

## **MASTER SERVICES AGREEMENT FOR ON-FARM GROUNDWATER REPLENISHMENT**

This Master Services Agreement (“Agreement”) is made as of January \_\_\_\_, 2022, by and between Omochumne-Hartnell Water District (“Cooperator”), having an address of 8970 Elk Grove Blvd., Elk Grove, CA 95624, and The Freshwater Trust, an Oregon nonprofit corporation (“TFT”), having an address of 700 SW Taylor Street, Suite 200, Portland, OR 97205.

### **BACKGROUND**

Cooperator is a Sustainable Groundwater Management Act (“SGMA”) Groundwater Sustainability Agency (“GSA”), with responsibility for sustainable groundwater management and associated authorities for replenishment. Cooperator has agreements with various landowners and operators who farm certain real property in Sacramento County, shown on the map attached hereto in **Exhibit A** (“Scope of Work”) as Figure 1 (the “Property”). TFT is working on a program to demonstrate multi-benefit on-farm groundwater replenishment (the “Program”). The Program is intended to achieve replenishment through the seasonal application of surface water on agricultural fields where there is high potential for water infiltration. The goal of the Program is to replenish groundwater for the benefit the Cosumnes River and the Sacramento River Watersheds, the regional groundwater dependent ecosystems, and native fish and wildlife while simultaneously protecting and supporting agriculture in the region.

Using the BasinScout® Platform, an interactive tool to analyze groundwater recharge opportunities, TFT identified the Property as one of the most important groundwater recharge project opportunities in the region. Cooperator has received information about the Program from TFT and desires to enroll certain acreage of its Property in the Program (the “Enrolled Acreage”) as identified in **Exhibit A**. Further, Cooperator holds surface water rights, as detailed in the **Exhibit B**, which the parties mutually desire to use for groundwater recharge as part of this Program.

### **TERMS & CONDITIONS**

Cooperator and TFT agree to perform and be bound by the following terms and conditions:

#### **1. Term of Agreement.**

This Agreement will commence on the date last signed below (the “Commencement Date”). The Agreement will continue with an automatic annual renewal unless Cooperator chooses to withdraw subject to the Agreement Termination procedures. Agreement will automatically expire on **December 31, 2026** (“Expiration Date”), unless otherwise lawfully terminated or renewed by mutual agreement of the parties. Upon such expiration, the parties will have no further rights or obligations under this Agreement, except as specifically provided in this Agreement.

#### **2. Agreement Termination.**

Except as provided otherwise in this Agreement, this Agreement may be earlier terminated:

- (a) By mutual written agreement of the parties.
- (b) Upon material breach of the Agreement by a party, provided that notice and seven (7) day opportunity to cure are given to the breaching party. Should the breach remain uncured, the non-

breaching party may either unilaterally rescind this Agreement and recover restitution, or affirm this Agreement and recover damages, including, but not limited to, the cost of securing replacement Program participation and surface water to use for groundwater recharge.

(c) By TFT or OHWD without cause at any time upon thirty (30) days prior written notice.

Upon termination of this Agreement, TFT shall have no further liability to Cooperator other than compensation at the agreed rate for the Services performed and reimbursement of any permitted expenses incurred by Cooperator prior to the date of the termination.

### **3. Services**

Cooperator and its subcontractors shall provide services to TFT as detailed in the attached **Exhibit A** (the “Services”). Cooperator agrees that it will at all times fully comply with all federal, state and local laws, ordinances, codes, rules and regulations, and any contractual obligations relating to the use of the Property, including, but not limited to any diversion reporting requirements of the State of California. Cooperator further agrees that it will cause all of its subcontractors to do the same. Cooperator and TFT further agree that time is of the essence in the performance of this Agreement.

### **4. Payment Terms**

**Fees.** TFT shall pay Cooperator as specified in the Scope of Work, **Exhibit A**. The compensation identified in **Exhibit A** notwithstanding, each party will bear and pay its own expenses, including, in the case of the Cooperator, any costs of preparing the Property for or otherwise participating in the Program.

**Invoices.** Cooperator shall submit itemized invoices to TFT detailing the Services performed during the billing period, any expenses, and the total amount billed under the invoice. Invoices may be sent electronically to the TFT Project Manager, Ben Wallace, at [Ben@TheFreshwaterTrust.org](mailto:Ben@TheFreshwaterTrust.org) or via regular mail to The Freshwater Trust, 700 SW Taylor St, Suite 200, Portland, OR 97205. If the terms of this Agreement have been met and there has been no material breach of this Agreement by Cooperator, then TFT shall pay Cooperator’s invoice within thirty (30) days of receipt of Cooperator’s invoice or within fifteen (15) days after any questions TFT may raise about Cooperator’s invoice have been resolved.

**Completion of Form W-9.** Cooperator agrees to complete an IRS Form W-9, required for TFT to process payment to Cooperator, and return it to TFT as a condition of and prior to payment of any invoices under this Section 4.

**Taxes.** Cooperator shall have sole responsibility for the payment of all taxes and fees assessed against the compensation paid under this Agreement.

### **5. Cooperator’s Representations & Warranties**

Cooperator represents and warrants that: (a) it has the power and authority to enter into this Agreement and to perform the Services contemplated hereunder, (b) it has obtained all consents necessary for its participation in the Program and its performance of the terms of this Agreement (including without limitation the consents of any landowners and any persons with other rights with respect to the Property), and (c) no other agreements or obligations concerning the Property interfere with Cooperator’s right or ability to perform its obligations hereunder or will be violated by Cooperator’s performance of such

obligations. Cooperator represents the water rights are applicable to the replenishment activities and are further described in **Exhibit B**. Cooperator further represents and warrants that Cooperator has conducted its own review of its participation in the Program and its taking of or omission of actions required by or related to this Agreement; that, except as expressly provided in this Agreement, neither TFT nor any person affiliated with or otherwise on behalf of TFT is making or has made any representation or warranty, written or oral, with respect to the Program or otherwise; and, that Cooperator has not relied and will not rely on any such representation or warranty or any omissions by any such persons whether made on, before or after the date hereof, except as expressly set forth in this Agreement.

Without limiting the foregoing, if the Property is owned by any person (the “Landowner”) other than Cooperator, then Cooperator represents and warrants that Cooperator has the right to execute and perform this Agreement with respect to the Property, without the consent of the Landowner (except for any consent as Cooperator may already have obtained and which is irrevocable with respect to Cooperator’s participation in the Program), and that the Landowner will not have any rights against TFT in respect of Cooperator’s performance under or in any way related to this Agreement and Cooperator’s participation in the Program. At the request of TFT, Cooperator will arrange for a meeting of TFT and the Landowner. This Section 5 will survive the termination or expiration of this Agreement or any part thereof.

#### **6. Access to Property, Duty of Care**

Cooperator hereby irrevocably grants TFT and its employees, funders, invitees, subcontractors, agents and assigns (collectively, “TFT Personnel”) permission to enter the Property to monitor and verify field conditions on the Enrolled Acreage during the replenishment activities until the Expiration Date. During the replenishment activities, TFT shall provide Cooperator with at least 48 hours’ notice prior to entering the Property unless Cooperator agrees to a shorter notice period. Cooperator, or its representative, will coordinate with TFT to ensure that a designated representative for Cooperator is available to accompany TFT Personnel when accessing the Property in order to ensure safe access and to avoid interference with agricultural and other activities. When replenishment activities are not occurring, TFT will provide Cooperator with two (2) business day notice, exclusive of federal holidays, prior to entering the Property unless Cooperator agrees to a shorter notice period. Notice or agreement under this section may be provided verbally or in writing, including by text or email.

During the term of this Agreement, Cooperator and the TFT agree that: (a) TFT and its employees, funders, invitees, subcontractors, agents and assigns will coordinate their activities with Cooperator in order not to unreasonably disturb ongoing maintenance operations and other activities on the Property or on Cooperator’s adjacent property, if applicable; and (b) both Cooperator and TFT will take, use, provide and make proper, necessary and sufficient precautions, safeguards, and protections against the occurrence of any accidents, injuries, or damages to any person or the Property.

#### **7. Property Management & Notification of Changes in Operation, Lease, or Ownership**

During the term of this Agreement, Cooperator and Cooperator’s representatives and assigns (including all subcontractors and lessees) will manage the Property in accordance with this Agreement and so as not to disturb the nature of this Program.

Cooperator shall maintain title or a valid leasehold interest in the Property for the duration of the Agreement and will promptly notify TFT of any planned or pending changes in operation, lease or ownership of the Property.

No exercise of the rights granted herein will give rise to any claim of title to the Property on the part of TFT or parties claiming through or under them. This Agreement and the rights granted herein may not be assigned, in whole or in part, by Cooperator without the written consent of TFT.

#### **8. Indemnification**

Cooperator assumes the risk of any damage caused by its participation in the Program. Cooperator will indemnify, defend and hold harmless TFT, its affiliates and funders and their officers, directors, members, employees and agents from and against any and all claims, demands, causes of action, damages, judgments, losses, liabilities, costs and expenses (including reasonable attorney's fees) arising or resulting, directly or indirectly, from any negligent action or failure to act on the part of Cooperator or breach by Cooperator of any of its obligations, representations and warranties under this Agreement. TFT will indemnify, defend and hold harmless Cooperator, and landowners and any persons with other rights with respect to the Property, from any and all claims, demands, causes of action, damages, judgments, losses, liabilities, costs and expenses (including reasonable attorney's fees) arising or resulting, directly or indirectly, from any negligent action arising from the entry of TFT's representatives on the Property or breach by TFT of any of its obligations under this Agreement (provided that the foregoing shall not apply to any such claims or actions to the extent arising from the absence of any Consent). Notwithstanding the foregoing, in no event will any party be liable for consequential, incidental or special damages. Through the execution of this Agreement, TFT and Cooperator certify that these indemnification provisions were mutually negotiated, that neither party objected to this provision, and therefore both parties agree to be bound accordingly. This Section 8 will survive the termination or expiration of this Agreement or any part thereof.

#### **9. Independent Contractor Status**

This Agreement does not create a legal partnership, joint venture, or employment relationship between TFT and Cooperator and their respective employees and subcontractors. TFT has no authority to enter into contracts on behalf of Cooperator. Cooperator has no authority to enter into contracts on behalf of TFT. Both parties may perform services for or enter into contracts with other persons or entities, provided that those services or contracts will not impair the timely satisfaction of obligations under this Agreement.

#### **10. Insurance**

Cooperator shall name TFT and its officers, agents, and employees as additional insureds under Cooperator's commercial liability insurance policy and will provide TFT with certificates of insurance evidencing such coverage.

#### **11. Force Majeure**

The failure of either party to perform any obligation otherwise due solely as a result of (a) governmental action, laws, orders, regulations, directions or requests, or (b) as a result of events, such as war, acts of public enemies, strikes or other labor disturbances, fires, floods, acts of God or any causes of like kind beyond the reasonable control of such party and not otherwise contemplated in this Agreement

(collectively referred to as "Force Majeure"), is excused for so long as such Force Majeure exists or until the parties agree to terminate this Agreement.

**12. Use of Data**

TFT will own all data collected and processed during the Program and all data collected may be made available to the State and may be in the public domain to the extent to which release of such materials is required under the California Public Records Act (Government Code Section 6250 et seq.) and the State shall have the right to use any such data for any public purpose. Cooperator will have the right to data collected and processed during the Program provided, however, that Cooperator may not publicize the data without prior written permission from TFT. TFT will not unreasonably withhold such permission.

**13. Notices**

Except as provided for in this Agreement, or for such day-to-day communications or instructions as may be called for or reasonably anticipated in the description of the work to be done under this Agreement (none of which may, however, alter the terms of this Agreement), any notice, demand, request, consent, or approval of any kind related to this Agreement will be in writing and delivered in person or sent registered or certified mail, postage pre-paid, to the addresses provided below or to the most recent address which the addressed party has provided for such purposes under this Agreement.

The Freshwater Trust

Attn: VP of People & Operations  
700 SW Taylor Street, Suite 200  
Portland, OR 97205

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may, from time to time, by written notice to the other, designate a different address, which will be substituted for the most current address previously provided. This Section 13 will survive the termination or expiration of this Agreement or any part thereof.

**14. Miscellaneous**

Entire Agreement. This Agreement will become binding when signed by the Cooperator and TFT. This Agreement supersedes all prior or contemporaneous communications and negotiations, both oral and written, concerning the subject matter of this Agreement and constitutes the entire agreement between TFT and Cooperator with respect to such matters.

Counterparts. This Agreement may be executed in several counterparts, and all counterparts so executed will constitute one agreement which will be binding on all of the parties, notwithstanding that all of the parties are not signatory to the same counterpart. Electronic signatures, digital signatures, fax signatures, and scanned signatures are acceptable for this Agreement in compliance with the Uniform Electronic Transactions Act (UETA).

Amendment. No amendment to this Agreement will be effective unless it is in writing and is signed by all of the parties hereto.

Choice of Law. This Agreement will be interpreted and construed under, and will be and governed by, the internal laws of the State of California, without regard to any choice of law rules.

Interpretation. This Agreement may not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The paragraph headings are for ease of reference only and shall not be used in constructing or interpreting this Agreement.

Assignment. The terms and conditions of this Agreement are binding upon Cooperator and its successors and assigns. Cooperator will provide TFT written notice of any such assignments.

Exhibits. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are incorporated into this Agreement as fully as if set out in their entirety herein, but in the event of any conflict between the terms of this main body of the Agreement and the terms of any exhibits, addenda, or other attachments, the terms of this main body of the Agreement will control unless the exhibits, addenda, or other attachments have been mutually agreed to in writing by the parties.

Survival. The provisions of this Agreement will survive the expiration or termination of this Agreement to the extent of any rights accrued or obligations incurred during such term, and Sections 5, 8, 13, and 14 shall survive any expiration or termination of this Agreement.

Severability. If any provision of this Agreement is held to be invalid or unenforceable, the other provisions will not be affected thereby.

Approval. This Agreement has been approved in writing by authorized representatives for each of the parties with full authority to bind its organization.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

**COOPERATOR**

**THE FRESHWATER TRUST**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A - SCOPE OF WORK**  
**OWHD**  
**On-Site Groundwater Replenishment**

**1. Master Services Agreement**

This Scope of Work is entered into as of the date last signed by The Freshwater Trust ("TFT") and Omochumne-Hartnell Water District ("Cooperator"). All terms and conditions set forth in the Master Services Agreement

("Agreement") are incorporated herein by reference as if set forth in this Scope of Work. All capitalized terms used in this Scope of Work shall have the same meaning set forth in the Agreement, except as modified by this Scope of Work. Upon full execution of this Scope of Work, the Agreement shall be deemed to include this Scope of Work.

**2. Project Location**

The physical location of the project is Teichert Ranch field in the Cosumnes watershed, Sacramento County, located within Section 20 of Township 7 North, Range 7 East, Mount Diablo Meridian (the "Recharge Field") as shown by **Figure 1** below.

**3. Scope of Work**

As part of the Demonstrating Multi-Benefit On-Farm Groundwater Replenishment ("Program"), TFT and Cooperator wish to pursue the recharge of groundwater by applying a portion of Cooperator's surface water rights, as identified in the State Water Resources Control Board permit included in the Agreement as **Exhibit B**. In pursuit of this goal, Cooperator agrees to perform the following:

**Groundwater Replenishment Actions**

Cooperator will annually divert surface water from the Cosumnes River between November and March ("Recharge Season") and apply that water to its 792 acre agricultural field(s), ("Recharge Field") as shown by **Figure 1**; provided, however, that the parties may agree in writing to pursue recharge on a different agricultural field that is capable of delivering equivalent or greater recharge volume and benefits.

These surface water applications will be applied in sufficient quantity to generate an Annual Water Recharge Volume of 300 acre feet. Annual Water Recharge Volume is defined as the volume of water that has been independently verified as having infiltrated below the root zone. Cooperator acknowledges that performance of this task will be measured by Annual Water Recharge Volume and that it may be necessary to apply a larger volume of water to achieve this result.

In accordance with California Water Code section 5101, Cooperator shall direct owner or other responsible party to file, or otherwise cause to be filed, a complete statement of diversion and use with the State Water Resources Control Board prior to April 1 of the year succeeding year each that water is diverted for these Groundwater Replenishment Actions.

Cooperator shall report the following information to TFT on an annual basis (by June 1) to document the implementation of the Groundwater Replenishment Actions:

- Location, timing, and volume of surface water diversions;

- Location, area, and depth of water applied to field(s);
- Methods used for groundwater replenishment, including standards, and practices followed; and
- All information reasonably necessary to monitor and verify the results of Groundwater Replenishment Actions, as requested by TFT.

In carrying out this Scope of Work, Cooperator shall not: (1) harm or adversely impact groundwater dependent ecosystems unless a levee repair or other public safety issue arises, in which case Cooperator will replant affected vegetation within two years following the conclusion of the repairs or public safety issue; or (2) take any action that would undermine the intended benefits of the Groundwater Replenishment Actions in this Scope of Work.

#### **4. Performance Timeline**

Cooperator may begin performance on or after the execution of this Scope of Work and will complete performance of all Services contained in this Scope by June 30, 2022 or through extension under the Master Services Agreement.

#### **5. Drought Contingency**

In the event that Cooperator is subject to a drought-related reduction or curtailment order that constrains the use of Cooperator's water rights to an extent that frustrates the purpose of this Scope of Work, Cooperator will notify TFT in writing within seven business days of receiving the order(s) and detail what actions, if any, may be required to meet regulatory requirements. If such orders require a temporary reduction in water available to be applied, that water will be made up as soon as practicable to meet the volumetric requirements described above. Cooperator and TFT will cooperate to find a mutually agreeable solution to the issues created by any such order.

#### **6. Payment**

For Cooperator's performance of the Services outlines in this Scope of Work, TFT shall pay Cooperator \$ 100 per acre foot for water recharge below the root zone, constituting an annual payment ("Annual Rate") of \$30,000. TFT will not compensate Cooperator for any direct expenses, costs, or any amount for water that is diverted or used for purposes other than the performance of this Agreement. Unless otherwise agreed to by the parties in writing, the total cost of all Services invoiced to TFT pursuant to this Scope of Work shall not exceed 30,000 dollars (\$30,000). Payment is for the delivery of water that would not otherwise occur without the specified replenishment action.

#### **7. Other Terms**

*Access & Monitoring.* In accordance with the Agreement, Cooperator hereby irrevocably grants TFT and its employees, funders, invitees, subcontractors, agents and assigns permission to enter the Property and travel on existing access roads over the Property in order to monitor and verify field conditions subject to the Master Services Agreement. The parties intend for this access to allow TFT and its employees, funders, invitees, subcontractors, agents and assigns to undertake all actions on the Property necessary to verify and document the outcomes of the Services, including but not limited to:

- a. Maintaining monitoring equipment to measure groundwater recharge and groundwater-surface water interactions associated with the Cosumnes River, and the ditches associated with the Recharge Field;
- b. Monitoring and photographing the water diversion infrastructure used to divert water to the Recharge Field as well as the inundation of the Recharge Field; and



*Rights to Monitoring Data.* TFT owns, without limitation, all data and analyses derived from or relating to the Groundwater Replenishment Actions and the associated monitoring equipment if provided by TFT. TFT hereby grants to Cooperator a nonexclusive, perpetual, paid up, royalty-free, irrevocable, worldwide license to use data derived from monitoring equipment installed on the Property if provided by TFT.

*Transfer of Water Rights.* Cooperator will not assign or otherwise transfer any volume of water it has the right to divert in such quantities that would negatively affect the Services, or in any quantity if the transfer could generate groundwater replenishment credits or any other remuneration for recharge.

*Claiming Rights.* Funds to pay for Cooperator's fee under this Scope of Work will be generated, in whole or in part, by funding contributed by TFT partners. Cooperator acknowledges that the TFT and any associated partner or transferee shall hold the right to claim to have provided the funding that resulted in the estimated volumetric recharge benefits, as verified by a third-party, and associated social and/or environmental benefits that may occur as a result of the Program (collectively, "Claiming Rights"). Such Claiming Rights are strictly reputational and do not constitute a property interest or cognizable right to any volume of physical water. Cooperator agrees that it shall respect the Claiming Rights and shall take no action that may prevent TFT or partners from making claims or representations regarding all such verified Claiming Rights.

*Contact Information.* The day-to-day communications or instructions reasonably necessary for carrying out the Services described herein should be directed to the following contacts:

**Cooperator: Omochumne Hartnell Water District**

Michael Wackman, [info@ohwd.org](mailto:info@ohwd.org), [michael@wackmanconsulting.com](mailto:michael@wackmanconsulting.com) 916-682-5958

**The Freshwater Trust**

Erik Ringelberg, [Erik@thefreshwatertrust.org](mailto:Erik@thefreshwatertrust.org), 530-867-1411

Ben Wallace, [Ben@thefreshwatertrust.org](mailto:Ben@thefreshwatertrust.org), 510-672-1260

The parties have executed this Scope of Work to the Master Services Agreement as of the day and year last signed below.

