

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

This Master Services Agreement (“Agreement”) is made as of February \_\_\_\_\_, 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 **June 30, 2027** (“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 a seven (7) calendar day opportunity to cure are given to the breaching party. Should the breach remain uncured, the non-breaching party may unilaterally rescind this Agreement.

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

Upon termination of this Agreement, TFT shall promptly advance compensation at the agreed rate for the Services actually 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.

### **4. Payment Terms**

**Fees.** TFT shall pay Cooperator as specified in the **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 holds a temporary permit for the diversion of excess flows from the Cosumnes River (Temporary Permit No. 21423), attached hereto as **Exhibit B**, and will exercise good faith efforts to apply for future permits on the same or substantially similar terms for the uses described therein. 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, pursuant to separate agreements with Landowner . 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 grants TFT and its employees, funders, invitees, subcontractors, agents and assigns (collectively, “TFT Personnel”) permission to monitor and verify field conditions on the Enrolled Acreage during the replenishment activities until the Expiration Date as Cooperator’s agent, under the terms of Cooperators existing agreements with Landowner. Cooperator and Landowner may place reasonable restrictions on TFT Personnel’s activities during such site visits in order to provide for the safety of personnel and the protection of Landowner’s existing agricultural operations. During the replenishment activities, TFT shall provide Cooperator with at least 48 hours’ notice prior to TFT Personnel entering the Property unless Cooperator or Landowner 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 Personnel will coordinate their activities with Cooperator in order not to unreasonably disturb ongoing agricultural operations and other activities on the Property or on adjacent property, if applicable; and (b) both Cooperator and TFT Personnel 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**

Cooperator holds a nonexclusive easement in the Property sufficient for the purposes of carrying out the groundwater replenishment activities described herein and will promptly notify TFT of any planned or pending changes in its right to access or use the Property for these purposes.

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 part 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 understands that Cooperator is a California public agency, subject to public records disclosure requirements. Records held by Cooperator may be subject to required or discretionary disclosure in response to a Public Records Act request or court order. To the extent that TFT claims a proprietary or ownership interest in data gathered in connection with the Groundwater Replenishment Actions, it will

immediately notify Cooperator to identify an appropriate course of action for the retention and possible exchange of such materials.

**13. Confirmation of Water Rights & Accounting Practices.**

Cooperator and TFT agree that the Services are intended to benefit groundwater conditions within Cooperator’s boundaries. TFT further acknowledges that pursuant to the terms of its water right and California law, water diverted by Cooperator under its permit must be put to a beneficial use. California law permits the diversion of excess flows to groundwater storage, but does not recognize standalone recharge as a beneficial use. Accordingly, for purposes of documenting the beneficial use of its water right, Cooperator will apply a “last in, first out” accounting method to demonstrate the quantity of water applied to a beneficial use under its right. Cooperator and TFT agree that the Groundwater Replenishment Actions are intended to provide a net benefit to the groundwater basin, including a net increase in the total volume of water available for beneficial use consistent with Article X, Sec. 2 of the California Constitution. Water diverted to recharge under the Agreement will not be marketed for resale or additional compensation to Cooperator following its application in the Groundwater Replenishment Actions.

**14. 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

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Attn: VP of People & Operations

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700 SW Taylor Street, Suite 200

\_\_\_\_\_

Portland, OR 97205

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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.

**15. 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.

Rights and Obligations of Third Parties. The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation, or understanding established herein.

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, 14, and 15 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: \_\_\_\_\_

