

JOINT EXERCISE OF POWERS AGREEMENT
ESTABLISHING THE EASTERN SAN JOAQUIN GROUNDWATER AUTHORITY
Attorneys' Committee Draft 8/9/16

THIS AGREEMENT is entered into and effective this _____ day of _____, 2016 (“**Effective Date**”), pursuant to the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.* (“**JPA Act**”) by and among the entities listed in Exhibit A attached hereto and incorporated herein (collectively “**Members**”).

RECITALS

A. On August 29, 2014, the California Legislature passed comprehensive groundwater legislation contained in SB 1168, SB 1319 and AB 1739. Collectively, those bills, as subsequently amended, enacted the “Sustainable Groundwater Management Act”. Governor Brown signed the legislation on September 16, 2014 and it became effective on January 1, 2015.

B. Each of the Members overlie the San Joaquin Valley Groundwater Basin, Eastern San Joaquin Subbasin, California Department of Water Resources Basin No. 5-22.01 as its boundaries may be modified from time to time in accordance with Cal. Water Code Section 10722.2.

C. Each of the Members is authorized to become a Groundwater Sustainability Agency (“**GSA**”) under SGMA and has either elected to, or intends to elect to, become a GSA or to join in a GSA that is a Member of the Authority.

D. The Members desire, through this Agreement, to form the Eastern San Joaquin Groundwater Authority for the purpose of coordinating management of the Basin, in accordance with SGMA. The boundaries of the Authority are depicted on the map attached hereto as **Exhibit A**.

E. The mission of the Authority is to provide a dynamic, cost-effective, flexible and collegial organization to insure initial and ongoing SGMA compliance within the Basin.

F. The Members agree that the Authority itself is not initially intended to be a GSA but the Members may elect GSA status for the Authority in their discretion at a future time as further provided herein.

THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, the Members agree as follows:

ARTICLE 1: DEFINITIONS

1.1 **Definitions.** As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

- a. “**Agreement**” shall mean this Joint Exercise of Powers Agreement Establishing the Eastern San Joaquin Groundwater Authority.
- b. “**Authority**” shall mean the Eastern San Joaquin Groundwater Authority formed by this Agreement.
- c. “**Basin**” shall mean the San Joaquin Valley Groundwater Basin, Eastern San Joaquin Subbasin, California Department of Water Resources Basin No. 5-22.01 as its boundaries may be modified from time to time in accordance with Cal. Water Code Section 10722.2.
- d. “**Board of Directors**” or “**Board**” shall mean the governing body formed to implement this Agreement as established herein.
- e. “**Coordination Agreement**” shall mean a legal agreement adopted between two or more GSAs that provides the basis for intra-basin coordination of the GSPs of multiple GSAs within a basin pursuant to SGMA.
- f. “**Dedicated Revenue Stream**” shall mean a revenue stream dedicated to Authority activities that has been adopted by a Member or Members in the form of an assessment or charge in accordance with applicable law.
- g. “**DWR**” shall mean the California Department of Water Resources.
- h. “**Effective Date**” shall be as set forth in the Preamble.
- i. “**Groundwater Sustainability Agency**” or “**GSA**” shall mean an agency enabled by SGMA to regulate portion of the Subbasin cooperatively with all other Groundwater Sustainability Agencies in the Basin, in compliance with the terms and provisions of SGMA.
- j. “**Groundwater Sustainability Plan**” or “**GSP**” shall have the definition set forth in SGMA.
- k. “**GSA Boundary**” shall mean those lands located within the Member boundaries that overlie the Subbasin and are depicted in **EXHIBIT A**.
- l. “**JPA Act**” shall mean the Joint Exercise of Powers Act, Cal. Government Code §§ 6500 *et seq.*
- m. “**Management Area**” shall mean the area within the boundaries of a Member or group of Members to be managed by that Member or group of Members under any GSP adopted by the Authority.
- n. “**Member**” shall mean any of the signatories to this Agreement and “**Members**” shall mean all of the signatories to this Agreement.

o. “**Other Basin Agencies**” shall mean all other governmental agencies whose jurisdictions include the land overlying the Basin or whose jurisdictions include some governmental authority over the Basin who are not Members.

p. “**SGMA**” shall mean the California Groundwater Management Act of 2014 and all regulations adopted under the legislation (SB 1168, SB 1319 and AB 1739) that collectively comprise the Act, as that legislation and those regulations may be amended from time to time.

ARTICLE 2: KEY PRINCIPLES

2.1 The Members intend to work together in mutual cooperation to develop a GSP in compliance with SGMA, for the sustainable management of groundwater for that portion of the Basin underlying the Members of the Authority.

2.2 The Members intend to mutually cooperate to the extent possible to jointly implement the GSP within the Basin.

2.3 To the extent the Members are not successful at jointly implementing the GSP within the Basin, or to the extent that any Member wishes to implement the GSP within its boundaries, the Authority intends to allow any individual Member to implement the GSP within its boundaries, and to work together with all Members to coordinate such implementation in accordance with the requirements of SGMA.

2.4 The Members intend that the Authority will represent the Members in discussions with Other Basin Agencies, and shall enter into Coordination Agreements with those that form GSAs as required by SGMA to achieve an integrated, comprehensive Basin-wide GSP that satisfies SGMA as to sustainable groundwater management for the entire Basin.

2.5 Each Member will retain the right to determine, in its sole discretion, whether to (i) become a GSA, or (ii) join in a GSA that is a Member of the Authority.

2.6 The Members expressly intend that the Authority will not have the authority to limit or interfere with the respective Members’ rights and authorities over their own internal matters, including, but not limited to, a Member’s surface water supplies, groundwater supplies, facilities, operations, water management and water supply matters.

2.7 Nothing in this Agreement is intended to modify or limit Members’ police powers or any other authority.

2.8 The Members further intend through this Agreement to cooperate to obtain consulting, administrative and management services needed to efficiently develop a GSP, to conduct outreach to Other Basin Agencies and private parties, and to identify mechanisms for the management and funding commitments reasonably anticipated to be necessary for the purposes of this Agreement.

2.9 The Members acknowledge and agree that SGMA is new and complex legislation, with implementing regulations continuing to be developed by DWR. While this Agreement reflects the Members' initial approach to SGMA compliance, a great deal of data needed for implementation is unknown, necessary models are still in development, the Members may have changes in political boundaries or gain experience in the application of SGMA or discover other considerations that may affect the decision of a Member on how to best comply with SGMA within its own and its Management Area boundaries. DWR has acknowledged the need for entities to change their decisions about participating in or becoming a GSA, and it is the intent of the Members to support flexibility in admitting additional Members, accommodating voluntary withdrawals, coordinating with other multi-agency or individual GSAs, changing the form of their organizational documents, for example, or creating an independent agency through a Joint Powers Agreement, and making other types of adjustments required by the Members to achieve efficient compliance with SGMA, consistent with the schedule and requirements of SGMA for coordination throughout the Basin and the provisions of this Agreement.

2.10 Each Member acknowledges that SGMA requires that multiple GSAs within a given Bulletin 118 groundwater basin must coordinate, and are required to use the same data and consistent methodologies for certain required technical assumptions when developing a GSP, and that the entire subbasin must be implementing a GSP for the basin to be deemed in compliance with SGMA.

ARTICLE 3: FORMATION, PURPOSE AND POWERS

3.1 **Recitals:** The foregoing recitals are incorporated by reference.

3.2 **Certification.** Each Member certifies and declares that it is a public agency or mutual water company (as defined in Government Code section 6500 et seq.) that is authorized to be a party to a joint exercise of powers agreement and to contract with each other for the joint exercise of any common power under Article 1, Chapter 5, Division 7, Title 1 of the Government Code, commencing with section 6500.

3.3 **Formation of Authority.** Pursuant to the JPA Act, the Members hereby form and establish the Eastern San Joaquin Groundwater Authority which will function in accordance with this Agreement. The Authority will not be a separate public entity. However, the Members recognize that the Authority may, in the future, desire to implement projects for purposes of SGMA implementation and the Members reserve authority to amend this Agreement to provide for the establishment of the Authority as a separate public entity.

3.4 **Purpose of the Authority.** The purposes of this Agreement are to:

- a. provide for the joint exercise of powers common to each of the Members and powers granted pursuant to SGMA (subject to the restrictions contained in this Agreement), through the Authority;
- b. cooperatively carry out the purposes of SGMA;

c. develop, adopt and implement a legally sufficient GSP covering those portions of the Basin that are within the jurisdictional boundaries of the Members, subject to the limitations set forth in this Agreement; and

d. satisfy the requirements of SGMA for coordination among GSAs.

3.5 Powers of the Authority. To the extent authorized by the Members through the Board of Directors, and subject to the limitations set forth in this Agreement, the Authority shall have and may exercise any and all powers commonly held by the Members in pursuit of the Authority's purpose, as described in Article 3.4 of this Agreement, including but not limited to the power:

a. To implement SGMA in accordance with this Agreement;

b. To exercise jointly the common powers of its Members including, without limitation, powers conferred to the Members by SGMA;

c. To adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority;

d. To perform all acts necessary or proper to carry out fully the purposes of this Agreement; and to exercise all other powers necessary and incidental to the implementation of the powers set forth herein; and

e. To borrow funds so long as a Dedicated Revenue Stream is committed by one or more Members for repayment.

3.6 Powers Reserved to Members. Each of the Members (or groups of Members) will have the sole and absolute right, in its sole discretion, to:

a. Become a GSA individually or collectively within the Member's boundaries or the Management Area managed in whole or in part by such Member;

b. Approve the portion, section or chapter of the GSP adopted by the Authority as applicable within the Member's boundaries or the Management Area managed in whole or in part by such Member or GSA of which it is a part;

c. At each individual Members' election, acting through GSAs established by Members, implement SGMA and the GSP adopted by the Authority within the Member's boundaries or the Management Area managed in whole or in part by such Member, provided that any Member may elect, in its sole discretion, to have the Authority implement SGMA and the GSP within the Member's boundaries; and

d. Notwithstanding anything to the contrary in this Agreement, the Authority shall not undertake any activities within the geographic or service area boundaries of any of its Members pursuant to the GSP developed or adopted hereunder unless the Member has formally and expressly consented and agreed to the activity proposed.

3.7 **Term.** This Agreement shall be effective as of the Effective Date and shall remain in effect until terminated in accordance with Article 6.3 of this Agreement.

3.8 **Boundaries of the Authority.** The geographic boundaries of the Authority and that portion of the Basin that will be managed by the Authority pursuant to SGMA are depicted in **EXHIBIT A**.

3.9 **Role of Member Agencies.** Each Member agrees to undertake such additional proceedings or actions as may be necessary in order to carry out the terms and intent of this Agreement. The support of each Member is required for the success of the Authority. This support will involve the following types of actions:

a. The Members will provide support to the Board of Directors and any third party facilitating the development of the GSP by making available staff time, information and facilities within available resources.

b. Policy support shall be provided by the Members to either approve, or respond quickly to, any recommendations made as to funding shares, operational decisions, fare structures, and other policy areas.

c. Each Member shall contribute its share of capital and operational fund allocations, as established by the Board of Directors in the annual budget, as approved by the Board of Directors.

d. Contributions of public funds and of personnel, services, equipment or property may be made to the Authority by any Member for any of the purposes of this Agreement provided that no repayment will be made for such contributions.

3.10 **Other Officers and Employees.** The Members do not anticipate that the Authority will have any employees. However, the Authority may do the following:

a. Provide that any employee of a Member, with the express approval of that Member, may be an *ex officio* employee of the Authority, and shall perform, unless otherwise provided by the Board, the same various duties for the Authority as for his or her other employer in order to carry out this Agreement.

b. The Board shall have the power to employ competent registered civil engineers and other consultants to investigate and to carefully devise a plan or plan to carry out and fulfill the objects and purposes of SGMA, and complete a GSP.

ARTICLE 4: GOVERNANCE

4.1 **Board of Directors.** The business of the Authority will be conducted by a Board of Directors that is hereby established and that shall be initially composed of one representative from each of the Members. Without amending this Agreement, the composition of the Board of Directors shall be altered from time to time to reflect the withdrawal of any Member and/or the admission of any new Member. Each Member will appoint one member of the Authority Board

of Directors. Each member of the Authority Board of Directors shall be a member of the governing board of the appointing Member. Each Member may designate one alternate to serve in the absence of that Member's appointed Director. Such alternate need not be a member of the governing board of the Member. All members of the Authority Board of Directors and all alternates will be required to file financial disclosure Form 700s. Each Member shall notify the Authority in writing of its designated representative on the Authority Board of Directors.

4.2 **Term of Directors.** Each member of the Authority Board of Directors will serve until replaced by the appointing Member.

4.3 **Officers.** The Board of Directors shall elect a chairperson, a vice chairperson, a secretary and a treasurer. The chairperson and vice-chairperson shall be directors of the Board and the secretary and treasurer may, but need not, be directors of the Board. The chairperson shall preside at all meetings of the Board and the vice-chairperson shall act as the chairperson in the absence of the chairperson elected by the Board. The treasurer shall meet the qualifications set out in Government Code section 6505.5 as a depository of funds for the Authority.

4.4 **Powers and Limitations.** All the powers and authority of the Authority shall be exercised by the Board, subject, however, to the rights reserved by the Members as set forth in this Agreement.

4.5 **Quorum.** A majority of the members of the Authority Board of Directors will constitute a quorum.

4.6 **Voting.** Except as to actions identified in Section 4.7, the Authority Board of Directors will conduct all business by majority vote. Prior to voting, the Members shall endeavor in good faith to reach consensus on the matters to be determined such that any subsequent vote shall be to confirm the consensus of the Members. If any Member strongly objects to a consensus-based decision prior to a vote being cast, the Members shall work in good faith to reasonably resolve such strong objection, and, if the same is not resolved collaboratively, then the matter will proceed to a vote for final resolution under this Section 4.6 or Section 4.7, below, as applicable.

4.7 **Supermajority Vote Requirement for Certain Actions.** The following actions will require a two-thirds (2/3) vote by the directors present:

- a. Approval of the Authority's annual budget;
- b. Decisions related to the levying of taxes, assessments or property-related fees and charges;
- c. Decisions related to the expenditure of funds by the Authority beyond expenditures approved in the Authority's annual budget;
- d. Decisions related to the establishment of the Members' percentage obligations for payment of the Authority's operating and administrative costs as provided in Article 5.1; and

e. Approval of a GSP.

4.8 **Meetings.** The Board shall provide for regular and special meetings in accordance with Chapter 9, Division 2, Title 5 of Government Code of the State of California (the “Ralph M Brown Act” commencing at section 54950), and any subsequent amendments of those provisions.

4.9 **By-Laws.** The Board may adopt by-laws to supplement this Agreement. In the event of conflict between this Agreement and the by-laws, the provisions of this Agreement shall govern.

4.10 **Administrator.** The Members hereby designate San Joaquin County to serve as administrator of, and keeper of records for, the Authority.

ARTICLE 5: FINANCIAL PROVISIONS

5.1 **Contributions and Expenses:** Members shall share in the general operating and administrative costs of operating the Authority in accordance with percentages determined by the Authority Board of Directors. Each Member will be assessed quarterly, beginning on January 1 of each year. Members shall pay assessments within thirty (30) days of receiving assessment notice from the Treasurer. Each Member will be solely responsible for raising funds for payment of the Member’s share of operating and administrative costs. The obligation of each Member to make payments under the terms and provision of this Agreement is an individual and several obligation and not a joint obligation with those of the other Members. Each Member shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. No Member shall be under the control of or shall be deemed to control any other Member. No Member shall be precluded from independently pursuing any of the activities contemplated in this Agreement. No Member shall be the agent or have the right or power to bind any other Member without such Member’s express written consent, except as expressly provided in this Agreement.

5.2 **Initial Contributions.** Upon execution of this Agreement, each of the Members shall contribute Five Thousand Dollars (\$5,000.00) to the Authority. Such funds may be used in the discretion of the Authority Board of Directors to fund the activities of the Authority including, without limitation, engineering services.

5.3 **Liability of Board and Officers.** The funds of the Authority may be used to defend, indemnify and hold harmless the Authority, any Director, officer, employee, or agent for actions taken within the scope of the authority of the Authority. Nothing herein shall limit the right of the Authority to purchase insurance including but not limited to directors and officers liability insurance.

5.4 **Repayment of Funds.** No refund or repayment of the initial commitment of funds specified in Section 5.2 will be made to a Member ceasing to be a Member of this Agreement whether pursuant to removal by the Board of Directors or pursuant to a voluntary withdrawal. The refund or repayment of any other contribution shall be made in accordance with

the terms and conditions upon which the contribution was made, the terms and conditions of this Agreement or other agreement of the Authority and withdrawing Member.

5.5 **Budget.** The Authority's fiscal year shall run from January 1 through December 31. Each fiscal year, the Board shall adopt a budget for the Authority for the ensuing fiscal year. Within ninety (90) days of the effective date of this Agreement, the Board shall adopt a budget. Thereafter, a budget shall be adopted no later than December 1 of the preceding fiscal year. The budget must be adopted by unanimous vote of the Board.

5.6 **Alternate Funding Sources.** The Board may obtain State of California or federal grants but shall not create indebtedness without securing a Dedicated Revenue Stream.

5.7 **Depository.** The Board shall designate a Treasurer of the Authority, who shall be the depository and have custody of all money of the Authority, from whatever source, subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent. All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Member or any other person or entity. The Treasurer shall perform the duties specified in Government Code sections 6505 and 6505.5.

5.8 **Accounting.** Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. The books and records of the Authority shall be open to inspection by the Members at all reasonable times, and by bondholders and lenders as and to the extent provided by resolution or indenture.

5.9 **Audit.** A qualified firm, serving in the capacity of auditor, shall audit the records and the accounts of the Authority annually in accordance with the provisions of section 6505 of the Law. Copies of such audit reports shall be filed with the State Controller and each Member within six months of the end of the Fiscal Year under examination.

5.10 **Expenditures.** All expenditures within the designations and limitations of the applicable approved budget shall be made upon the approval of any officer so authorized by the Authority Board of Directors. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the approval and written order of the Board. The Board shall requisition the payment of funds only upon approval of claims or disbursements and requisition for payment in accordance with policies and procedures adopted by the Board.

5.11 **Initial Staffing Contributions.** The Authority initially intends to contribute to the goals and objectives identified in this Agreement by utilizing the staff at the Members' own cost to pursue those operations, investigations and programs. It is intended that no indebtedness be created unless funding is secured by a Dedicated Revenue Stream.

ARTICLE 6: CHANGES TO MEMBERSHIP, WITHDRAWAL AND TERMINATION

6.1 **Changes to Membership.** The Authority Board of Directors will have the authority to (1) approve the addition of new members to the Authority, and (2) remove a

Member involuntarily, in accordance with this Article. In the event of the approval of new Members or the involuntary removal of an existing Member the Members (and any new Members) shall execute an addendum or amendment to this Agreement describing all changes in Members. In the event of the involuntary removal of a Member the removed Member shall remain fully responsible for its proportionate share of all liabilities incurred by the Authority prior to the effective date of the removal.

6.2 Noncompliance. In the event any Member (1) fails to comply with the terms of this Agreement, or (2) undertakes actions that conflict with or undermine the functioning of the Authority or the preparation or implementation of the GSP, such Member shall be subject to the provisions for involuntary removal of a Member set forth in of Section 6.3 of this Agreement. Such actions of a Member shall be as determined by the Board of Directors and may include, for example, failure to pay its agreed upon contributions when due, refusal to participate in GSA activities or to provide required monitoring of sustainability indicators; refusal to enforce controls as required by the GSP; refusal to implement any necessary actions as outlined by the approved GSP minimum thresholds that are likely to lead to “undesirable results” under SGMA.

6.3 Involuntary Termination. The Members acknowledge that SGMA requires that multiple GSAs within a given Bulletin 118 groundwater basin must coordinate, and are required to use the same data and consistent methodologies for certain required technical assumptions when developing a GSP, and that the entire Basin must be implementing a GSP for the Basin to be deemed in compliance with SGMA. As a result, upon the determination by the Board of Directors that the actions of a Member (1) fail to comply with the terms of this Agreement, or (2) conflict with or undermines the functioning of the Authority or the preparation and implementation of the requirements of the GSP, the Board of Directors may terminate that Member’s membership in this Authority, provided that prior to any vote to remove a Member involuntarily all of the Members shall meet and confer regarding all matters related to the proposed removal.

6.4 Withdrawal of Members. A Member may, in its sole discretion, unilaterally withdraw from the Authority, effective upon ninety (90) days’ prior written notice to the Authority, provided that (a) the withdrawing Member will remain responsible for its proportionate share of any obligation or liability duly incurred by the Authority, in accordance with Article 5.1. In the event the withdrawing Member has any rights in any property or has incurred obligations to the Authority, the Member may not sell, lease or transfer such rights or be relieved of its obligations, except in accordance with a written agreement executed by it and the Authority. The Authority may not sell, lease, transfer or use any rights of a Member who has withdrawn without first obtaining the written consent of the withdrawing Member. If a Member withdraws prior to June 30, 2017, the withdrawing Member shall notify DWR if required and all applicable counties that it will act alone as a GSA or join an alternate multi-agency GSA. Until July 1, 2017, the applicable county may also elect to cover the area of the withdrawing Member.

6.5 Termination. This Agreement and the Authority may be terminated by a majority vote of the Members. However, in the event of termination each of the Members will remain responsible for its proportionate share of any obligation or liability duly incurred by the Authority, in accordance with Article 5.1. Nothing in this Agreement will prevent the Members

from withdrawing as provided in this Agreement, or from entering into other joint exercise of power agreements.

6.6 Disposition of Property Upon Termination. Upon termination of this Agreement, the assets of the Authority shall be transferred to the Authority's successor, provided that a public entity will succeed the Authority, or in the event that there is no successor public entity, to the Members in proportion to the contributions made by each Member. If the successor public entity will not assume all of the Authority's assets, the Board shall distribute the Authority's assets between the successor entity and the Members in proportion to the any obligation required by Sections 5.1 or 5.6.

6.7 Use of Data. Upon withdrawal, any Member shall be entitled to use any data or other information developed by the Authority during its time as a Member. Further, should a Member withdraw from the Authority after completion of the GSP, it shall be entitled to utilize the GSP for future implementation of SGMA within its boundaries.

ARTICLE 7: SPECIAL PROJECTS

7.1 Fewer than all of the Members may enter into a special project agreement to achieve any of the purposes or activities authorized by this Agreement, and to share in the expenses and costs of such special project, for example, to share in funding infrastructure improvements within the boundaries of only those Members and their Management Areas. Special project agreements must be in writing and documentation must be provided to each of the Members to this Agreement.

7.2 Members that enter into special project agreements agree that any special project expenses incurred for each such special project are the costs of the special project participants, respectively, and not of any other Members to this Agreement not participating in the special project, and the special project expenses shall be paid by the parties to the respective special project agreements.

7.3 Members participating in special project agreements if conducted by the Authority, shall hold each of the other parties to this Agreement who are not parties to the special project agreement free and harmless from and indemnify each of them against any and all costs, losses, damages, claims and liabilities arising from the special project agreement. The indemnification obligation of Members participating in special project agreements shall be the same as specified in Article 5.1 for Members in general, except that they shall be limited to liabilities incurred for the special project.

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.1 Amendments. This Agreement may be amended from time to time by a unanimous vote of the Members.

8.2 Binding on Successors. Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without a unanimous vote by

the Members. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto.

8.3 **Notice.** Any notice or instrument required to be given or delivered under this Agreement may be made by: (a) depositing the same in any United States Post Office, postage prepaid, and shall be deemed to have been received at the expiration of 72 hours after its deposit in the United States Post Office; (b) transmission by facsimile copy to the addressee; (c) transmission by electronic mail; or (d) personal delivery, as follows:

[To be added]

8.4 **Counterparts.** This Agreement may be executed by the Members in separate counterparts, each of which when so executed and delivered shall be an original. All such counterparts shall together constitute but one and the same instrument.

8.5 **Choice of Law.** This Agreement shall be governed by the laws of the State of California.

8.6 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement is held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

8.7 **Headings.** The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Members to this Agreement.

8.8 **Construction and Interpretation.** This Agreement has been arrived at through negotiation and each Member has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Member shall not apply in the construction or interpretation of this Agreement.

8.9 **Entire Agreement.** This Agreement constitutes the entire agreement among the Members and supersedes all prior agreements and understandings, written or oral. This Agreement may only be amended by written instrument executed by all Members.

IN WITNESS WHEREOF, the Members have executed this Agreement on the day and year first above-written.

[Signature blocks]