

PARTICIPATION AGREEMENT

(Mt. Nebo Water Agency and Strawberry Water Users Association)

This Participation Agreement is effective _____, _____, 2023, between Mt. Nebo Water Agency ("~~MNWA~~~~Mount Nebo~~~~MNWA~~") and Strawberry Water Users Association ("SWUA"). MNWA and SWUA are referred to together as "the Parties."

BACKGROUND RECITALS

- A. ~~Mount Nebo~~~~MNWA~~ is an administrative interlocal agency created pursuant to the Interlocal Cooperation Act, Utah Code Ann. §11-13-101, *et seq.* as amended (the "Act"), and as described in that certain "Interlocal Agreement for Joint and Cooperative Action Creating Mt. Nebo Water Agency," made effective on March 24, 2014 ("Interlocal Agreement"), as amended.
- B. One of ~~Mount Nebo~~~~MNWA~~'s purposes is to plan, design, develop, construct, own and/or sponsor projects and related facilities as defined in the Interlocal Agreement.
- C. SWUA is a Utah non-profit mutual irrigation company that operates pursuant to Utah Code Ann. §16-6a-101, *et seq.*, its Articles of Incorporation, bylaws and rules and regulations, and distributes water to its shareholders.
- D. SWUA was incorporated in 1922 and by Contract with the United States dated September 28, 1926, as supplemented by Contract dated November 20, 1928 and superseded by Contract of October 9, 1940, SWUA became the repayment entity and assumed the responsibility to operate, maintain and replace the Strawberry Valley Project facilities, which included the original Strawberry Reservoir, the Strawberry Tunnel, the Strawberry Power Canal, the Springville/Mapleton Lateral, the Highline Canal, and the Upper and Lower Hydro-Electric Spanish Fork Power Plants.
- E. The Bureau of Reclamation constructed the Solider Creek Dam and Enlarged Strawberry Reservoir as part of the Bonneville Unit of the Central Utah Project, in 1974, which enlarged reservoir subsumed the original Strawberry Reservoir, and incorporated the water supply of the SVP into the water supply of the CUP.
- F. The United States Bureau of Reclamation, the Central Utah Water Conservancy District, Strawberry Water Users Association entered into Contract # 1-07-40-R1330 on July 29, 1991, ("1991 Contract") to address the future operations of the CUP and the SVP and the delivery by Central Utah Water Conservancy District to Strawberry Water Users Association of an annual contractual allocation of water of 61,000 ac-ft and a one-time allocation of 50,000 ac-ft, which the parties agreed is the equivalent of the long-term average historical withdrawal of water from the reservoir of 61,500 ac-ft/year. This allocation was coupled with a permanent allocation of storage capacity of 50,000 ac-ft, together with the obligation for SWUA to pay an equitable and

proportionate share of the Operation and Maintenance expenses of the CUP facilities used to deliver this water to SWUA. Water is delivered today from storage in the Enlarged Strawberry Reservoir by the CUWCD through CUP project facilities to SWUA pursuant to the 1991 Contract for delivery to its shareholders.

- G. Land within the historic service area of SWUA is transitioning from agriculture to more urban development. SWUA desires to participate in the ~~Mount-Nebo~~MNWA and to be involved with the development and protection of the ground water supplies in the valley and other projects of ~~Mount-Nebo~~MNWA for the benefit of its shareholders. The provisions of the Interlocal Agreement applicable to SWUA are for SWUA and its shareholders' direct benefit and protection as third-party beneficiaries under the Interlocal Agreement.
- H. Pursuant to this Agreement, ~~Mount-Nebo~~MNWA and SWUA establish the general terms of SWUA's participation with ~~Mount-Nebo~~MNWA.

AGREEMENT

1. MNWA Operating Assessments: SWUA agrees to pay ~~Mount-Nebo~~MNWA's annual operating assessments pursuant to the terms of Section 8B of the Interlocal Agreement, as amended:

- a. ~~Mount-Nebo~~MNWA will notify SWUA of ~~Mount-Nebo~~MNWA's proposed fiscal year operating budget by March 15 of each fiscal year.
- b. ~~Mount-Nebo~~MNWA will invoice SWUA for its equitable and proportionate share of the proposed assessment on or about July 1 of each year.
- c. SWUA will notify ~~Mount-Nebo~~MNWA of its acceptance or rejection of the proposed assessment within ten days of the ~~Mount-Nebo~~MNWA invoice.
- d. ~~Mount-Nebo~~MNWA may propose a new assessment, at its discretion, or the Parties may negotiate the assessment amount.
- e. SWUA will pay such assessments to which it consents pursuant to Section 8B of the Interlocal Agreement either within 30 days of receipt of such invoice or within 30 days of the Parties' agreement on the amount of the assessment.
- f. SWUA's exercise of its right to reject or consent to an assessment pursuant to Section 8B of the Interlocal Agreement, or its negotiation of a different assessment pursuant to the terms of this paragraph, shall not subject SWUA to sanctions under Section 8B. Such sanctions would apply only where SWUA has consented to a given assessment and then defaults in its timely payment.

2. **Projects and Project Costs.** The Parties understand and agree that, as of the date of this Agreement, there is no specific ~~Mount-Nebo~~MNWA project in which SWUA is a current financial participant. If SWUA would like to become a participant in the on-going ground water studies and the possible development of a ground water management plan, should such a project proceed, as well as other specific projects as they may be proposed, SWUA shall enter into a project-specific agreement as provided in the Interlocal Agreement. To the extent of SWUA's participation in any such specific project in the future, a specific allocation of project costs will be identified and agreed upon in a project-specific agreement to be signed by the Parties participating therein. Any such future project-specific agreement(s) may include other ~~Mount-Nebo~~MNWA member(s), future member(s) or another non-member contracting entity, all as defined in the Interlocal Agreement.

3. **Consultation with Reclamation.** ~~Mount-Nebo~~MNWA understands and agrees that, depending on the nature of a proposed project, SWUA may be obligated to consult with Reclamation to ensure compliance with its existing contracts with Reclamation, and/or the 1991 Contract. SWUA reserves the right to consult with Reclamation and its own legal counsel on any matter.

4. **SWUA Rights.**

- a. Nothing in this Agreement affects or is intended to affect the rights and responsibilities of SWUA pursuant to the terms of the Contract with the United States dated September 28, 1926, as supplemented by Contract dated November 20, 1928, and superseded by Contract of October 9, 1940, and particularly the 1991 Contract.
- b. Nothing in this Agreement affects or is intended to affect SWUA's obligations to its shareholders as provided by its Articles of Incorporation, bylaws, contracts, and rules and regulations or as otherwise provided by law.
- c. Nothing in this Agreement limits or is intended to limit SWUA's efforts to act to act independently of ~~Mount-Nebo~~MNWA and its members to operate, maintain, repair, and replace its SVP project facilities. However, if ~~Mount-Nebo~~MNWA initiates a project to improve SWUA's facilities, with SWUA as a project participant, SWUA's ability to act unilaterally may be subordinated to and governed by the Project Agreement.
- d. SWUA assets, property, infrastructure, contractual water supply and any independently owned water rights, may be used or included within any ~~Mount-Nebo~~MNWA project or purpose only with SWUA's express written consent, and the consent of the United States' as required by other agreements with SWUA and the United States.

5. **Termination.** SWUA may terminate this Agreement at any time upon six (6) months written notice to the Board subject to:

- a. SWUA's payment of any outstanding assessments.
- b. Payment of its proportionate share of any outstanding debt obligations incurred on a Project in which SWUA is a project-participant, or upon condition that SWUA will continue to pay its proportionate share of any such debt or obligation; or,
- c. Upon written agreement of the other Project participants to absorb SWUA's proportionate share of any such Project obligation in exchange for SWUA assigning its interest in the Project to one of more of the other Project participants.

6. **Miscellaneous.**

- a. **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties hereto with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions, and preliminary agreements between the Parties hereto relating to the subject matter hereof.
- b. **Cooperation.** Each Party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as any Party may reasonably request or as may be reasonably necessary or appropriate to effectuate, consummate, or perform any of the terms, provisions, or conditions of this Agreement.
- c. **Successors.** This Agreement shall inure to and bind the successors and assigns of the respective Parties.
- d. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, even though all Parties do not sign the same counterpart. A signature sent by facsimile shall be the same as if it were an original.
- e. **Modification.** The Parties may not modify, waived, amended, or change this Agreement, unless the same is in writing and signed by the Parties.
- f. **Severability.** The provisions of this Agreement are severable; and should any provision hereof be found to be void, voidable, or unenforceable under any applicable law, such void, voidable, or unenforceable provision shall not

affect or invalidate any other provision of this Agreement, which shall continue to govern the relative rights and duties of the Parties as though the void, voidable, or unenforceable provision were not a part hereof. In addition, it is the intention and agreement of the Parties that all the terms and conditions hereof shall be enforced to the fullest extent permitted by law.

- g. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

MOUNT NEBO WATER AGENCY

By: _____

Its: _____

Attest: _____
Its Secretary

STRAWBERRY WATER USER'S ASSOCIATION

By: _____

Its: _____

Attest: _____
Its Secretary