

RECHARGE NET METERING (ReNeM) PROGRAM
STAGE 2 ASSESSMENT

LANDOWNER ACCESS AGREEMENT

This Landowner Access Agreement (“agreement”) is made and entered into by and between the Resource Conservation District of Santa Cruz County (“RCD”), University of California Santa Cruz (“UCSC”), and _____ (“Landowner(s)”) on _____, 20__.

WHEREAS, Landowner(s) owns the Property located at _____, APN_____, more particularly described on Exhibit “A” (the “Property”) attached hereto and incorporated herein; and,

WHEREAS, in 2016, the Pajaro Valley Water Management Agency (“PV Water”) established a 5-year pilot Recharge Net Metering (“ReNeM”) Program (“Program”), which among other things, provides a financial incentive to landowners in the form of a rebate issued by PV Water for increasing the amount of groundwater recharge occurring within the Pajaro Valley by building a managed aquifer recharge (“MAR”) project on their property; and,

WHEREAS, the RCD and UCSC (together, the “Partners”) are serving as the “Third Party Certifier” for the Program, independent from but in coordination with PV Water, to identify and screen potential project sites, raise funds for installation, design systems, obtain permits, develop monitoring plans, collect data and samples, and prepare annual reports on ReNeM operations; and,

WHEREAS, Landowner(s) has completed the Stage 1 Assessment of the Program; and,

WHEREAS, Landowner(s) has agreed to provide access to the Property for the Partners, their designated employees, agents, or anyone authorized to perform tasks on their behalf to conduct the Stage 2 Assessment of the Program to evaluate the feasibility of a MAR project (“Assessment”). A description of the activities included in the Assessment is attached hereto as Exhibit “B” and incorporated herein; and,

WHEREAS, Landowner(s) is interested in voluntarily implementing a MAR project on his/her/their Property for the purpose of stormwater infiltration; and,

WHEREAS, the RCD is a public agency subject to requirements of the California Government Code sections 6250 through 6270.5, the California Public Records Act (“CPRA”), which requires that public agencies respond to proper requests for public records, and the RCD Board of Directors has adopted a Policy guiding the release of such information;

WHEREAS, UCSC is part of a public university subject to requirements of the CPRA, which requires that public agencies respond to proper requests for public records, and UCSC follows broader UC policy guiding the release of such information;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

1) Legal Framework. This agreement shall be read in conjunction with the following documents (collectively, "Contract Documents") that constitute the legal framework of this agreement and are incorporated herein by this reference:

Exhibit A	Legal Description of Landowner's Property
Exhibit B	Assessment Description
Exhibit C	Grant Conditions, if applicable
Exhibit D	Operations and Maintenance Obligations
Exhibit E	Reporting Requirements

2) Authorization. Landowner(s) authorizes the Partners, their designated employees, agents, or anyone authorized to perform tasks on their behalf, to enter the Property to conduct activities outlined in Exhibit B. Access will be limited to those portions of the Property which are relevant to the Assessment and those additional portions of the Property that are reasonably necessary to gain access to perform the Assessment. The Partners, their designated agents or anyone authorized to perform tasks on their behalf, will give Landowner(s) reasonable notice (at least 24 hours) prior to entering the Property. Reasonable and actual notice may be given by mail, in person, by email or by telephone. The Partners agree to joint and several liability for personal injury or property damage to the extent caused by their active negligence, sole negligence, or willful misconduct.

Landowner(s) acknowledge that PV Water is not involved in the physical assessment of properties for the ReNeM Program and that PV Water's participation in the ReNeM Program does not create any relationship of co-partner, joint venturer, principal and agent or employer and employee between Landowner(s) and PV Water. PV Water shall not be held liable for any costs, damage, injury, or other possible adverse effects relating to the Assessment or the Program except for personal injury or property damage (a) that is proximately caused by the sole negligence of PV Water, or (b) to the extent such personal injury or property damage is proximately caused by the active negligence or willful misconduct of PV Water.

If Landowner is an individual, Landowner certifies that he/she holds legal title to the Property on which the Assessment is occurring, and Landowner is not aware of any easements or restrictions on the Property that would be in conflict with the Assessment. _____(Initial if applicable)

If Landowner is not an individual, but is instead a legal entity such as a corporation, partnership, trust etc., Landowner certifies that such entity holds legal title to the Property and that the individual signing on Landowner's behalf has the full authority, including written proof to sign for the entity. _____ (Initial if applicable)

3) Term and Termination. This Agreement shall remain in effect from the date of this Agreement through the earlier of (a) September 30, 2021 or (b) termination of the Program, unless sooner terminated as herein provided ("Term"). The Term may be extended upon the mutual written agreement of the parties.

Notwithstanding anything contained in this agreement that may be construed to the contrary, Partners may terminate this agreement at any time by giving not less than thirty (30) calendar days' prior written notice to Landowner(s) of such termination.

In the event the Program materially and negatively (a) interferes with the business activities of Landowner(s) (or its/their tenants) on the Property, or (b) damages the Property, Landowner(s) may terminate this agreement by giving not less than thirty (30) calendar days' prior written notice to Partners of such termination.

- 4) Photographs. Landowner(s) agrees to allow for photographs to be taken for the Assessment.
- 5) Landowner(s) grants the Partners permission to disseminate information about the Assessment to potential funders and permitting agencies, including but not limited to soils information, hydrology, conceptual designs, and photographs.
- 6) No Recourse. Landowner(s) shall have no recourse against the Partners for further financial support or assistance except as expressly set forth in the Contract Documents.
- 7) Good Faith. Landowner(s) acknowledges that the Partners are expending public funds to conduct the Assessment. While, this agreement does not constitute a guarantee that the Partners will implement a MAR project on the Property, by signing this Agreement Landowner acknowledges that they have read the ReNeM Process documents available at [rcdsantacruz.org/ ReNeM](http://rcdsantacruz.org/ReNeM) and agrees in good faith to allow the implementation of a MAR project on their Property pending unforeseen circumstances if the analyses conducted in this Agreement demonstrate that the conditions of the Property would support a MAR project.
- 8) Dispute Resolution.
 - a) Mediation. The Partners and Landowner(s) agree to mediate any dispute or claim arising between them out of this agreement before resorting to arbitration. The mediation fees shall be divided equally between the parties.
 - b) Arbitration. Any dispute or claim in law or equity arising out of this agreement which is not settled through mediation shall be decided by neutral binding arbitration in accordance with Part III, Title 9, of the California Code of Civil Procedure (commencing with Section 1280), and not by court action except as provided by California law for judicial review of arbitration proceedings. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties shall have the right to discovery in accordance with Code of Civil Procedure Section 1283.05. Whenever possible, the arbitrator shall be a retired Superior or Appellate Court Judge or Justice, or someone of equivalent knowledge and experience and the arbitration proceeding shall take place in Santa Cruz County. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedy, shall not constitute a waiver of the right to arbitrate under this provision.
- 9) Implementation. Landowner(s) agrees to abide by the following general principles relating to the Assessment:
 - a) Reasonableness and Good Faith. Whenever this agreement requires the Landowner(s) to give its consent or approval to any action, such consent or approval shall not be unreasonably withheld or delayed.

- b) Cooperation. The parties shall take all appropriate and necessary measures to ensure fulfillment of the obligations and objectives arising out of the Contract Documents.
 - c) Information. The parties agree to provide all information necessary for the compliance with the Contract Documents and to apply the highest degree of transparency and accountability.
 - d) Adverse Circumstances. The parties shall promptly inform each other of any circumstances that interfere or threaten to interfere with the successful implementation of the Contract Documents.
 - e) Representation and communication. All communications to Landowner(s) concerning this agreement shall be directed to the party who signs this agreement on behalf of Landowner(s), unless otherwise instructed in writing by Landowner(s).
- 10) Entire Agreement; Amendments. This Agreement and all exhibits referred to in this agreement constitute the final, complete, and exclusive statement of the terms of the agreement between the parties relating to the Assessment and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this agreement. This agreement may be amended only by an agreement in writing signed by the Landowner(s), RCD, and UCSC.
- 11) Partial Invalidity. If a court or arbitrator of competent jurisdiction holds any agreement clause to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected.
- 12) Open Records. All books and records of the parties pertaining to this agreement and/or the Assessment shall be open to inspection and audit upon reasonable notice for any purpose reasonably related to this agreement.
- 13) Further Documents. The parties recognize the cooperative nature of the Program. At any time and from time to time during the Term of this agreement as well as following completion of the Assessment, each party shall execute and deliver (and acknowledge before a notary public where necessary) such documents as the other party may reasonably request or as are necessary to carry out and give effect to the provisions of this agreement.
- 14) Counterparts. This agreement may be executed in one or more counterparts, each of which shall be a fully binding and enforceable contract and agreement against the party signing such counterpart, but all such counterparts shall together constitute but one agreement.
- 15) Negation of Agency or Partnership. This agreement shall not be construed as making either party an agent, partner or joint venturer of the other party.
- 16) Governing Law and Venue. This agreement shall be deemed to be made under, and shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written:

RESOURCE CONSERVATION DISTRICT OF
SANTA CRUZ COUNTY

UNIVERSITY OF CALIFORNIA,
SANTA CRUZ

Date

Date

Signature

Signature

Lisa Lurie
Executive Director
820 Bay Ave, Suite 136
Capitola, CA 95010

Andrew T Fisher
Professor of Earth & Planetary Sciences
1156 High Street, E&M A232
Santa Cruz, CA 95064

LANDOWNER(S)

LANDOWNER(S)

Date

Date

Signature

Signature

Printed Name/Title

Printed Name/Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

Exhibit A
Legal Description of Landowner's Property

Attach Deed and map designating the Assessment area including access routes.

Exhibit B Assessment Description

The Stage 2 Assessment may include, but is not limited to, one or more of these and related activities:

- A detailed desktop/computer assessment of site conditions, including analysis of soils, aquifer conditions, well logs, and modeled runoff.
- One or more site visits by the Partners, coordinated with the Landowner/tenant, to collect additional data and/or samples.
- Drilling of exploratory boreholes, potentially with coring to recover subsurface samples.
- Evaluation of potential for the site to host habitat for threatened or endangered species, and other factors that could impact permitting requirements.
- Preliminary engineering design, to assess potential project site, operation, and cost to develop
- Sampling to assess water quality, potentially at multiple times.

Sites undergoing Stage 2 Assessment will be listed on the ReNeM web site (rcdsantacruz.org/ReNeM) as being "in consideration" for inclusion in the program. At this stage, the name of the project could include a public identifier (family name(s), site name) or a generic name (at preference of Landowner/tenant). However, if a project is to be incorporated into the ReNeM program as an active project, the name and general location of the project will become public information and listed on the ReNeM site by that time. In addition, site performance information for all ReNeM projects will be considered to be public information once a project is incorporated and operated as part of the ReNeM program. This is essential so that operation of the program is transparent.

At least once per water year, Partners will review the status of sites that have undergone Stage 2 Assessment and rank these projects as to their priority for funding and full development. Factors that will be considered in ranking potential projects include: potential to infiltrate ≥ 100 ac-ft/yr during a typical water year, site location compared to other (active or pending) ReNeM projects, ease of site access (under both dry and wet conditions), potential for negative environmental impact (e.g., endangered or threatened species), water quality, the presence of high percolation rate soils, space in an underlying aquifer, favorable aquifer properties, a high ratio of benefit to cost, potential for securing funding for planning and capital costs.

Exhibit C
Grant Conditions

Insert, if applicable

Exhibit D
Operations and Maintenance Obligations

Site assessment for a potential MAR project as part of the ReNeM Program could require clearing debris, mowing, or other modest activities to permit site access for personnel, their contractors, or field equipment. Once there is agreement for an Assessment, ReNeM Partners will work with Landowner(s) and/or tenant(s) to set timing and gain access as needed to complete the Assessment.

If a project is approved for inclusion in the ReNeM Program and is constructed and becomes operational, there is an expectation that the Landowner(s) and/or tenant(s) will help to maintain the project as needed to keep it working. The purpose of the ReNeM rebate, provided by PV Water, is to offset the costs associated with operation and maintenance of a MAR project. Projects that provide insufficient benefit because of a lack of maintenance could be removed from the Program.

Exhibit E
Reporting Requirements

By signing this agreement, Landowner(s) acknowledge(s) that information gathered during the Stage 2 Assessment will be available for public review.

If the Partners have received grant funds to complete the Stage 2 Assessment, the following information may be provided to the funding agency (refer to checked boxes):

- GPS Coordinates
- Water Quality Data
- Landowner Agreement
- Photo Documentation
- Signage
- Other _____