AGREEMENT TO FORM A JOINT POWERS AUTHORITY

EASTERN TULE GROUNDWATER SUSTAINABILITY AGENCY

THIS AGREEMENT ("Agreement") is made December 6, 2016, by and between COUNTY OF TULARE ("County"), CITY OF PORTERVILLE, PORTERVILLE IRRIGATION DISTRICT, SAUCELITO IRRIGATION DISTRICT, TEAPOT DOME WATER DISTRICT, VANDALIA WATER DISTRICT, TERRA BELLA IRRIGATION DISTRICT, and KERN-TULARE WATER DISTRICT (hereinafter referred to individually as "Member" and collectively as "Members"), in light of the following:

RECITALS

A. During September 2014, Governor Brown signed three bills (SB 1168, SB 1319, and AB 1739) into law creating the Sustainable Groundwater Management Act ("SGMA").

B. SGMA authorizes the formation of an entity called a Groundwater Sustainability Agency ("GSA"), one or more of which are authorized to be responsible for implementing provisions of SGMA as to each groundwater basin and subbasin falling within the provisions of SGMA.

C. The Members overlie the Tule Subbasin (5-22.13 of the Department of Water Resources Bulletin 118 classifications) ("Subbasin") of the San Joaquin Valley Basin, an unadjudicated groundwater basin, portions of which underlie the jurisdictional boundaries of each Member.

D. Each of the Members to this Agreement is a local government entity with either water supply, water management, or land use responsibilities within the Subbasin and is qualified individually to serve as a GSA under the provisions of SGMA.

E. Under SGMA, a combination of local agencies may elect to form a GSA through a joint powers agreement.

F. The Members intend by this Agreement to create a joint powers authority that will elect to become a GSA for their jurisdictional areas covering a portion of the Subbasin.

G. Under SGMA, each GSA will be responsible for assuming its regulatory role by June 30, 2017, and for submitting a Groundwater Sustainability Plan ("GSP") to the Department of Water Resources by January 31, 2020.

H. The Members intend to work cooperatively with other GSAs in the Subbasin for purposes of developing a GSP and entering into a Coordination Agreement if necessary.

I. The Members desire, once successfully electing to be a GSA, to begin collecting and organizing data, engaging and retaining experts and consultants, and soliciting feedback from

TULARE COUNTY AGREEMENT NO. 27912

beneficial users and users of groundwater and interested persons within the portion of the Subbasin subject to their jurisdiction, for the purpose of preparing a GSP and for the purpose of negotiating Coordination Agreements with the other GSAs in the Subbasin.

J. The Members intend by this Agreement to provide for the management and funding commitments reasonably anticipated to be necessary for the above purposes.

K. The Members intend by this Agreement to provide a framework for cooperative efforts for all entities and individuals within the Authority's jurisdictional area and to implement SGMA in the most effective, efficient, and fair way reasonably possible, and at the lowest reasonable cost.

L. The jurisdictional area of this Authority is intended to generally consist of all areas within the jurisdictional boundaries of the Members and will specifically be determined at the time a notice of intent to act as a GSA is filed with the Department of Water Resources. For the purposes of this Agreement only, the jurisdictional boundary of the County of Tulare will be defined to not include any areas that are within the jurisdictional boundaries of any other Member.

NOW THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the Members hereby agree as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.01. Creation of Authority. Pursuant to California Government Code Section 6500 *et seq.*, there is hereby created a public entity to be known as the "Eastern Tule Groundwater Sustainability Agency" (hereinafter referred to as the "Authority"), which shall be a public entity separate and apart from the Members, and shall administer this Agreement.

Section 1.02. Purpose. The purposes of this Agreement are:

(a) To create a Joint Powers Authority separate from its Members that will elect to be the GSA for a portion of the Subbasin and, subject to the limitations of this agreement, carry out the provisions of SGMA within the jurisdictional area of the GSA;

(b) To develop, adopt, and implement a legally sufficient GSP covering those portions of the Subbasin that are within the jurisdictional boundaries of the GSA, subject to the limitations set forth herein, in order to implement SGMA's requirements and achieve sustainability goals outlined in SGMA; and

(c) To enter into a Coordination Agreement or similar agreement with other GSAs in order to meet the sustainability requirements outlined in SGMA.

ARTICLE II

POWERS

(a) Section 2.01. Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of all powers authorized under SGMA and necessary to satisfy the requirements of SGMA, including but not limited to developing, adopting and implementing a GSP, subject to the right of Members to withdraw from the authority and seek to become GSAs as specified in Section 8.05. The Authority shall have the power to sue and be sued.

Section 2.02. Restrictions on the Exercise of Powers. Pursuant to Government Code Section 6509 *et seq.*, the powers of the Authority shall be exercised and restricted in the same manner as those imposed upon the Kern Tulare Water District. The Authority shall not have the power of eminent domain. Nothing in this Agreement shall modify or limit the police powers of Members, if any.

Section 2.03. Obligations of the Authority. No debt, liability or obligation of the Authority shall constitute a debt, liability or obligation of any of the Members, appointed members of the Board of Directors, or committee members.

Section 2.04. Water Right. The Authority shall not have the power to control, limit or empower a Member's rights and authorities over its own surface water supplies, facilities, operations, water management, water supply projects and financial affairs ("Water Supply Matters"). As provided in Water Code Section 10720.5 of SGMA, the Authority and all of its Members confirm that groundwater management under this Authority shall not modify rights or priorities to use or store groundwater consistent with Section 2 of Article X of the California Constitution and that any groundwater management plan adopted by the Authority shall not determine or alter surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

ARTICLE III

GOVERNING BODY

Section 3.01. Governing Board. The Authority shall be administered by a Board of Directors ("Board"), composed of Directors and alternate Directors as described herein, to serve at the pleasure of their appointive governing body. All voting power of the Authority shall reside in the Board.

(a) The Board shall consist of Directors who shall be appointed as follows:

(1) One elected member of the governing body of each Member entity.

(2) One representative from a landowner and groundwater user in a "white area" (hereinafter referred to as "White Area Representative"), appointed by the County of Tulare Board of Supervisors. A "white area" is defined as such area where the County of Tulare is the only public agency with jurisdiction as defined by SGMA .

(b) Each Member shall appoint one person, who is either an elected member of the governing body of the Member entity or on the staff of such Member entity, to serve as an alternate Director of the Board in the same manner as the Director is appointed by the Member. Any such alternates shall be empowered to cast votes in the absence of the regular Directors or, in the event of a conflict of interest preventing the regular Director from voting, to vote because of such conflict of interest.

(c) Directors and alternate Directors may be removed or replaced as follows:

(1) Members may be removed or replaced at any time by their governing board; and

(2) A Director who is no longer either an elected member of the governing body of the entity or on the staff of such entity that qualified such director to serve on the Board shall be deemed automatically removed from the Board.

Section 3.02. Meetings of the Board. The Board shall provide for calling and conducting its regular meetings and special meetings, in accordance with Government Code Section 54950 *et seq.*

Section 3.03. Minutes. The Secretary shall cause to be kept summary minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the summary minutes to be forwarded to each Director and to each of the Members.

Section 3.04. Voting. Each Director shall have one vote.

Section 3.05. Quorum; Required Votes; Approval. A quorum of the Board for convening of any meeting shall consist of a majority of all Directors, or in the absence of a Director, such Director's designated alternate. A quorum of the Board must be present at the time of any vote on any matter before the Board. An affirmative vote of at least a majority of all Directors, or designated alternate Director, present in a quorum of the Board, shall be required for any action of the Board. Notwithstanding the foregoing, approval of certain types of matters shall require the approval of two-thirds of the Directors of the Board. The items requiring approval of two-thirds of the Directors of the Board are: agenda items to approve or revise budgets, assessments, litigation, the hiring or termination of the chief executive officer, the adoption of bylaws, adoption of the GSP, the addition of new Members, the termination of Members, and amendments of this Agreement. Directors representing a Member who is delinquent in any past or present monetary contributions shall abstain from voting on all matters.

Section 3.06. Bylaws. The Board may adopt bylaws and governing regulations consistent with this Agreement, which may be amended from time to time, for the conduct of its meetings as are necessary for the purposes hereof.

ARTICLE IV

COMMITTEES

Section 4.01. Committee Formation. Committees shall be formed by the Board in order to advise the Board on matters that fall within the scope of the particular committee's assignment. Committees may be standing committees or *ad hoc* committees. The Board shall appoint one Director or alternate Director to be a member of and the Chair of each committee. Committees shall meet as often as directed by the Board or, if no such direction is given, as often as necessary, as determined by the Chair of the committee. Two standing committees shall be formed as soon as reasonably practical, but in no event later than one hundred and twenty (120) days of formation of the Authority. They are as follows:

(a) Stakeholder Committee. Committee members shall fall within categories of interested persons or representatives of interested entities as described in SGMA. Committee members shall be appointed by the Board from among applicants.

(b) Executive Committee. Each Director shall be entitled to appoint one staff member of the Member agency to be a member of the Executive Committee.

ARTICLE V

OFFICERS AND EMPLOYEES

Section 5.01. Chair and Vice-Chair. Each year the Board shall elect a Chair and a Vice-Chair from among the Directors. The Chair and the Vice-Chair shall serve at the pleasure of the Board and shall perform the duties normally required of said offices.

(a) The Chair shall (1) preside at and conduct each meeting of the Board, (2) represent the Board as directed by the Board, (3) be an ex-officio member of each committee established by the Board, and (4) perform such other duties as may be imposed by said Board;
(b) The Vice-Chair shall act and perform all of the Chair's duties in the absence of the Chair; and
(c) The Chair or Vice-Chair shall sign all contracts and agreements as approved by the Board.

Section 5.02. Secretary. The Board shall appoint a Secretary from among the employees of the Authority, or if no such employees exist, a consultant. The Secretary shall serve at the

pleasure of the Board. The Secretary shall act on behalf of the Authority and perform such other duties as may be imposed by the Board. The Secretary shall sign agreements for the Authority when authorized by the Board.

Section 5.03. Treasurer and Auditor.

(a) The County Treasurer shall be the depositary, shall have custody of all the money of the Authority from whatever source, and shall have the duties and obligations of the Treasurer as set forth in Government Code Sections 6505 and 6505.5. The County Treasurer shall be responsible for receiving quarterly reports from the Secretary and verifying the balance of this report with respect to the balance as maintained by the records of the County Auditor.

(b) The County Auditor shall assure strict accountability of all receipts and disbursements of the Authority and shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

Section 5.03. Officers in Charge of Records; Funds; and Accounts. Pursuant to Government Code Section 6505.1, the County Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 5.04. Employees and Consultants. The Board may hire employees and consultants, including engineers, accountants and attorneys, to provide services to the Authority to accomplish the purposes of the Authority.

ARTICLE VI

ACCOUNTS AND REPORTS; FUNDS

Section 6.01. Accounts and Reports. The County Auditor shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times by the public and representatives of the Members. The County Auditor, within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members.

Section 6.02. Annual Budget. The Board shall adopt a budget for the Authority. Members shall make contributions as set forth in the budgets adopted by the Board. A Director's affirmative vote to approve a budget does not constitute consent to finance or otherwise participate in any project or projects within that budget.

Section 6.03. Intention for Reimbursement for Expenditures from Grant Proceeds. It is the intention of the Members that the advancement of monies by any Members for expenses of the

operational needs of the Authority shall be reimbursed from the proceeds of grants, if grant funds are obtained and such reimbursement is allowable under the terms of any grant agreement.

Section 6.04. Assessment of Members. The Board may vote to assess Members for a share of costs incurred by the Authority or which are anticipated to be incurred by the Authority. All assessments shall be paid by Members within sixty (60) days of the approval of the assessment by the Board. Any Member or entity failing to timely pay an assessment shall lose its privilege to vote on any item presented to the Board, until such assessment is paid.

ARTICLE VII

Implementation of SGMA

Section 7.01 – Development of GSP. Unless otherwise provided under this section 7.01, the Authority shall develop the GSP for all areas within the jurisdictional boundary of the Members, as defined herein. Notwithstanding the foregoing, consistent with the provisions of SGMA pertaining to Management Areas, any Member or group of Members may propose its or their own chapter or provisions governing SGMA implementation within their respective boundaries or a Management Area managed in whole or in part by such Member(s) for inclusion by the Authority into the Authority's GSP. The Authority shall promptly review the proposed chapter or provisions for consistency with the Authority's GSP and to determine that it meets the requirements of SGMA. If the Authority determines by a vote of 75% of the Directors that a Member's proposed chapter or provisions is/are consistent with SGMA and the Authority's GSP, it shall incorporate such chapter or provisions into the Authority's GSP.

Section 7.02 – Implementation in Management Areas. Any Member (or group of Members) that has or have established a Management Area as part of the Authority's GSP may request to be assigned the primary responsibility of implementing SGMA and the Authority's GSP within its Management Area by giving written notice to the Authority, which notice may be given at any time. Upon receipt of such notice, the Authority and the requesting Member(s) shall develop a mutually acceptable agreement describing the respective roles and responsibilities of the Authority and the requesting General Member(s) with respect to such implementation.

ARTICLE VIII

MEMBERSHIP, TERM; WITHDRAWL; TERMINATION

Section 8.01. Other Members. The Board may vote to approve other entities to be a Member of the Authority with representatives serving as Director and alternate Director on the Board. The Board may vote to remove any Member as a member of the Authority.

Section 8.02. Term. The Members hereby agree to establish the Authority to last in perpetuity. This Agreement may be rescinded and the Authority terminated by unanimous written consent of all Members.

Section 8.03. Withdrawal of Member. A Member may terminate its membership in the Authority at any time upon giving written notice of the withdrawal to the Authority which shall be effective one hundred eighty (180) days after such notice. Any Member who withdraws shall remain obligated to pay its share of all debts, liabilities, and obligations incurred or accrued prior to the effective date of such withdrawal.

Section 8.04. Disposition of Assets. Upon termination of the Authority, any assets shall be returned to the Members in the same proportion said Members have funded such reserves or surplus, in accordance with California Government Code Section 6512.

Section 8.05 Effect of Withdrawal On SGMA Status. Upon withdrawal or termination as a Member, whether occurring before or after June 30, 2017, it is contemplated the withdrawing or terminated Member would concurrently become (or designate) a GSA for the lands within its boundaries (or a Management Area managed in whole or in part by such Member), so that such lands of the withdrawing or terminated Member would continue to be subject to a GSA and if applicable a GSP and the powers of such withdrawing Member within its boundaries would not be limited by this Agreement. In the event that a Member provides notice of withdrawal either prior to or within 30 days after adoption of a GSP by the Authority, the Authority (i) shall not object to or interfere with the lands in the withdrawing or terminated Member's boundaries (or a Management Area managed in whole or in part by such Member) being in a GSA, as designated by such withdrawing or terminated Member, (ii) shall facilitate such transition to the extent necessary, and (iii) the Authority shall withdraw from managing the Subbasin as a GSA for that portion of the Basin within the boundaries of the withdrawing or terminated Member and so notify the Department of Water Resources. The withdrawing or terminated Member will also be entitled to copies of all documents, information, and material developed by the Authority and paid for in whole or in part by the Member prior to the Member's withdrawal or termination.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.01. Amendments. This Agreement may be amended by the Board at any time, or from time to time.

Section 9.02. Indemnification. The Authority shall indemnify, defend, and save harmless the Members, their officers, agents, and employees, and appointed members of the Board of

Directors, their officers, agents, and employees, and committee members, their officers, agents, and employees, from and against any and all claims and losses whatsoever, occurring or resulting to persons, firms, or corporations furnishing or supplying work, services, materials or supplies to the Authority in connection with the performance of this Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm or corporation, for damage, injury, or death arising out of or connected with the Authority's performance of its obligations under this Agreement. Nothing herein shall limit the right of the Authority to purchase insurance or to create a self-insurance mechanism to provide coverage for the foregoing indemnity.

In this regard, the Members do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2 as amended or supplemented. Provided, however, if any Member(s) of the Authority are, under such applicable law, held liable for the acts or omissions of the Authority caused by negligent or wrongful act or omission occurring in the performance of this Agreement, such parties shall be entitled to contribution from the other Members so that after said contributions each Member shall bear an equal share of such liability.. This Section 9.02 does not apply to acts or omissions of a Member in implementing the GSP adopted by the Authority within such Member's boundaries managed in whole or in part by such Member.

Section 9.03. Insurance. The Authority shall obtain insurance for all Members, appointed members, and committee members, including but not limited to directors and officers liability insurance and general liability insurance containing policy limits in such amounts as the Board of Directors shall determine will be necessary to adequately insure against the risks of liability that may be incurred by the Authority.

Section 9.04. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

Section 9.05. Counterparts. This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument.

IN WITNESS WHEREOF, the Members hereto execute this Agreement on the date first written above.

COUNTY OF TULARE By:	CITY OF PORTERVILLE By:
PORTERVILLE IRRIGATION DISTRICT By:	SAUCELITO IRRIGATION DISTRICT By:
TEAPOT DOME WATER DISTRICT By:	VANDALIA WATER DISTRICT By:
TERRA BELLA IRRIGATION DISTRICT By:	KERN-TULARE WATER DISTRICT By:

APPROVED AS TO FORM:
COUNTY COUNSEL
By: _____ 2016/606
Deputy

KERN-TULARE WATER DISTRICT

RESOLUTION NO. 2016-18

A RESOLUTION OF THE BOARD OF DIRECTORS OF KERN-TULARE WATER DISTRICT AUTHORIZING EXECUTING AN AGREEMENT TO FORM A JOINT POWERS AUTHOIRITY EASTERN TULE GROUNWATER SUSTAINABLITY AGENCY

WHEREAS, the Sustainable Groundwater Management Act of 2015 ("SGMA") was signed in to law on September 16, 2014; and

WHEREAS, SGMA requires that each California groundwater basin or subbasin be managed by a Groundwater Sustainability Agency (GSA), or multiple GSAs, and that such management be implemented pursuant to an approved Groundwater Sustainability Plan (GSP) or multiple GSPs; and

WHEREAS, the Department of Water Resources defines California groundwater basins and subbasins in Bulletin 118-80 updated in 2003; and

WHEREAS, Kern-Tulare Water District (District) overlies two subbasins within the Tulare Lake Hydrologic Region San Joaquin Valley Groundwater Basin known as the Kern County Subbasin (Basin No. 5-22.14) and the Tule Subbasin (Basin No. 5-22.13), both unadjudicated groundwater basins; and

WHEREAS, the District desires to have all District lands in Tulare County which are in the Tule Subbasin coordinate with other parties of the Tule Subbasin; and

WHEREAS, the District wishes to work with neighboring parties to provide a framework for cooperative efforts relative to formation of an Eastern Tule GSA under the act; and

WHEREAS, the Eastern Tule GSA has an agreement titled "Agreement to Form a Joint Powers Authority Eastern Tule Groundwater Sustainability Agency"; and

WHEREAS, it is in the best interest of the District and its landowners to enter into the agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of **Kern-Tulare Water District** as follows:

1. Each of the matters set forth above is true and correct and the Board so finds and determines.

2. The Agreement is hereby adopted and the District's General Manager is authorized to sign a signatory page which will accompany the Agreement and

indicate adoption of the Agreement by this District.

PASSED, APPROVED AND ADOPTED by the Board of Directors of Kern-Tulare Water District this 10th day of November, 2016.

AYES:	Kent H. Stephens Andrew Pandol Bruce Kelsey
NOES:	None
ABSENT:	John Zaninovich Curt Holmes
ABSTAIN:	None

CERTIFICATE OF RESOLUTION

We, the undersigned, hereby certify as follows:

1. That we are the President and Assistant Secretary of the KERN-TULARE WATER DISTRICT; and

2. That the foregoing resolution, consisting of 3 pages, including this page, is a true and correct copy of a resolution of the Board of Directors of the Kern-Tulare Water District passed at the meeting of the Board of Directors held on November 10, 2016, at the conference room of Pandol and Sons, Inc., 401 Road 192, Delano California.

IN WITNESS WHEREOF, we have signed this certificate this 10th day of November, 2016, at Delano, California.

Kent H. Stephens
President of the Board of Directors

Steven C. Dalke
Assistant Secretary

BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF EAST TULE SUSTAINABLE GROUNDWATER MANAGEMENT ACT JOINT POWERS AGREEMENT	))))	**Resolution No. 2016-0939 Agreement No. 27912**

UPON MOTION OF SUPERVISOR WORTHLEY, SECONDED BY SUPERVISOR COX, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD DECEMBER 6, 2016, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS ISHIDA, VANDER POEL, COX, WORTHLEY AND ENNIS
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE

ATTEST: MICHAEL C. SPATA
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: Denise A. Ybarra
Deputy Clerk

* *

1. Approved a Joint Powers Agreement with the City of Porterville, Porterville Irrigation District, Saucelito Irrigation District, Teapot Dome Water District, Vandalia Water District, Terra Bella Irrigation District, and Kern-Tulare Water District to form the East Tule Groundwater Sustainability Agency; and

2. Authorized the Chairman to execute the agreement; and

3. Appointed Supervisor Ennis as Director and appointed Supervisor Vander Poel as Alternate Director to the JPA Board.

CAO
Co. Counsel
Auditor

DAY
12/7/16