

## Merced Subbasin Groundwater Sustainability Agency

### TEMPLATE AGREEMENT FOR LAND REPURPOSING (dated May 23, 2023)

THIS AGREEMENT FOR LAND REPURPOSING (“**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”) by and between the Merced Subbasin Groundwater Sustainability Agency (“**MSGSA**”) and \_\_\_\_\_ (“**Participant**”). MSGSA and Participant are each individually referred to in this Agreement as a “**Party**” and collectively as the “**Parties**”.

#### 1. RECITALS

A. MSGSA is the Groundwater Sustainability Agency under the Sustainable Groundwater Management Act (“**SGMA**”) responsible for achieving sustainable management of its portion of the Merced Subbasin.

B. MSGSA considers demand reduction a primary tool to achieve groundwater sustainability.

C. MSGSA has adopted a two-phase approach to implementation of its Groundwater Sustainability Plan, with Phase 1 focused on land repurposing and Phase 2 likely to include groundwater pumping allocations.

D. MSGSA has developed the Land Repurposing Program (as defined and adopted by MSGSA under Resolution 2022-06) (“**LRP**”) as a voluntary program focused over a three to five (3-5) year time period.

E. Landowners within MSGSA have agreed to raise funds for the LRP to be used to encourage landowners to apply for and participate in the LRP.

F. In fall 2022, MSGSA solicited LRP applications for the first year of the LRP during the then-specified solicitation period, scored all applications received in accordance with its scoring framework including criteria related to spatial location, water use savings, incentive payment costs, and additional considerations, determined that selected applications should be accepted, and entered into Agreements with willing participants, the durations of which ranged from 3 to 5 years.

G. In 2023, MSGSA has solicited LRP applications for the second year of the LRP during the specified solicitation period, scored all applications received in accordance with its scoring framework including criteria related to spatial location, water use savings, incentive payment costs, and additional considerations, and has determined that selected applications should be accepted and enter into Agreements.

H. Defined terms in this Agreement are designated in Bold, and summarized in **EXHIBIT A** attached hereto.

**NOW THEREFORE:**

Participant and MSGSA hereby enter into this Agreement for Land Repurposing as follows:

**2. PROPERTY INFORMATION.**

2.1. Property. The land to be repurposed is subject to the terms and conditions of this Agreement (“**Property**”) consists of a total area of \_\_\_\_\_ acres, and is all or a portion of that land more particularly described in **EXHIBIT B** attached hereto, and as located on the scaled map (i.e., an annotated Assessor’s Parcel Map) attached as **EXHIBIT C**.

2.2. Cropping During Baseline Period. The Parties agree that the specific type of agricultural cropping of the Property during the most recent three (3) year period (2021 through 2023) (“**Baseline Period**”), consisted of the following crop types and areas during each year:

2021: \_\_\_\_\_

2022: \_\_\_\_\_

2023: \_\_\_\_\_

As used in this Agreement, the term “**Year**” shall mean October 1<sup>st</sup> of the preceding calendar year through September 30 of the calendar year.

2.3. Baseline Water Use. The “**Baseline Water Use**” for the Property is the Water Use on the Property during the Baseline Period, excluding any years during which the Property was not irrigated. For purposes of establishing Baseline Water Use, any months for which Water Use data are not available in the last year of the Baseline Period will be assigned the average Water Use for those same months in the first two years of the Baseline Period. As used in this Agreement, “**Water Use**” means the consumptive use, on an annual basis, of applied groundwater associated with the Property. Water Use is quantified as the total evapotranspiration (ET) from the property, measured using remote sensing technique(s) under commonly accepted methods by MSGSA staff, less any applied surface water contributing to ET, and less the amount of precipitation contributing to ET (“**Effective Precipitation**”), estimated based on measurements of total precipitation at the nearest active California Irrigation Management Information System (CIMIS) station and the effective precipitation calculation method from the U.S. Department of Agriculture National Engineering Handbook.

2.3.1 Participant agrees that the Baseline Water Use for Property under this Agreement shall be \_\_\_\_\_ acre-feet per year for each acre of the Property, for a total of \_\_\_\_\_ acre-feet per year over the entire Property. Backup calculations of Baseline Water Use are provided in **EXHIBIT D** attached hereto.

**3. LRP PLAN.**

3.1 Agreement. Participant agrees to repurpose the Property to a use approved by MSGSA and to reduce the overall Baseline Water Use of the Property in the amount specified in Section 3.5, subject to the terms and conditions of this Agreement (“**Repurposed**”).

3.2 Consistency with Application. The information in this Agreement shall be consistent with the information provided to MSGSA by Participant in their Phase 1 LRP

Application(s) \_\_\_\_\_. In the event that disparities exist between the information provided in the Phase 1 LRP Application and the information contained in this Agreement, the information in this Agreement shall prevail. The Application(s) associated with this Agreement are provided in **EXHIBIT E** attached hereto.

3.3 Term. The term of this Agreement shall be for a period of \_\_\_\_\_ ( ) years (“**Term**”) beginning on October 1, 2023, and ending September 30, 202X. Repurposing of the Property under this Agreement shall begin in the very next year on October 1, 2023.

3.4 Repurposed Land Use. Participant agrees that during the Term the Repurposed use(s) of the Property shall be limited to the following in the each of the following Years:

2024: \_\_\_\_\_

2025: \_\_\_\_\_

2026: \_\_\_\_\_

2027: \_\_\_\_\_

3.5 Groundwater Use on Repurposed Land. Participant agrees that during the Term the use of groundwater on the Property shall be no greater than \_\_\_\_\_ ( ) acre-feet per year for each acre of the Property, for a total of \_\_\_\_\_ ( ) acre-feet per year over the entire Property.

3.6 Minimum Water Use Reduction. The Repurposing shall achieve, at a minimum, the “**Minimum Water Use Reduction**” for the Property which shall be quantified as follows:

3.6.1 For Repurposed land uses that will be irrigated, the Minimum Water Use Reduction will be calculated as the difference in Net Irrigation of the Property under Baseline Period cropping conditions and Repurposed cropping conditions, multiplied by the Uncertainty Allowance Factor and multiplied by the number of acres in the Property.

3.6.2 For Repurposed land uses that will not be irrigated, the Minimum Water Use Reduction will be the minimum annual value of Baseline Water Use multiplied by the number of acres in the Property multiplied by ninety percent (90%).

3.6.3 Participant agrees that the Minimum Water Use Reduction for Property under this Agreement shall be \_\_\_\_\_ ( ) acre-feet per year for each acre of the Property, for a total of \_\_\_\_\_ ( ) acre-feet per year over the entire Property. Backup calculations of Minimum Water Use Reduction are provided in **EXHIBIT E** attached hereto.

3.6.4 As used in this Agreement:

3.6.4.1 The term “**Uncertainty Allowance Factor**” shall be defined as a factor equal to 0.75 that is used to scale (by multiplication) the difference in Net Irrigation between Baseline and Repurposed cropping conditions for purposes of calculating the Minimum Water Use Reduction when the Repurposed condition of the Property is irrigated; and

3.6.4.2 The term “**Net Irrigation**” shall mean the average annual net irrigation associated with a specific land use category, as quantified by the California Simulation

of Evapotranspiration of Applied Water (Cal-SIMETAW) datasets for the Merced Stream Group and El Nido-Stevinson Detailed Analysis Units.

3.6 Assignment. This Agreement may be assigned or transferred by Participant only upon transfer of the Property, and upon prior written approval of MSGSA, which approval shall not be unreasonably withheld or delayed.

#### 4. INCENTIVE PAYMENTS.

4.1 Incentive Payment Amount. Upon full compliance with the terms and conditions of this Agreement, MSGSA shall make an annual incentive payment to Participant calculated as \_\_\_\_\_ per acre of Property Repurposed in accordance with the terms of this Agreement (“**Per Acre Incentive Payment**”) for a total annual payment amount of \_\_\_\_\_ (“**Annual Incentive Payment**”).

4.2 Incentive Payment Schedule. Except as otherwise provided in this Agreement, the Annual Incentive Payments shall consist of one (1) annual payment dispersed from the MSGSA to the Participant on or before the November 1 immediately following each Year during the Term for the Repurposed portion of the Property during the preceding Year.

#### 5. VERIFICATION AND MONITORING OF LAND AND WATER USE

5.1 Water Use Monitoring by MSGSA. MSGSA shall monitor Water Use on the Property using measurements of evapotranspiration (ET) using remote sensing technique(s) and estimates of Effective Precipitation based on measurements of total precipitation at the nearest active California Irrigation Management Information System (CIMIS) station and the effective precipitation calculation method from the U.S. Department of Agriculture National Engineering Handbook. Water Use for the Property shall be quantified as the ET less Effective Precipitation. MSGSA shall make Water Use information available to the Participant, at no additional cost to the Participant, by means of online portal and/or electronic or physical mail. MSGSA shall make Water Use information available to the Participant at quarterly intervals. The objective of Water Use monitoring is to evaluate reductions in Water Use on the Property under Repurposed conditions relative to the Baseline Water Use to ensure Participant’s contractual obligation to achieve the Minimum Water Use Reduction is achieved.

5.2 MSGSA Right to Inspection. MSGSA representative shall have access to the Property to make site visits to perform direct observations and document conditions of the Property. The Participant shall make necessary and appropriate accommodations to allow for MSGSA representative to conduct such site visits to the Property.

5.3 Independent Water Use Verification. Notwithstanding the water use monitoring by MSGSA in accordance with Section 5.1, Participant shall be entitled to demonstrate independent verification of Water Use, and reduction thereof, using other monitoring techniques reasonably approved by MSGSA in advance such as other ET remote sensing technique(s) and/or measurements of groundwater extractions volumes that are adjusted by irrigation efficiency factor(s), all at the sole cost of the Participant. Water Use measurements based on groundwater extraction volumes shall be based on a meter that is certified bi-annually to the reasonable satisfaction of MSGSA to be calibrated to report extraction rates and/or volumes within the criteria specified in American Water Works Association Manual M6. Participant shall also be entitled to

demonstrate repurposing activities through photographic documentation of repurposed lands and groundwater production infrastructure, which shall be reasonably considered by MSGSA.

## **6. PROHIBITION ON NET EXPANSION OF IRRIGATED AGRICULTURE ON LANDS OWNED OR OPERATED BY THE PARTICIPANT**

6.1 Prohibition of Net Expansion of Irrigated Agriculture on Lands Owned or Operated by Participant. Participant shall be prohibited from expanded the net acreage of irrigated agriculture on any other lands owned or operated by Participant in the MSGSA service area during the Term.

6.2 Monitoring by MSGSA of Extent of Irrigated Agriculture on Lands Owned or Operated by Participant. The extent of irrigated agriculture on other lands owned or operated by the Participant during the Term shall be monitored and evaluated by MSGSA based on a combination of County of Merced tax roll records, remote sensing, aerial imagery, and other technique(s) determined to be appropriate by MSGSA. In addition, Participant is required to report to MSGSA all land irrigated within the MSGSA service area during the Term.

## **7. DEFAULT AND ENFORCEMENT ACTIONS.**

7.1 Default. Should MSGSA determine that Participant is in violation of any of the terms of this Agreement, or that a violation is threatened, MSGSA shall give written notice to Participant of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Agreement, to restore the portion of the Property so injured. If Participant fails to cure the violation within thirty (30) days after receipt of notice thereof from MSGSA, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue to diligently cure such violation until finally cured, MSGSA may take any one or more of the following actions, at the discretion of MSGSA:

7.1.1 Bring an action at law or in equity of court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Agreement;

7.1.2 Withhold the Annual Incentive Payments, or a portion thereof, for any Year in which the default has occurred; and/or

7.1.3 Terminate this Agreement. In the event that this Agreement is terminated with Year(s) remaining on the Term, a penalty equal to twenty-five percent (25%) of the remaining Incentive Payments for remaining Years on the Term ("**Termination Penalty**") shall be assessed by MSGSA on Participant.

MSGSA's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Agreement, and Participant agrees that MSGSA's remedies at law for any violation of the terms of this Agreement are inadequate and that MSGSA shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which MSGSA may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of

otherwise available legal remedies. MSGSA's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7.2 Costs of Enforcement. Any costs incurred by MSGSA in enforcing the terms of this Agreement against Participant, including, without limitation, costs of suit and attorneys' fees, and any costs or restoration necessitated by Participant's violation of the terms of this Agreement shall be borne by Participant.

7.3 Discretion/Waiver. Enforcement of the terms of this Agreement shall be at the discretion of MSGSA, and any forbearance by MSGSA to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by Participant shall not be deemed or construed to be a waiver by MSGSA of such term or of any subsequent breach of the same or any other term of this Agreement or of any of MSGSA's rights under this Agreement. No delay or omission by MSGSA in the exercise of any right or remedy upon any breach by Participant shall impair such right or remedy or be construed as a waiver.

7.4 Acts Beyond Participant's Control. Nothing contained in this Agreement shall be construed to entitle MSGSA to bring any action against Participant for any injury to or change in the Property resulting from causes beyond Participant's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Participant under emergency condition to prevent, abate or mitigate significant injury to the Property resulting from such causes.

8. **INDEMNIFICATION**. Participant shall hold harmless, indemnify, and defend MSGSA and its directors, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "**Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes for action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties.

9. **REPRESENTATIONS AND WARRANTIES OF PARTICIPANT**. To induce MSGSA to enter into this Agreement, Participant represents and warrants to MSGSA as of the Effective Date and during the Term, and covenants with MSGSA as follows:

9.1 Organization and Authority. If not an individual, Participant consists of duly formed legal entity as represented in the signature block, validly existing, and in good standing. The persons who have executed this Contract on behalf of Participant have been duly authorized to do so on behalf of the landowner of the Property.

9.2 Enforceability of Documents. Upon execution by Participant, this Agreement shall constitute the legal, valid, and binding obligations of Participant, enforceable against Participant, in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

**10. RELATIONSHIP OF LAND REPURPOSING PROGRAM TO ALLOCATION.** The MSGSA is developing and will implement, starting no later than WY 2026, groundwater pumping allocations as part of its Phase 2 implementation program.

10.1 No Effect on Land Classification for Purpose of Allocation. Participation in this LRP shall have no effect on the classification of the Property as irrigated or non-irrigated for purposes of any groundwater allocations made by the MSGSA.

10.2 No Allocation During Term of this Agreement. During the Term, the Property shall not receive a groundwater allocation from MSGSA. The Property will be given a groundwater allocation by MSGSA upon termination of this Agreement in the same manner as if this Agreement had not occurred.

**11. MISCELLANEOUS.**

11.1 Entire Agreement. This Agreement sets forth the entire agreement of the Parties with respect to the LRP and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Agreement, including the Application, all of which are merged herein. This Agreement may be amended only by mutual written agreement and written approval of the Parties, which approval shall not be unreasonably withheld or delayed.

11.2 Notice. Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service or sent by certified or registered mail, postage prepaid, or (if an email address is provided) sent by electronic transmission (subject to confirmation of such electronic transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) with the day received from a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email before 5:00 p.m. (PT) on any Business Day or the next succeeding Business Day if sent by email after 5:00 p.m. (PT) on any Business Day or on any day other than a Business Day or (iv) five (5) Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or email address, or to such other address or addresses or email address or addresses as such Party may subsequently designate to the other Party by notice given hereunder:

To MSGSA: Merced Subbasin Groundwater Sustainability Agency  
Attention: Lacey McBride  
c/o Merced County Community and Economic Development Department  
2222 M Street  
Merced, CA 95340  
Phone 209-381-1096  
Email: Lacey.McBride@countyofmerced.com

To Participant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**“Business Day”** means any day other than a Saturday, Sunday, or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

11.3 Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

11.4 Interpretation. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement is to be interpreted as if it were drafted by all and not anyone or more Parties.

11.5 Counterparts and Electronic Signatures. This Agreement may be executed in two or more counterparts and, when so executed, shall have the same force and effect as though all signatures appeared in one document. This Agreement and any other transaction document, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine, portable document format or other electronic transmission (including any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), will be treated in all manner and respects as an original contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Any such signature page will be effective as a counterpart signature page hereto without regard to page, document or version numbers or other identifying information thereon, which are for convenience of reference only.

11.6 Partial Invalidity. If any term or provision of this Agreement is, to any extent, invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each such term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

11.7 Jurisdiction. Any claims arising out of this Agreement shall be resolved through litigation in the County of Merced Superior Court. The Parties consent to the jurisdiction of the Merced Superior Court and agree not to seek alternative venue. In addition, the Parties waive any claim to have matters arising from this Agreement resolved in federal Court.

11.8 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and assigns of the Parties hereto.

11.9 Time is of the Essence. Time is of the essence in this Contract.

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed as a sealed instrument as of the Effective Date.

**MSGSA:**

MERCED SUBBASIN  
GROUNDWATER SUSTAINABILITY AGENCY

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

Attest: \_\_\_\_\_  
Secretary



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

**PARTICIPANT:**

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

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

## EXHIBIT A DEFINITIONS

“**Agreement**” is defined in the Preamble.

“**Annual Incentive Payment**” is defined in Section 4.1.

“**Baseline Period**” is defined in Section 2.2.

“**Baseline Water Use**” is defined in Section 2.3.

“**Effective Date**” is defined in the Preamble.

“**Effective Precipitation**” is defined in Section 2.3.

**EXHIBIT A** is referenced in Section 1.H.

**EXHIBIT B** is referenced in Section 2.1.

**EXHIBIT C** is referenced in Section 2.1.

**EXHIBIT D** is referenced in Section 3.2.

**EXHIBIT E** is referenced in Section 2.3.1 and Section 3.6.3.

“**Indemnified Parties**” is defined in Section 8.

“**LRP**” is defined in Section 1.D.

“**Minimum Water Use Reduction**” is defined in Section 3.6.

“**MSGSA**” is the Merced Subbasin Groundwater Sustainability Agency, defined in the Preamble.

“**Net Irrigation**” is defined in Section 3.6.4.2.

“**Party**” and “**Parties**” is defined in the Preamble.

“**Participant**” is defined in the Preamble.

“**Per Acre Incentive Payment**” is defined in Section 4.1.

“**Property**” is defined in Section 2.1.

“**Repurposed**” is defined in Section 3.1.

“**SGMA**” means the Sustainable Groundwater Management Act and is defined in Section 1.A.

“**Term**” is defined in Section 3.3.

“**Termination Penalty**” is defined in Section 7.1.3.

**“Uncertainty Allowance Factor”** is defined in Section 3.6.4.1.

**“Water Use”** is defined in Section 2.3.

**“Year”** is defined in Section 2.2.

**EXHIBIT B  
PROPERTY INFORMATION**

Parcel 1:

Physical Address: \_\_\_\_\_

Merced County Assessor's Parcel Number: \_\_\_\_\_

Area (acres) per Assessor's Office: \_\_\_\_\_

**EXHIBIT C  
PARCEL MAP INCLUDING PROPERTY**

**EXHIBIT D**  
**MINIMUM WATER USE REDUCTION BACKUP CALCULATIONS**

**EXHIBIT E**  
**LAND REPURPOSING PROGRAM APPLICATION(S)**  
**COVERED BY THIS AGREEMENT**