

**MEMORANDUM OF UNDERSTANDING
REGARDING SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
GRASSLAND BASIN DRAINAGE MANAGEMENT ACTIVITY AGREEMENT**

This Memorandum of Understanding (“MOU”) is made and entered into this ____ day of April, 2020 by and between the San Luis & Delta-Mendota Water Authority (the “Authority”), a joint powers agency of the State of California (the “Authority”), on behalf of its members participating in the Grassland Drainage Management Activity Agreement (“GBD”); and [PEREIRA] (“Pereira”), an individual landowner.

RECITALS

- A. The Authority has entered into that certain agreement dated July 6, 1995, and effective July 11, 1995, with certain of its members entitled, the “Grassland Basin Drainage Management Activity Agreement.”
- B. The parties to the Grassland Basin Drainage Management Activity Agreement desire to exercise their joint powers to take action on a regionally coordinated basis to address issues relating to the control, management, distribution and discharge of agricultural drainage and storm water, and in particular, to contract with the United States for the temporary use of the San Luis Drain to convey such storm water.
- C. Pereira owns land not presently within the jurisdictional boundaries of any of the parties to the Activity Agreement or of any organized drainage, reclamation, or similar district, who desire to participate with the Authority and the Activity Agreement Members on a regional coordinated basis to address issues relating to the control, management, distribution and discharge of agricultural drainage and storm water, and in particular, to contract with the United States for the temporary use of the San Luis Drain to convey such storm water.
- D. Pereira further desire to enter into agreements to allow participation in the coordinated effort by other local agencies, mutual water companies, or individual parties which are not members of the San Luis & Delta-Mendota Water Authority but which agree to participate pursuant to the terms of any additional memoranda of understanding negotiated pursuant to the Activity Agreement.
- E. The parties intend the benefits and obligations of this MOU to run to Pereira and their successors in interest.

AGREEMENT

NOW, THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

Section 1. Definitions

- A. “Activity Agreement Member(s)” shall mean a member or members of the Authority who are signatories to the Activity Agreement.

- B. "Activity Agreement" or "Agreement" shall mean the Grassland Basin Drainage Management Activity Agreement.
- C. "Activity Agreement Operating Costs" shall mean Authority Operating Costs which are allocable to members of the Activity Agreement through the Activity Agreement and any MOU's executed in conjunction with the Activity Agreement, including this one, together with all costs or liabilities incurred pursuant to the Activity Agreement and any MOU's executed in conjunction with the Activity Agreement, including this one.
- D. "Authority" shall mean the San Luis & Delta-Mendota Water Authority.
- E. "Authority Operating Costs" shall mean the Authority rent and other occupancy charges, acquisition cost of office furniture and equipment, including telephone, telecopy, photocopy, cost of cars and other vehicles, insurance premiums, salaries and wages of employees including payments in connection with retirement programs and other benefit programs, fees of creditors, lawyers, engineers and other consultants, travel, telephone, telecopy and photocopy expenses and any other general administrative expenses.
- F. "Drainage Area" shall mean all of those parcels of real property located in the County of Merced, State of California, and more particularly described in Exhibit "A", which is attached hereto and incorporated herein.
- G. "Grassland Basin" shall mean that certain geographic area including generally acreage lying within the Camp 13 Drainage District, the Charleston Drainage District, the Firebaugh Canal Water District, the Pacheco Water District, the Panoche Drainage District, and certain additional lands within the Central California Irrigation District or not within any organized territory described in Exhibit "A" to the Activity Agreement.
- H. "JPA" or "JPA Agreement" shall mean that certain Amended and Restated Joint Exercise of Powers Agreement effective January 1, 1992, establishing the Authority, as amended from time to time.
- I. "Memorandum of Understanding" or "MOU" shall mean this agreement.
- J. "Use Agreement" shall mean any agreement entered into by the Authority and the United States Department of Interior Bureau of Reclamation designated as "Agreement for Use of the San Luis Drain," the benefit and obligations of which are distributed to the Activity Agreement Members pursuant to the terms of the Activity Agreement, and to parties signing memoranda of understanding pursuant to the terms of the memoranda of understanding, specifically including but not necessarily limited to that certain Use Agreement dated December 31, 2019 and any subsequent amendments or renewals thereof.
- K. All other capitalized terms not expressly defined herein shall be as defined in the Activity Agreement.

Section 2. Purpose. The Purpose of this MOU is to provide a mechanism for the participation of Pereira with the Activity Agreement Members for the purposes described in the Activity

Agreement, expressly including but not limited to use of a portion of the San Luis Drain as a conveyance of storm water through the Use Agreement with the United States.

Section 3. Relationship to Activity Agreement.

- A. The parties to this MOU hereby acknowledge and agree that the Activity Agreement, a copy of which is attached hereto as Appendix 1, and by this reference is incorporated herein, shall be organized and operated as set forth therein.
- B. Pereira hereby acknowledges and agrees that, except as their participation and representation is expressly established by this MOU and any provisions in the Activity Agreement which are specific to Pereira under this MOU, its relationship to the Activity Agreement Members shall be governed by the terms of the Activity Agreement as if the Pereira were members, and the Pereira jointly have the rights, duties, liabilities and obligations of Activity Agreement Members.

Section 4. Participation in the Organizational Structure

Pereira hereby acknowledges and agrees that he shall have no right to a position on the GBD Steering Committee of the Activity Agreement and no right to exercise a vote; instead, Pereira agrees that the duly appointed members of the Steering Committee may represent him and bind him pursuant to the terms of this MOU.

Section 5. Authorization to Allocate Operating Costs

Pereira agrees that all Activity Agreement Operating Costs incurred by the Authority under the Activity Agreement are the costs of the Activity Agreement Members, Pereira, and any other participating parties, and not of the Authority, and shall be paid by the Activity Agreement Members, Pereira, and any other participating parties. Pereira hereby agrees that Pereira will pay their allocated share of Activity Agreement Operating Costs and Authority Operating Costs assigned to the Activity Agreement, in accordance with Section 6 of this MOU and the Activity Agreement.

Section 6. Participation Percentages.

The participation percentages of the Activity Agreement Members, of Pereira, and of any other participating parties are set forth in Attachment 1 to this MOU, which Attachment 1 is also attached and incorporated by reference into the Activity Agreement, and which may be amended to reflect participation of Pereira, retroactive to the beginning of the current fiscal year, and may thereafter be amended by the Steering Committee from time to time.

Section 7. Term.

This MOU shall take effect on the date it is executed by the Authority and be retroactive as to Activity Agreement expenses to the first day of the current Fiscal Year. This MOU shall remain in full force and effect until this Agreement is amended, rescinded or terminated by the parties, either voluntarily or involuntarily.

Section 7. Termination of this MOU

- A. Notice on Withdrawal. To withdraw, Pereira shall give the Authority written notice of such withdrawal not less than 30 days prior to the withdrawal date.
- B. Notice of Involuntary Termination. Should the Authority choose to terminate this MOU for cause, including but not limited to the failure of Pereira to pay their Participation Percentage as described in Section 5, in a timely manner, then it shall give each of the Pereira notice of such termination not less than 30 days prior to the termination date.
- C. Indemnification. Whether Pereira withdraws voluntarily or this MOU is terminated involuntarily for some cause, Pereira shall, within 30 days after such termination or withdrawal date, pay all financial obligations incurred prior to such withdrawal or termination date pursuant to the terms of this MOU and the Activity Agreement. Provided, however, indemnification obligations set forth in Section 4 of the Activity Agreement shall survive such withdrawal or termination date for a period equal to all applicable statutes of limitations. As of the withdrawal or termination date, all rights of participation in this MOU and the Activity Agreement shall cease for the withdrawing or terminating party, specifically including but not limited to, any right to discharge storm water pursuant to the Use Agreement.

Section 8. Amendments

This MOU may be amended in writing by the parties hereto.

Section 9. Assignment; Binding on Successors.

Except as otherwise provided in this MOU, the rights and duties of Pereira may not be assigned or delegated without the written consent of the Authority. Any attempt to assign or delegate such rights or duties in contravention of this MOU shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect. This MOU shall inure to the benefit of, and be binding upon, the successors and assigns of the parties.

Section 10. Counterparts.

This MOU may be executed by the Authority and Pereira in any number of separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 11. Choice of Law.

This MOU shall be governed by the laws of the State of California.

Section 12. Headings.

The titles of sections of this MOU are for convenience only and no presumption or implication of the intent of the parties as to the construction of this MOU shall be drawn therefrom.

Section 13. Severability.

If one or more clauses, sentences, paragraphs or provisions of this MOU shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by Pereira and the Authority that the remainder of the MOU shall not be affected thereby.

The parties hereto acknowledge their agreement with the foregoing terms and represent that the individuals signing this MOU have authority to enter into this MOU on behalf of the principal whom they claim to represent.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By:

Date:

Title:

Pereira

By:

Date:

Title:

EXHIBIT "A"

[Description of Pereira real property and definition of all of the parcels

DRAFT

ATTACHMENT 1

DRAFT