



## **MADERA IRRIGATION DISTRICT**

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### BOARD OF DIRECTORS

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**JOHN P. KINSEY**

April 30, 2015

### Via Email & U.S. Mail

Cheryl Schmit  
Stand Up for California  
Post Office Box 355  
Penryn, California 95663

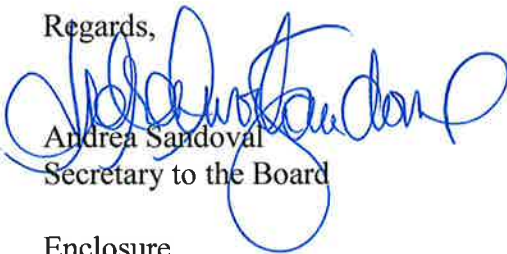
Dear Ms. Schmit,

This letter is to inform you Madera Irrigation District's (the "District") Board of Directors will consider the approval of an Amendment to the existing Memorandum of Understanding between the District and the North Fork Rancheria at the regular board meeting scheduled for Tuesday, May 5, 2015. The item is on the agenda for discussion at 3:00 p.m. A copy of the proposed Amendment is enclosed. As you will see, the proposed Amendment changes the method for calculating payments due to the District.

The District will provide you with a courtesy copy of the agenda once finalized by mail. The agenda will also be available on the District's website [www.madera-id.org](http://www.madera-id.org) at least 72 hours prior to the board meeting.

If you have any questions, please contact me at 559-673-3514 ext. 215.

Regards,

  
Andrea Sandoval  
Secretary to the Board

Enclosure

## AMENDMENT TO MEMORANDUM OF UNDERSTANDING

This Amendment (the “*Amendment*”) to the December 19, 2006, Memorandum of Understanding (the “*MOU*”) is made and entered into as of May 5, 2015 (the “*Effective Date*”), by and between Madera Irrigation District, an irrigation district organized under the California Irrigation District Law, Section 20500 *et seq.* of the California Water Code (the “*District*”), and the North Fork Rancheria of Mono Indians of California, a federally-recognized Indian tribe (the “*Tribe*”). The District and the Tribe are sometimes collectively referred to in this Amendment as the “*Parties*,” and individually as a “*Party*.”

### RECITALS

**WHEREAS**, the District and the Tribe entered into the MOU on December 19, 2006; and

**WHEREAS**, the intent of the Parties in executing the MOU was to “mitigate potential impacts of the Trust Acquisition and the Project on the District,” and to ensure “the total amount of the contributions which the Tribe will make to the District pursuant to this MOU will exceed the total amount of the taxes, fees and other assessments the District would receive from a private developer of a comparable project”; and

**WHEREAS**, Paragraph 2(a) of the MOU requires the Tribe to “contribute to the District recurring contributions in the amount of Eleven Thousand Five Hundred Dollars (\$11,500) per annum in lieu of any stand by or other fees, assessments, and taxes to the District related to the Property,” “not later than thirty (30) days after the acquisition by the United States of title to the Property in trust for the benefit of the Tribe . . . .”; and

**WHEREAS**, Paragraph 2(b) of the MOU requires the Tribe to “contribute to the District recurring contributions in the amount of Thirty Six Thousand Dollars (\$36,000) per annum as an equitable share of costs associated with District activities such as recharge efforts to help address the overdraft of the groundwater basin associated with the Trust Property,” “no later than thirty (30) days after the acquisition by the United States of the title to the property . . . .”; and

**WHEREAS**, the United States took title to the Property in trust for the benefit of the Tribe on or about February 5, 2013; and

**WHEREAS**, the Tribe has not yet commenced construction of the Project contemplated in the MOU, and contends it cannot do so until the resolution of pending litigation that could not have been anticipated under the laws and policies existing in 2006 when the MOU was negotiated; and

**WHEREAS**, the District has not received any payments from the Tribe under Paragraph 2(b) of the MOU, and the District has not deposited payments made by the Tribe in the amount of Twenty One Thousand Eight Hundred Sixty Three Dollars and Fifty Cents (\$21,863.50), pursuant to its obligations under Paragraph 2(a) of the original MOU (the “*Deposited Payments*”); and

**WHEREAS**, following discussions among them, the District and the Tribe have entered into this Amendment to delay the payments required under Paragraph 2(b) of the MOU, and to increase such payments so as to better reflect “the total amount of the taxes, fees and other assessments the District would receive from a private developer of a comparable project.”

### **DEFINITIONS**

*Amendment* – shall have the meaning ascribed to it in the initial paragraph hereof.

*Assessment Rate* – means the assessment rate adopted by the District each year pursuant to Section 20571 of the Water Code. The Assessment Rate may increase over time in the event the District undertakes a process to modify its assessments under, for example, Proposition 218.

*Deposited Payments* – shall have the meaning ascribed to it in the Recitals.

*District* – shall have the meaning ascribed to it in the initial paragraph hereof.

*Effective Date* – shall have the meaning ascribed to it in the initial paragraph hereof.

*MID Grower Rate* – means the volumetric rate per acre-foot of water that the District charges for irrigation water provided to original District lands.

*MOU* – shall have the meaning ascribed to it in the initial paragraph hereof.

*Party* – shall have the meaning ascribed to it in the initial paragraph hereof.

*Recurring Contributions for Loss of Sales* – shall have the meaning ascribed to it in subparagraph A.2 below.

*Recurring Contributions In-Lieu of Tax Assessments* –shall have the meaning ascribed to it in subparagraph A.1 below.

*Total District Charges Per Acre*– means the Assessment Rate plus any applicable land-based annual charges, including standby charges, for Category 2 lands within the District in the year in which the MOU requires the Tribe to make any payment under the MOU.

*Tribe* – shall have the meaning ascribed to it in the initial paragraph hereof.

Unless otherwise specified herein, all terms in this Amendment shall have the same meanings specified in the MOU.

## TERMS

### A. Amendments to MOU

#### 1. MOU Paragraph 2(a)

Paragraph 2(a) of the MOU is hereby stricken, and replaced with the following language:

“To mitigate potential economic impacts of the Project on the District related to the loss of tax revenues as a result of the Trust Acquisition, the Tribe shall, as a government funding mechanism, pay the following amounts:

- (i) For the period of February 5, 2013, through December 31, 2015, the sum of \$11,500 per year (for a total of \$34,500), for which the District may deposit the Deposited Payments on or after the Effective Date, with the remainder payable by the Tribe on or before December 20, 2015;
- (ii) For the period of 2016 through the end of the calendar year in which the fortieth (40th) anniversary of the first payment under Paragraph 2(b) occurs, the Tribe shall, on or before December 20 of each calendar year, contribute to the District recurring contributions in an amount equal to the Total District Charges Per Acre multiplied by 305 (“*Recurring Contributions In-Lieu of Tax Assessments*”).”

#### 2. MOU Paragraph 2(b)

Paragraph 2(b) of the MOU is hereby stricken, and replaced with the following language:

“To mitigate potential economic impacts of the Project on the District related to the loss of water sales, the Tribe shall, as a government funding mechanism, commencing on December 20 of the calendar year in which the Tribe engages in any development activities on the Property, which shall include without limitation any vertical construction or the planting of permanent crops, contribute to the District recurring contributions in an amount equal to the MID Grower Rate multiplied by 450 per annum (“*Recurring Contributions for Loss of Sales*”); provided, however, if the Wastewater Treatment Plant described in Section 2.2.8 of the Final Environmental Impact Study for the Project is operational and capable of delivering recycled water for indoor non-potable uses and landscaping, the recurring contributions shall be in an amount equal to the MID Grower Rate multiplied by 300 per annum commencing December 20 of the calendar year following the year in which the Tribe provides notice pursuant to Paragraph 21 below that such Wastewater Treatment Plant is operational

and capable of delivering recycled water. In the event the District does not set an MID Grower Rate for the year in which any payment under this Paragraph 2(b) is due, the MID Grower Rate used to determine the Recurring Contribution for Loss of Sales for that year shall be the last MID Grower Rate set by the District.”

**3. MOU Paragraphs 2(c), 2(d), 2(e), and 2(f)**

Paragraphs 2(c), 2(d), 2(e), and 2(f) of the MOU are hereby stricken.

**4. MOU Paragraph 4(c)**

Paragraph 4(c) of the MOU is hereby stricken.

**5. MOU Paragraph 5(c)**

The following language shall be added as a new Paragraph 5(c) to the MOU:

“Nothing herein shall be construed as providing, supplying, or guaranteeing the Tribe a right to a groundwater supply for the Project.”

**6. MOU Paragraph 6(b)**

The following language shall be added as a new Paragraph 6(b) to the MOU:

“The Tribe shall comply, to the extent required by law as a federally recognized Indian tribe, and may otherwise voluntarily comply, with any generally-applicable measures developed by any Groundwater Sustainability Agency, or comparable governmental entity, with respect to the sustainable management of groundwater supplies for the sub-basin within which the Project is located, including but not limited to those measures adopted or implemented pursuant to the Sustainable Groundwater Management Act of 2014.”

**7. MOU Paragraph 7(b)**

Paragraph 7(b) of the MOU is hereby stricken, and replaced with the following language:

“This MOU shall expire on the fortieth (40th) anniversary of the first payment under Paragraph 2(b).”

**8. MOU Paragraph 7(c)**

Paragraph 7(c) of the MOU is hereby stricken.

**9. MOU Paragraph 8(b)**

Paragraph 8(b) of the MOU is hereby stricken, and replaced with the following language:

“In the event the Property, or any portion thereof, is no longer “Indian country” or “Indian lands” within the meaning of federal law, or is removed from trust or restricted status such that the Property, or any portion thereof, is no longer held in trust by the United States for the benefit of the Tribe, then any such property shall be subject to the same rules, regulations, fees, charges and assessments applicable to such property immediately prior to the land being taken into trust by the United States.”

**10. MOU Paragraphs 11(a), 11(b), and 11(d)**

Paragraphs 11(a), 11(b), and 11(d) of the MOU are hereby stricken.

**11. MOU Paragraph 21**

The contact information for sending copies of notices to the Tribe is hereby stricken and shall be replaced with the following language:

“Maier Pfeffer Kim Geary & Cohen, LLP  
1440 Broadway, Suite 812  
Oakland, CA 94609  
Telephone: (510) 835-3030  
Fax: (510) 835-3040  
Attention: John A. Maier, Esq.”

The following language shall be added at the end of Paragraph 21:

“With a copy to:

Wanger Jones Helsley PC  
265 E. River Park Circle, Suite 310  
Fresno, CA 93720  
Telephone: (559) 233-4800  
Fax: (559) 233-9330  
Attention: John P. Kinsey”

**12. Hold Harmless and Indemnification Related to Consideration & Implementation of Amendment**

To the furthest extent allowed by law, the Tribe shall indemnify, hold harmless and defend the District and each of its directors, officers, officials, employees, agents and attorneys from any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys’ fees) arising from any action or proceeding filed against the District which challenges the County’s approval, execution or delivery of this Amendment on the basis of claims related to the District’s approval of this Amendment of the MOU, including but

not limited to any environmental review of this MOU performed under CEQA or NEPA. The Tribe shall also reimburse the District for any and all costs and fees incurred in connection with the District's preparation of any environmental document under CEQA or NEPA.

**13. Limited Waiver of Sovereign Immunity**

**(a) Waiver**

Subject to the provisions of this Section, the Tribe expressly and irrevocably waives sovereign immunity (and any defenses based thereon) in favor of the District (but not as to any other person or entity) as to any disputes specifically arising under this Amendment and not as to any other actions, matters or disputes.

**(b) Limitations on Tribe's Waiver**

The Tribe's waiver of sovereign immunity in favor of the District is specifically limited to permitting, and does permit, the decisions referenced in Subsection 15(c)(ix) of the MOU and actions referenced in Subsection 15(e) of the MOU. The arbitrators and the courts will have no authority or jurisdiction to issue any monetary award or damages or order the execution or enforcement of any monetary award or damages against any assets or revenues of the Tribe except for the Tribe's share of the net revenues (as defined by IGRA) from the Facility. The Tribe does not waive its sovereign immunity with respect to (i) actions by third parties, or (ii) disputes between the Tribe and the District which do not specifically arise under the MOU or this Amendment.

**(c) Tribal Council Resolution**

The Tribe represents to the District that the Tribal Council of the Tribe has adopted a resolution in accordance with the Tribe's Constitution which provides that (i) the Tribal Council has the authority to act on behalf of the Tribe in connection with the execution and delivery of this Amendment, (ii) the Tribal Council delegates authority to the Chairperson of the Tribe to execute and deliver this Amendment on behalf of the Tribe and (iii) the Tribe waives sovereign immunity on a limited basis as set forth in this Amendment. A certified copy of the resolution is attached to this Amendment as Exhibit "A."

**14. Ratification; Conflict**

Except as expressly amended by this Amendment, the terms and conditions of the MOU shall remain unaltered, are hereby reaffirmed, and shall continue in full force and effect. In the event of any conflict or inconsistency between the terms of the MOU and the terms of this Amendment, the terms of this Amendment shall govern and control.

**IN WITNESS WHEREOF**, the Parties have executed this MOU as of the Effective Date.

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| <p><b>MADERA IRRIGATION DISTRICT</b></p><br><br><p>By _____<br/>Carl Janzen, President</p> | <p><b>NORTH FORK RANCHERIA OF MONO INDIANS OF CALIFORNIA</b></p><br><br><p>By _____<br/>Judy E. Fink, Chairperson</p> |
|--|---|