER

1/20/2017

DATE

CITY OF MODESTO

JAMES HOLGERSON, CITY MANAGER

DATE

CITY OF RIVERBANK

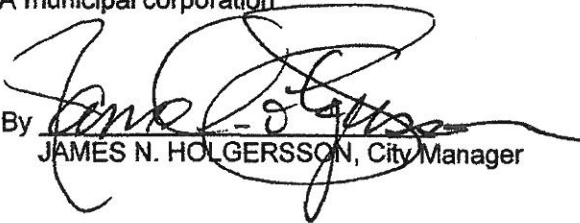
JILL ANDERSEN
CITY MANAGER

DATE


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IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Memorandum of Understanding forming the Stanislaus and Tuolumne Rivers Groundwater Basin Association Groundwater Sustainability Agency in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2017- 30, adopted by the Council of the City of Modesto on the 24th day of January, 2017.

CITY OF MODESTO,
A municipal corporation

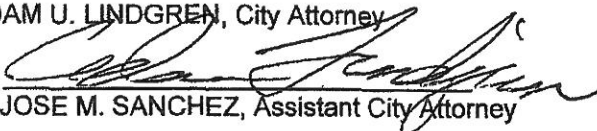
By 
JAMES N. HOLGERSSON, City Manager

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(Seal)

APPROVED AS TO FORM:
ADAM U. LINDGREN, City Attorney

By 
JOSE M. SANCHEZ, Assistant City Attorney

CITY OF WATERFORD

TIM OGDEN, CITY MANAGER

DATE

CITY OF MODESTO

JAMES HOLGERSON, CITY MANAGER

DATE

CITY OF RIVERBANK




SEAN SCULLY
CITY MANAGER

02/01/2017

DATE

ATTEST:



ANNABELLE AGUILAR, CMC
CITY CLERK

02/01/2017