

# EASTSIDE WATER DISTRICT INFRASTRUCTURE REIMBURSEMENT PROGRAM GUIDELINES

**ADOPTED: December 15, 2022**

## INTRODUCTION

### Background

The Eastside Water District (**EWD**) Infrastructure Reimbursement Program (**Program**) provides funding to qualifying EWD landowners for projects that utilize surface water after the eligible project is completed. Projects must meet certain eligibility criteria and be pre-approved in writing by EWD. These guidelines provide information on eligible projects, applicant eligibility, available funding, the application process, and contractual obligations. The Program will be subject to funding and approval by the Board of Directors (**Board**) on an annual basis. Funding will be allocated on a first come, first served basis; however, EWD reserves the right to allocate funds based on a ranking of the projects based upon cost-effectiveness, location, and other factors.

### Objectives

The objective of the Program is to encourage landowners, through financial incentives, to invest in physical improvements that will increase the amount of surface water used and/or recharged within EWD, and in turn reduce the amount of groundwater pumped – creating an “in-lieu” recharge program. The long-term goal of the Program is to increase surface water use within EWD.

### Role of Eastside Water District

The role of EWD in the Program includes, but isn't limited to:

- Review of applications for conformance with guidelines
- Review project designs
- Performing final inspection
- Entering into **SURFACE WATER USE AGREEMENT** after completion of work and approval by EWD
- Verification of project performance one-year after construction

Upon completion of construction EWD will reimburse the landowner for eligible costs, or, in certain circumstances, may agree to fund the project in advance upon prior negotiation and agreement. Landowner will then agree to utilize surface water when available for a period of twenty (20) years from the reimbursement date or upon amortization of the costs of construction as stated in the Surface Water Use Agreement.

If water for the project is supplied by Turlock Irrigation District (**TID**) or Merced Irrigation District (**MID**), EWD shall provide the surface water supplies to the Landowner for free on lands outside of MID & TID.

## **ELIGIBLE PROJECTS**

### Physical Improvements

Physical improvements that are eligible for funding include, but are not limited to

- New pipelines, sidegates, control gates and control boxes from surface water sources to pump intake of private landowner facilities (components related to conversion from flood irrigation to pressurized irrigation system)
- Unlined regulating reservoirs in areas where groundwater recharge is desired and practical
- Segregation of irrigation system to isolate surface water deliveries to eligible lands

## **ELIGIBILITY**

Applications can be submitted by an individual landowner or a group of landowners (i.e., Improvement District). Applicants must satisfy the following eligibility criteria to be considered for funding:

- Must have control of the land as a landowner (lessees can apply but landowner must sign the contract)
- Must be in good standing with the Irrigated Lands Regulatory Program
- Eligible lands must be entirely or partially within EWD
- With prior approval, lands outside of EWD may be eligible if they are able to affect the EWD cone of depression
- Minimum field size of 10 acres for overall project (smaller fields considered on a case-by-case basis)
- Benefitting land must have irrigation history in at least 2 of the last 5 years

## **AVAILABLE FUNDING**

The total amount of funding available for the Program will vary each year based on EWD's approved budget, but the Board anticipates an initial budget of \$200,000.00 for 2023.

## **APPLICATION PROCESS AND PAYMENT PROCEDURES**

The application and payment procedures are summarized as follows:

1. Landowner submits application package for review (including application form (**Attachment 1**), design plans and information, cost estimate, contractor/consultant/manufacturer information, crop map, TID or MID connection locations, meter locations if available, five (5) year average water use per acre, and estimate of surface water use opportunities)
2. EWD considers project for funding based on timing of submittal, availability of funding, and ranking.
3. EWD prepares Surface Water Use Agreement if project is approved
4. Landowner executes agreement
5. EWD monitors during construction
6. Landowner completes project
7. EWD performs final inspection
8. Landowner submits final record drawings, and itemized invoices for qualifying project expenses
9. EWD reimburses landowner for eligible expenses.
10. EWD may perform post-project monitoring one (1) year after construction to verify performance as intended

## **CONTRACTUAL OBLIGATIONS**

### General Obligations

Landowner will enter into a Surface Water Use Agreement with EWD in the form attached as **ATTACHMENT 2**, which will provide:

- Landowner must agree to utilize surface water supplies whenever available during the term.
- Minimum field size of 10 acres for overall project (smaller fields considered on a case-by-case basis)
- Amortization of construction costs will be through a \$50.00 credit to the landowner for each acre foot of surface water used by the Project.
- A memorandum of the Surface Water Use Agreement will be recorded against the property during the term.

### Flow Measurement Requirements

- For projects utilizing water from Turlock Irrigation District, (TID) or Merced Irrigation District (MID) supply numbers will be utilized.
- For projects utilizing other surface water supplies, flow measurement is required with meter standards to be approved in writing by EWD for all conveyance projects.
- Landowner agrees to provide EWD permanent access to flow measurement device.
- EWD shall have the right to install telemetry in the future, if desired.
- Landowner agrees to repair, modify, calibrate or replace flow measurement device to ensure accuracy.
- EWD shall also have the right to repair, modify, calibrate or replace flow measurement device at landowner's expense.

## ATTACHMENT A

### LANDOWNER APPLICATION FOR INFRASTRUCTURE REIMBURSEMENT PROGRAM

#### Instructions

The EASTSIDE WATER DISTRICT INFRASTRUCTURE REIMBURSEMENT PROGRAM (“**Program**”) provides partial funding to EWD landowners for projects that increase surface water use and recharge. Projects must meet certain eligibility criteria and be pre-approved by EWD. Please carefully read the EWD Program Guidelines before submitting an application. Funding will be allocated on a first come, first served basis; however, EWD reserves the right to allocate funds based on a ranking of the projects based upon cost-effectiveness, location, and other factors. Funding is not guaranteed for all applications and is dependent upon funding availability. If you have any questions about the Program please contact Sarah Woolf at 559-341-0174.

#### General Information

Landowner Name: \_\_\_\_\_

Farm Name (if applicable): \_\_\_\_\_

Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Assessor Parcel Numbers(s): \_\_\_\_\_

#### Project Information

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Source water location and number of outlet or gate: \_\_\_\_\_

#### Historical Water Use Information

Current Crop Map:

Historical cropping patten:

Current Irrigation System:

## ATTACHMENT B

### EASTSIDE WATER DISTRICT SURFACE WATER USE AGREEMENT

This SURFACE WATER USE AGREEMENT ("**Agreement**") is made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ ("**Effective Date**"), by and between EASTSIDE WATER DISTRICT, a political subdivision of the State of California ("**District**"), and \_\_\_\_\_, ("**Landowner**"). District and Landowner and each individually referred to in this Agreement as a "**Party**" and collectively as the "**Parties**."

#### 1. RECITALS

A. District adopted an Infrastructure Reimbursement Program on December 15, 2022 ("**Program**") to encourage the construction of physical Improvements to use surface water for irrigation ("**Improvements**") benefitting the District.

B. This Agreement implements the Program by agreeing to fund the Improvements, requiring the Landowner to use surface water supplies, providing free surface water supplies in certain instances, and crediting the Landowner with the cost of surface water until the cost of the Improvements are amortized.

C. Landowner has installed Improvements more particularly described in **EXHIBIT A** attached hereto to make surface water available to that real property more particularly described in **EXHIBIT B** to this Agreement ("**Property**").

D. District has verified installation of the Improvements as well as the cost for construction of the Improvements as submitted by Landowner, which are also included in EXHIBIT A ("**Costs**").

E. Landowner is entitled to receive reimbursement for the Costs upon the terms and conditions of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

2. **EVIDENCE OF LANDOWNER'S COSTS.** Landowner has submitted to District copies of all invoices, receipts and other evidence of payment by Landowner documenting the Costs. District and Landowner agree that the total Costs to be amortized pursuant to this Agreement for the Improvements shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_), which includes only the total actual cost of the Improvements, and does not include other costs of Landowner, such as acquisition of land or easements, or removal of other water conveyance Improvements, including wells and pumps.

3. **TERM OF AGREEMENT.** This Agreement shall become effective on the Effective Date and will continue in effect until the credit attributed to the Landowner in accordance with

Section 4 equals the Cost, or for a period of twenty (20) years from the Effective Date, whichever comes first (“**Term**”).

4. **AMORTIZATION OF COSTS.** For each acre foot of surfaced water used on the Property through the Improvements, Landowner shall receive a credit of Fifty Dollars (\$50.00) against the Costs.

5. **WATER COST.**

A. During the Term, District agrees to provide Landowner surface water for irrigation on the Property when available from Turlock Irrigation District (“**TID**”) or Merced Irrigation District (“**MID**”) at no cost if applied on lands outside of TID & MID.

B. During the Term, should Landowner utilize groundwater to irrigate the Property during any time that surface water is made available to the Property by TID or MID, then Landowner shall be responsible to pay District for any and all groundwater pumped at One Hundred Dollars (\$100.00) per acre foot.

5. **WATER MEASUREMENT.** Water received by Landowner from TID or MID shall be measured by TID. Surface water available to Landowner from any other source shall be measured by a water meter to be installed by Landowner in accordance with District rules and the Program.

6. **SURFACE WATER USE.** During the Term, Landowner agrees to exclusively use surface water for irrigation on the Property; provided however, that Landowner may use groundwater when surface water is unavailable, if surface water quality is incompatible with the operations on the Property, or if Landowner’s system must incorporate groundwater into the system due to capacity or quality issues, with prior written concurrence of the District. Such written concurrence shall not be unreasonably withheld or delayed.

7. **SURFACE WATER AVAILABILITY AND QUALITY.** District does not warrant that there will be sufficient surface water available to Landowner or the Property under this Agreement during the Term or any time thereafter. District agrees to make surface water available to Landowner whenever sufficient quantities of surface water are made available to District from TID or MID. District does not warrant the quality or quantity of water available.

8. **BINDING ON SUCCESSORS/RECORDING.** This Agreement is intended to bind the Parties as a covenant running with the land pursuant to California Civil Code Section 1468 and shall bind successive owners of the Property for a period of twenty (20) years from the Effective Date. A memorandum of this Agreement in the form attached as **EXHIBIT C** shall be recorded with the office of the recorder of the county or counties in which the Property is located.

9. **NOTICES.** 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 transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if

personally delivered, (ii) one (1) Business Days after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 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 as such Party may subsequently designate to the other Party by notice given hereunder:

District: Eastside Water District  
731 East Yosemite Avenue, Suite B #147  
Merced, CA 95340  
Phone: 559.341.0174  
Email: sarahwoolf@me.com

Landowner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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.

#### 10. MISCELLANEOUS.

A. Entire Agreement. This Agreement supersedes any prior agreement and contains the entire agreement of the Parties regarding the sale and amortization of surface water at a groundwater rate. No other agreement, statement, or promise made by any Party to any employee, officer, or agent of a party to this Agreement, or any other person, that is not in writing and signed by all of the parties to this Agreement shall be binding upon them. Any amendment, including oral modifications, must be reduced to writing and signed by both Parties, to be effective.

B. Waiver. Failure by either Party to enforce any covenant, restriction or other provision of this Agreement or to seek redress for the breach of or default in performance under any such covenant, restriction or other provision of this Agreement shall in no way constitute a waiver of the right to enforce such covenant, restriction or provision of this Agreement or seek redress for the breach thereof. The waiver by either Party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.

C. No Agency or Partnership. Nothing in this Agreement shall be deemed or construed by any person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any other association between or among any of the parties. No part of this Agreement shall be construed as creating any rights in the general public, nor



shall any part be deemed to be a gift or dedication for public use of any portion of the properties described in this Agreement.

D. Further Documents. Each Party shall, as often as reasonably requested, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further documents and instruments as may be necessary to carry out the intent and purpose of this Agreement.

E. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

F. Severability. In the event a court of competent jurisdiction determines any provision of this Agreement is void or unenforceable, such provision shall be deemed reformed so as to be valid or enforceable to the maximum extent possible, and the remaining provisions of this Agreement shall remain in full force and effect.

G. Authority. Each Party represents that its representatives executing this Agreement on their behalf have the binding authority to do so.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**LANDOWNER**

**DISTRICT**

EASTSIDE WATER DISTRICT

By: \_\_\_\_\_  
Tim Johnson, President

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

**EXHIBIT A TO SURFACE WATER USE AGREEMENT  
IMPROVEMENTS**

**EXHIBIT B TO SURFACE WATER USE AGREEMENT  
LEGAL DESCRIPTION OF PROPERTY**

**EXEMPT FROM RECORDING FEES  
PURSUANT TO GOVERNMENT CODE  
SECTION 27383 and 27388.1.**

**RECORDING REQUESTED BY, AND  
WHEN RECORDED, RETURN TO:**

EASTSIDE WATER DISTRICT  
731 East Yosemite Avenue, Suite B 147  
Merced, CA 95340

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF  
SURFACE WATER USE AGREEMENT**

This MEMORANDUM OF SURFACE WATER USE AGREEMENT ("**Memorandum**") is made this \_\_\_\_\_ day of \_\_\_\_\_ 2023 by and between EASTSIDE WATER DISTRICT, a political subdivision of the State of California ("**District**"), and \_\_\_\_\_ ("**Landowner**"). District and Landowner and each individually referred to in this Agreement as a "**Party**" and collectively as the "**Parties**."

6. **RECITALS**

F. On \_\_\_\_\_, 2023, the Parties entered into a Surface Water Use Agreement ("**Agreement**") pursuant to which District agreed to fund certain infrastructure for Landowner, and Landowner agreed to utilize surface water on that real property in Stanislaus County more particularly identified as Stanislaus County Assessor Parcel Numbers \_\_\_\_\_ ("**Property**").

G. The Parties desire to execute this Memorandum to provide constructive notice of the rights and obligations of the Parties under the Agreement to all third parties.

7. **TERM.** The Agreement obligates the Landowner to utilize surface water on the Property, with certain exceptions, and subject to penalties for noncompliance, for a period of twenty (20) years from the date of the Agreement.

8. **AGREEMENT.** The rights of the Parties are set forth in the Agreement, which is incorporated in this Memorandum by reference.

**LANDOWNER**

\_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF \_\_\_\_\_                    )

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**DISTRICT**  
**EASTSIDE WATER DISTRICT**

By: \_\_\_\_\_  
Tim Johnson, President

Attest: \_\_\_\_\_  
Karen Whipp, Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_        )

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public, personally appeared TIM JOHNSON, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_        )

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public, personally appeared KAREN WHIPP, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A TO  
MEMORANDUM OF SURFACE WATER USE AGREEMENT  
LEGAL DESCRIPTION OF PROPERTY**