

# DRAFT

Agreement No. \_\_\_\_\_

## **Management Agreement Between**

### **Omochumne-Hartnell Water District and the Sacramento Area Flood Control Agency For Construction, Operation and Maintenance of Groundwater Recharge Facilities on the Sherbakoff Property in the Vicinity of the Cosumnes River in South Sacramento County**

This Management Agreement (“Agreement”) between the Sacramento Area Flood Control Agency (“SAFCA”) and Omochumne-Hartnell Water District (“OHWD”) (collectively, “Parties”) shall be effective as of \_\_\_\_\_, 2020

## **RECITALS**

WHEREAS, SAFCA is a joint powers agency created under the SAFCA Joint Exercise of Powers Agreement dated January 17, 1991 and the Sacramento Area Flood Control Agency Act, California Water Code Appendix Sections 130 et seq.; and

WHEREAS, OHWD is a water district established in 1953 to serve agricultural water users on lands adjacent to the Cosumnes River and Deer Creek in South Sacramento County; and

WHEREAS, OHWD relies heavily on groundwater pumping to meet the irrigation demands of its landowners and is presently participating in groundwater sustainability planning efforts being carried out in both the Cosumnes and South American groundwater basins pursuant to the California Groundwater Sustainability Management Act of 2014; and

WHEREAS, SAFCA is exploring opportunities to re-operate reservoirs in the American River watershed to provide more space for flood control in the most severe flood events; and

WHEREAS, SAFCA believes that its ability to secure state funding for such reservoir re-operation will be greatly enhanced if this effort produces multiple benefits beyond flood risk reduction including the benefit of making water stored in Folsom Reservoir available under appropriate circumstances for increasing groundwater recharge along the Cosumnes River; and

WHEREAS, in December 2018, the Parties entered into a cost-sharing agreement (Cost Sharing Agreement) to facilitate OHWD’s implementation of a pilot project funded through a Proposition 84 Integrated Regional Water Management Grant to increase groundwater recharge and raise the groundwater table along Cosumnes River in the vicinity of Wilton (OHWD Recharge Project);

WHEREAS, the Cost Sharing Agreement was amended in September 2019 to broaden the scope of the cost shared activities to include activities that would enhance the results of the

OHWD Recharge Project, contribute to the development of a groundwater sustainability plan for the Cosumnes subbasin and address many of the environmental and engineering challenges associated with the groundwater recharge element of SAFCA's reservoir re-operation plan; and

WHEREAS, in August 2020 SAFCA was informed that it would receive a Proposition 1 Integrated Regional Water Management Grant (SAFCA Grant) to acquire fee title to the Sherbakoff property (Property) comprising approximately 130 acres of agricultural/grazing land located along the Cosumnes River directly adjacent to the OHWD Recharge Project area and to construct, operate and maintain the pipes, monitoring wells, and other groundwater recharge facilities necessary to incorporate the Property into the OHWD Recharge Project; and

WHEREAS, the Property is burdened by a conservation easement (Conservation Easement) granted in favor of the Sacramento Valley Conservancy (or SVC) for the purpose of ensuring that the Property is managed to protect its habitat value for Swainson's hawk and other wildlife species; and

WHEREAS, SAFCA and OHWD now desire to enter into this Agreement in order to identify the terms and conditions under which the Property will be incorporated into the OHWD Recharge Project.

NOW, THEREFORE, in consideration of their respective obligations under this Agreement, the Parties hereby agree as follows:

## **AGREEMENT**

1. **Purpose.** The purpose of this Agreement is for SAFCA to provide funding assistance for OHWD to construct and operate the project described in the SAFCA Grant.
2. **Scope.** OHWD shall be responsible for undertaking the following activities related to the SAFCA Grant as described in the scope of work attached hereto as Exhibit A: (a) constructing, operating and maintaining the groundwater recharge and monitoring facilities located on the Property that are identified in the SAFCA Grant; (b) conducting such monitoring activities as may be required by the SAFCA Grant; (c) preparing all quarterly and annual reports and monitoring plan results required by the SAFCA Grant; and (d) managing the Property so as to maintain its fitness to support groundwater recharge in a manner that is consistent with the requirements of the SAFCA Grant, the Cost Sharing Agreement, and the Conservation Easement.
3. **Funding.** SAFCA shall provide funding to OHWD to cover the cost for all services and activities related to constructing groundwater recharge and monitoring facilities on the Property; conducting monitoring activities; and preparing quarterly and annual reports and monitoring plan results. Prior to initiating any such services or activities, OHWD shall provide SAFCA through its Director of Planning (Project Manager) with a task order identifying the scope, schedule, and estimated cost of the service/activity. SAFCA shall review such task orders and approve them with or without revisions within two weeks of their receipt. Payments to

OHWD by SAFCA shall be based on the costs cited in the task orders approved by SAFCA plus any reimbursable expenses allowed under Exhibit B.

**TOTAL PRICE CEILING:**

**\$340,000**

Total funding for services performed pursuant to this Agreement, including reimbursable expenses, shall not exceed the Total Price Ceiling.

SAFCA shall make no payment to OHWD in any greater amount for any extra, further or additional services unless such services and payment therefore have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

4. Payment. SAFCA shall pay OHWD following receipt and approval of task orders the amount estimated on the task order. OHWD shall reference the contract number and task order number on the quarterly reports documenting task order expenditures.

Payment for reimbursable expenses will be made in accordance with Exhibit B. The IRS current guidelines for mileage and meal reimbursement will be strictly adhered to and override the current Exhibit B.

In each quarterly report following receipt of payment for a task order, OHWD will report to SAFCA on its progress on the work relative to the schedule in the task order and actual costs incurred. The first quarterly report after the completion of the tasks itemized in the task order shall include a full itemization of the actual cost of the work effort, including the hours actually worked by each OHWD job classification or employee name, and the actual expenditures on tasks and subtasks and/or project status with respect to any work product, milestone, or schedule. If total costs for work within the scope of a task order are lower than the amount paid by SAFCA pursuant to the estimated costs, OHWD shall reimburse SAFCA for the overpayment or may credit the overpayment to a future task order if mutually agreed by the parties in writing.

SAFCA reserves the right to withhold future payments in the amount of disputed Task Order specific items and shall give notice to OHWD pursuant to Section 9, of all such disputed specific items within ten (10) days following receipt of quarterly reports. The Parties shall exercise good faith and diligence in the resolution of any disputed invoiced amounts.

OHWD shall notify SAFCA's Project Manager in writing upon expenditure of seventy-five percent (75%) of the authorized Agreement amount. Such notice shall identify the percentage of funds expended, the percentage of work completed, an explanation of any variation between these two percentages, and an assessment of the cost of the remaining work to be performed.

5. Operation and Maintenance Activities. Sacramento Valley Conservancy is responsible for maintaining Property to meet the Swainson's Hawk Conservation Easement requirements, which may include grazing or mowing. OHWD shall be responsible for funding the cost of all operation and maintenance and Property management activities that are carried out pursuant to Section 1. In order to defray all or a portion of these costs, OHWD may be entitled

to lease the Property for agricultural or grazing activities provided that the terms and conditions of the lease are determined to be consistent with the SAFCA Grant and with Sacramento Valley Conservancy's land management responsibilities under the Conservation Easement. OHWD shall provide the lease to SAFCA and to SVC for review and approval at least two weeks prior to award.

6. Access to the Property. In order to carry out the activities specified in any agricultural or grazing lease awarded by OHWD pursuant to Section 4, SAFCA shall grant the lessee the right to access the Property across the easement connecting the Property to Sloughhouse Road. Access shall not be used to conduct the recharge related activities described in Exhibit A. OHWD shall be responsible for securing an independent access right to the Property for these activities from the land adjacent to the Property that is being used for the OHWD Recharge Project.

7. Term. This Agreement shall expire on December 31, 2035 unless amended by the Parties pursuant to Section 7 or terminated pursuant to Section 8.

8. Amendments. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

9. Termination.

A. SAFCA may terminate this Agreement without cause upon thirty (30) days' written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by SAFCA to OHWD and it is later determined that OHWD was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).

B. SAFCA may terminate this Agreement for cause immediately upon giving written notice to OHWD should OHWD materially fail to perform any of the covenants contained in this Agreement or in OHWD's Proposition 84 Grant agreement with RWA in the time and/or manner specified. If notice of termination for cause is given by SAFCA to OHWD and it is later determined that OHWD was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

C. SAFCA may terminate or amend this Agreement immediately upon written notice to OHWD, (1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to SAFCA is suspended or delayed; (2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; (3) if funds in SAFCA's yearly proposed and/or final budget are not appropriated by SAFCA for this Agreement or any portion thereof; or (4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by SAFCA as a result of mid-year budget reductions.

D. If this Agreement is terminated under paragraph A or C above, OHWD shall only be paid for any services completed prior to notice of termination or for any outstanding expense

obligations to a third party reasonably incurred prior to notice of termination that OHWD cannot legally cancel.

E. OHWD shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expense obligations to a third party that OHWD can legally cancel.

F. If this Agreement is terminated under paragraph A, B or C above, OHWD shall reimburse SAFCA for any work pre-paid by Task Order but not completed as of the effective date of the termination.

10. Notices. All notices, letters, and other communications under this Agreement shall be mailed, first class, or hand delivered, or submitted via facsimile followed by delivery of the original documents to the address shown. These addresses may be changed at any time by providing written notification to the other parties.

Sacramento Area Flood Control Agency  
1007 7th Street, 7th Floor  
Sacramento, CA 95814  
ATTN: Executive Director

Omochumne Hartnell Water District  
P.O. Box 211  
Wilton, CA 95693  
ATTN: General Manager

Sacramento Valley Conservancy  
P.O. Box 163351  
Sacramento, CA 95816  
ATTN: Executive Director

No change of address shall be binding upon the other party hereto until such party receives, at the address shown herein, written notice thereof. All notices shall be effective upon receipt.

11. Indemnification. SAFCA shall defend, indemnify and hold harmless OHWD, its Board of Directors, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of SAFCA's officers, directors, agents, employees, or subcontractors.

OHWD shall defend, indemnify, and hold harmless SAFCA, its Board of Directors, officers, directors, agents, employees, and subcontractors from and against all demands, claims,

actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of OHWD, its Board of Directors, officers, directors, agents, employees, or volunteers.

It is the intention of SAFCA and OHWD that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, OHWD's Board of Directors, SAFCA's Board of Directors, and SAFCA's subcontractors. It is also the intention of SAFCA and OHWD that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, OHWD's Board of Directors, SAFCA's Board of Directors and SAFCA's subcontractors.

12. Jurisdiction. Any lawsuit, action, or other proceeding arising from this Agreement shall be brought in a California state court located in the County of Sacramento as appropriate under State law.

13. Successors and Assigns. This Agreement may be assigned with the consent of the other party. It shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning party without the prior consent of the other party.

14. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect; provided that if any material obligation or benefit under this Agreement is deemed invalid or unenforceable, the Parties shall negotiate in good faith to amend the Agreement to ensure adequate consideration by both Parties.

15. Integration. This Agreement constitutes the entire understanding among the Parties pertaining to the subject matter hereof and supersedes all prior understandings and representations of the Parties with respect to the subject matter hereof. Any representation, promise, or condition not incorporated into this Agreement shall not be binding on any party.

IN WITNESS WHEREOF, the Parties hereto enter into this Agreement as of the date first set forth above.

**Sacramento Area Flood Control Agency**

**Omochumne Hartnell Water District**

By: \_\_\_\_\_  
Richard M. Johnson, Executive Director

By: \_\_\_\_\_  
Michael Wackman, General Manager

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

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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jeremy Goldberg, Agency Counsel

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

Exhibits

A: Scope of Work

B: Consultant Expense Reimbursement Guidelines