

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into this 9th day of December, 2025 ("Effective Date"), by and between the County of Fresno, a political subdivision of the state of California ("County"), and North Fork Kings Groundwater Sustainability Agency ("NFKGSA"), a Groundwater Sustainability Agency ("GSA"), created by Special Act legislation via Senate Bill 564, passed by the California State Legislature and signed by Governor Brown on September 16, 2016, in the Counties of Fresno and Kings, whose address is P.O. Box 158, Riverdale, California 93656.

WITNESSETH:

WHEREAS, on March 11, 2021, the President of the United States of America signed into law the American Rescue Plan Act of 2021 ("ARPA") which established the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") Program; and

WHEREAS, the County utilized a portion of its SLFRF to construct the 57-acre Elkhorn Recharge Facility ("Basin") to help offset groundwater overdraft; and

WHEREAS, the County intends on allowing the conveyance of surface water from the Liberty Canal and/or other facilities into the Basin during flooding conditions in the Kings River area and downstream in above average water years and any other time as is available; and

WHEREAS, diverted surface water will be used to recharge the groundwater aquifer, increasing the availability of groundwater for agricultural uses and ensuring the reliability of clean drinking water for member agencies of the NFKGSA; and

WHEREAS, the project will also benefit the water supplies of disadvantaged communities within the NFKGSA, including the unincorporated communities of Riverdale and Lanare, which are down gradient from the project location; and

WHEREAS, the NFKGSA was created by Special Act legislation as allowed by the Sustainable Groundwater Management Act of 2014 ("SGMA") to manage groundwater in a sustainable manner; and

WHEREAS, the County serves as a representative on the NFKGSA Board of Directors; and

WHEREAS, the NFKGSA represents that it is a GSA within the Kings Subbasin, which together with six other GSA groups, are responsible for developing and implementing Groundwater Sustainability Plans to comply with groundwater management regulations pursuant to SGMA; and

1 **WHEREAS**, the County wishes to allow the NFKGSA to manage surface water diversions into the
2 Basin through the Liberty Canal and/or other facilities; and

3 **WHEREAS**, the NFKGSA is willing and able to provide ongoing Basin management, operational,
4 and maintenance services; and

5 **WHEREAS**, the NFKGSA will develop a Basin management, operational, and maintenance
6 services plan to be reviewed and approved by the Director of the Department of Public Works and Planning
7 (Director) prior to the NFKGSA utilizing the Basin; and

8 **WHEREAS**, the County and NFKGSA desire to enter into this MOA to provide access and use of
9 the Basin to the NFKGSA.

10 **NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions herein
11 contained, the parties hereto agree as follows:

12 1. **GENERAL OBLIGATIONS OF THE GSA**

13 A. NFKGSA represents that it will manage, operate, and maintain the Basin, thereby
14 helping the County and other members of the Kings Subbasin comply with SGMA by recharging water
15 back into the aquifer, and helping to achieve state and local long-term groundwater sustainability goals.

16 B. NFKGSA will be responsible for the coordination and management of the surface
17 water diverted into the Basin through the Liberty Canal and/or other facilities.

18 C. NFKGSA will develop a Basin management, operational, and maintenance services
19 plan to be reviewed and approved by the Director prior to the NFKGSA utilizing the Basin.

20 2. **REPORTING REQUIREMENTS**

21 A. **Annual Water Report:** NFKGSA shall submit to the County's Director, or
22 designee, an annual report containing the estimated amount of surface water recharged during the year
23 at a time mutually agreed upon by Director and NFKGSA.

24 3. **REQUIRED LICENSES, CERTIFICATES, AND PERMITS**

25 A. Any licenses, certificates or permits required by the federal, state, county, or municipal
26 governments for NFKGSA to provide the services must be procured by NFKGSA, and be valid at the time
27 NFKGSA enters into this MOA.

28 B. NFKGSA must maintain such licenses, certificates and permits in full force and effect

1 during the term of this MOA. Licenses, certificates and permits may include, but are not limited to, driver's
2 licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and
3 permits will be procured and maintained by NFKGSA at no expense to the County.

4 4. **OFFICE SPACE, SUPPLIES, EQUIPMENT, AND OPERATING OVERHEAD**

5 NFKGSA shall provide all office space, supplies, equipment, vehicles, reference materials, and
6 telephone service necessary for NFKGSA to provide the services identified within this MOA. County is not
7 obligated to reimburse or pay NFKGSA for any expense or cost incurred by NFKGSA in providing these
8 services.

9 5. **TERM**

10 This MOA shall take effect on the Effective Date identified in the introductory paragraph and shall
11 remain in full force and effect until this MOA is amended, rescinded, suspended or terminated by action of
12 one or both of the Parties.

13 6. **TERMINATION**

14 This MOA may be terminated by either Party at will, for any reason, whatsoever, by having a written
15 termination notice served as hereinafter provided in Section 13. Termination shall be effective October 1
16 following notice of the termination pursuant to Section 13.

17 7. **INDEPENDENT CONTRACTOR**

18 In performance of the work, duties and obligations assumed by NFKGSA under this MOA, it is
19 mutually understood and agreed that NFKGSA, including any and all of the NFKGSA's officers, agents, and
20 employees will at all times be acting and performing as an independent agency, and shall act in an
21 independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate
22 of the County. Furthermore, County shall have no right to control or supervise or direct the manner or
23 method by which NFKGSA shall perform its work and function. However, County shall retain the right to
24 administer this MOA so as to verify that NFKGSA is performing its obligations in accordance with the terms
25 and conditions thereof.

26 NFKGSA and County shall comply with all applicable provisions of law and the rules and
27 regulations, if any, of governmental authorities having jurisdiction over all matters subject thereto.

28 Because of its status as an independent agency, NFKGSA shall have absolutely no right to

1 employment rights and benefits available to County employees. NFKGSA shall be solely liable and
2 responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
3 addition, NFKGSA shall be solely responsible and save County harmless from all matters relating to
4 payment of NFKGSA's employees, including compliance with Social Security withholding and all other
5 regulations governing such matters. It is acknowledged that during the term of this MOA, NFKGSA may be
6 providing services to others unrelated to the County or to this MOA.

7 8. **NON-ASSIGNMENT**

8 Neither party shall assign, transfer, or sub-contract this MOA, nor their rights or duties under this
9 MOA without the prior written consent of the other Party. County and NFKGSA acknowledge and agree
10 that NFKGSA may utilize third-party contractors and subcontractors to perform Basin maintenance
11 anticipated by this MOA.

12 9. **HOLD HARMLESS**

13 NFKGSA agrees to indemnify, save, hold harmless, and at County's request, defend the County,
14 its officers, agents, and employees from any and all costs and expenses (including attorney's fees and
15 costs), penalties, fines, damages, liabilities, claims, and losses occurring or resulting to County in
16 connection with the performance, or failure to perform, by NFKGSA, its officers, agents, or employees
17 under this MOA, and from any and all costs and expenses (including attorney's fees and costs),
18 penalties, fines, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or
19 corporation who may be injured or damaged by the performance, or failure to perform, of NFKGSA, its
20 officers, agents, or employees under this MOA.

21 County agrees to indemnify, save, hold harmless, and at NFKGSA's request, defend the
22 NFKGSA, its officers, agents, and employees from any and all costs and expenses (including attorney's
23 fees and costs), penalties, fines, damages, liabilities, claims, and losses occurring or resulting to
24 NFKGSA in connection with the performance, or failure to perform, by County, its officers, agents, or
25 employees under this MOA, and from any and all costs and expenses (including attorney's fees and
26 costs), penalties, fines, damages, liabilities, claims, and losses occurring or resulting to any person, firm,
27 or corporation who may be injured or damaged by the performance, or failure to perform, of County, its
28 officers, agents, or employees under this MOA.

1 10. **INSURANCE**

2 Without limiting the County's right to obtain indemnification from the NFKGSA or any third parties,
3 NFKGSA, at its sole expense, shall maintain in full force and effect the following insurance policies
4 throughout the term of this MOA.

5 **(A) Commercial General Liability.** Commercial general liability insurance with limits of not less than
6 Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars
7 (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include
8 products, completed operations, property damage, bodily injury, personal injury, and advertising
9 injury. The NFKGSA shall obtain an endorsement to this policy naming the County of Fresno, its
10 officers, agents, employees, and volunteers, individually and collectively, as additional insureds,
11 but only insofar as the operations under this MOA are concerned. Such coverage for additional
insureds will apply as primary insurance and any other insurance, or self-insurance, maintained
by the County is excess only and not contributing with insurance provided under the NFKGSA's
policy.

12 **(B) Automobile Liability.** Automobile liability insurance with limits of not less than One Million
13 Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must
include any auto used in connection with this MOA.

14 **(C) Workers Compensation.** Workers compensation insurance as required by the laws of the State
15 of California with statutory limits.

16 **(D) Employer's Liability.** Employer's liability insurance with limits of not less than One Million
Dollars (\$1,000,000) per occurrence for bodily injury and for disease.

17 **Additional Requirements**

18 **(A) Verification of Coverage.** Within thirty (30) days after the NFKGSA signs this MOA, and at any
19 time during the term of this MOA as requested by the County's Risk Manager or the County
20 Administrative Office, the NFKGSA shall deliver, or cause its broker or producer to deliver, to the
County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or
HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to
21 receive notices under this MOA, certificates of insurance and endorsements for all of the
22 coverages required under this MOA.

23 (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained
24 and is in full force; (2) the County, its officers, agents, employees, and volunteers are not
25 responsible for any premiums on the policy; and (3) the NFKGSA has waived its right to
26 recover from the County, its officers, agents, employees, and volunteers any amounts
paid under any insurance policy required by this MOA and that waiver does not invalidate
the insurance policy.

27 (ii) The commercial general liability insurance certificate must also state, and include an
28 endorsement, that the County of Fresno, its officers, agents, employees, and volunteers,
individually and collectively, are additional insureds insofar as the operations under this

MOA are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the NFKGSA'S policy.

- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this MOA.

(B) Acceptability of Insurers. All insurance policies required under this MOA must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this MOA an A.M. Best, Inc. rating of no less than A: VII.

(C) Notice of Cancellation or Change. For each insurance policy required under this MOA, the NFKGSA shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the NFKGSA shall, or shall cause the insurer to, provide written notice to the County not less than ten (10) days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the NFKGSA shall, or shall cause the insurer to, provide written notice to the County not less than thirty (30) days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the NFKGSA or its insurer to timely provide a written notice required by this paragraph is a breach of this MOA.

(D) County's Entitlement to Greater Coverage. If the NFKGSA has or obtains insurance with broader coverage, higher limits, or both, than what is required under this MOA, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the NFKGSA shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this MOA.

(E) Waiver of Subrogation. The NFKGSA waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this MOA. The NFKGSA is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the NFKGSA'S waiver of subrogation under this paragraph is effective whether or not the NFKGSA obtains such an endorsement.

(F) County's Remedy for NFKGSA's Failure to Maintain. If the NFKGSA fails to keep in effect at all times any insurance coverage required under this MOA, the County may, in addition to any other remedies it may have, suspend or terminate this MOA upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the NFKGSA. The County may offset such charges against any amounts owed by the County to the NFKGSA under this MOA.

(G) Subcontractors. The NFKGSA shall require and verify that all subcontractors used by the NFKGSA to provide services under this MOA maintain insurance meeting all insurance requirements provided in this MOA. This paragraph does not authorize the NFKGSA to provide services under this MOA using subcontractors.

1 11. **RECORDKEEPING AND CONFIDENTIALITY**

2 A. NFKGSA shall comply with the California Public Records Act, California Consumer
3 Privacy Act, and any other applicable laws.

4 12. **INSPECTIONS, AUDITS, AND PUBLIC RECORDS:**

5 12.1 **Inspection of Documents.** The NFKGSA shall make available to the County, and the
6 County may examine at any time during business hours and as often as the County deems necessary,
7 all of the NFKGSA's records and data with respect to the matters covered by this MOA, excluding
8 attorney-client privileged communications. The NFKGSA shall, upon request by the County, permit the
9 County to audit and inspect all of such records and data to ensure the NFKGSA's compliance with the
10 terms of this MOA.

11 12.2 **Public Records.** The County is not limited in any manner with respect to its public
12 disclosure of this MOA or any record or data that the NFKGSA may provide to the County. The County's
13 public disclosure of this MOA or any record or data that the NFKGSA may provide to the County may
14 include but is not limited to the following:

15 A. The County may voluntarily, or upon request by any member of the public or
16 governmental agency, disclose this MOA to the public or such governmental agency.

17 B. The County may voluntarily, or upon request by any member of the public or
18 governmental agency, disclose to the public or such governmental agency any record or data
19 that the NFKGSA may provide to the County, unless such disclosure is prohibited by court order.

20 C. This MOA, and any record or data that the NFKGSA may provide to the County, is
21 subject to public disclosure under the Ralph M. Brown Act (California Government Code, Title 5,
22 Division 2, Part 1, Chapter 9, beginning with section 54950).

23 D. This MOA, and any record or data that the NFKGSA may provide to the County, is
24 subject to public disclosure as a public record under the California Public Records Act (California
25 Government Code, Title 1, Division 10, Chapter 1, beginning with section 7920.000) ("CPRA").

26 E. This MOA, and any record or data that the NFKGSA may provide to the County, is
27 subject to public disclosure as information concerning the conduct of the people's business of
28 the State of California under California Constitution, Article 1, section 3, subdivision (b).

1 F. Any marking of confidentiality or restricted access upon or otherwise made with respect
2 to any record or data that the NFKGSA may provide to the County shall be disregarded and have
3 no effect on the County's right or duty to disclose to the public or governmental agency any such
4 record or data.

5 **12.3 Public Records Act Requests.** If the County receives a written or oral request under the
6 CPRA to publicly disclose any record that is in the NFKGSA'S possession or control, and which the
7 County has a right, under any provision of this MOA or applicable law, to possess or control, then the
8 County may demand, in writing, that the NFKGSA deliver to the County, for purposes of public
9 disclosure, the requested records that may be in the possession or control of the NFKGSA. Within five
10 (5) business days after the County's demand, the NFKGSA shall (a) deliver to the County all of the
11 requested records that are in the NFKGSA'S possession or control, together with a written statement
12 that the NFKGSA, after conducting a diligent search, has produced all requested records that are in the
13 NFKGSA'S possession or control, or (b) provide to the County a written statement that the NFKGSA,
14 after conducting a diligent search, does not possess or control any of the requested records. The
15 NFKGSA shall cooperate with the County with respect to any County demand for such records. If the
16 NFKGSA wishes to assert that any specific record or data is exempt from disclosure under the CPRA or
17 other applicable law, it must deliver the record or data to the County and assert the exemption by
18 citation to specific legal authority within the written statement that it provides to the County under this
19 section. The NFKGSA's assertion of any exemption from disclosure is not binding on the County, but the
20 County will give at least ten (10) days' advance written notice to the NFKGSA before disclosing any
21 record subject to the NFKGSA's assertion of exemption from disclosure. The NFKGSA shall indemnify
22 the County for any court-ordered award of costs or attorney's fees under the CPRA that results from the
23 NFKGSA's delay, claim of exemption, failure to produce any such records, or failure to cooperate with
24 the County with respect to any County demand for any such records.

25 **13. NOTICES**

26 The persons and their addresses having authority to give and receive notices under this MOA include the
27 following:
28

COUNTY

County of Fresno,
Department of Public Works and Planning
Water and Natural Resources Division
2220 Tulare Street, 6th Floor
Fresno, CA 93721
Attn: Augustine C. Ramirez, Division Manager

NFKGSA

North Fork Kings GSA
P.O. Box 158
Riverdale, CA 93656
Attn: Justin Mendes, General Manager

All notices between the County and NFKGSA provided for or permitted under this MOA must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three (3) County business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one (1) County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery shall be deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this MOA, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

14. **GOVERNING LAW**

Venue for any action arising out of or related to this MOA shall only be in Fresno County, California. The rights and obligations of the Parties and all interpretation and performance of this MOA shall be governed in all respects by the laws of the State of California.

15. **ADVICE OF ATTORNEY**

Each party warrants and represents that in executing this MOA, it has received independent legal advice from its attorneys, or the opportunity to seek such advice.

16. **ENTIRE AGREEMENT:**

This MOA constitutes the entire agreement between the NFKGSA and the County with respect to the subject matter hereof, and supersedes all previous agreements, negotiations, proposals, commitments,

writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this MOA.

[SIGNATURE PAGE FOLLOWS]

1 IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the day and year
2 first hereinabove written.
3

4 **North Fork Kings Groundwater
Sustainability Agency**

5 Justin Mendes
6 Justin Mendes, General Manager of
7 the North Fork Kings GSA
8 P.O. Box 158
9 Riverdale, CA 93656
10

COUNTY OF FRESNO

11 Ernest Buddy Mendes
12 Ernest Buddy Mendes, Chairman of the
13 Board of Supervisors of the County of
14 Fresno
15

16 **ATTEST:**
17 Bernice E. Seidel
18 Clerk of the Board of Supervisors
19 County of Fresno, State of California
20

21 By: Hanan M
22 Deputy
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