

Attachment 2

Common Interest Agreement

COMMON INTEREST AGREEMENT

This Common Interest Agreement (“Agreement”) is made as of this 23rd day of January 2024, by and between the County of Santa Barbara (“County”), the City of Santa Maria (“City”), and the Santa Maria Public Airport District (“Airport District”) (together collectively, the “Parties,” and individually, a “Party”).

WHEREAS, on September 26, 2023, the Central Coast Regional Water Quality Control Board (“Regional Board”) issued Cleanup and Abatement Order No. R3-2023-0070 (“CAO”) to several current and former owners and one former operator of the real property located at 2936 Industrial Parkway, Santa Maria, California (“Site”), including the County, the City, the Airport District, and other named dischargers¹ (collectively, “Dischargers”), requiring the investigation and clean up of trichloroethylene (“TCE”) and associated volatile organic compounds (“VOCs”), petroleum hydrocarbons, and 1,4-dioxane in soil, soil gas, and groundwater in the vicinity of the Site.

WHEREAS, the CAO asserts the same basis for liability for such investigation and cleanup against each of the Parties, namely, that the County and the City co-owned the Site from 1949 to 1964, and that the Airport District owned the Site from 1964 to 1968, during which period the SEMCO Twist Drill and Tool Company, Inc. (“SEMCO”) leased and operated the Site.

WHEREAS, between approximately 1949 and 2001, the SEMCO is alleged to have operated a precision tool manufacturing business at the Site in which it reportedly used VOCs in its operations as degreasers to clean tools and metal parts.

WHEREAS, in May 1985, the Santa Barbara County Environmental Health Services notified the Regional Board that TCE had been detected in soil adjacent to the City’s municipal supply well 2AS, located adjacent to the former SEMCO shop building at the Site.

WHEREAS, since 1987, the Regional Board has issued several orders requiring SEMCO and various Site owners, including affiliates of SEMCO, to complete investigation and cleanup activities at the Site, but the Site has never been investigated or cleaned up by such parties to the satisfaction of the Regional Board.

WHEREAS, the County, Airport District, and City each timely appealed the CAO to the State Water Resources Control Board (“State Board”) on or before October 26, 2023 by filing a Petition for Review of Regional Water Quality Control Board Action. The County and Airport District each further requested a hearing before the State Board and a stay of the CAO.

WHEREAS, Section F and Exhibit 4 of the CAO set forth respectively the required investigative and clean up actions the Dischargers must perform, and the time schedule for such activities.

¹ The full list of “Dischargers” identified in the CAO includes: the County; the City; the Airport District; SEMCO; Oro Financial of California, Inc.; Concha Investments, Inc.; Chris Mathys, an individual; Platino, LLC; Rhine, LP; Fernando Figueroa Salas, an individual; Mark J Powers, Inc.; and Curry Parkway, LP.

WHEREAS, certain technical reports and evaluations required under Section F of the CAO must be prepared by, or under the supervision of, a California licensed professional engineer or geologist and signed by the licensed professional.

WHEREAS, the Parties are public agencies with overlapping jurisdictions and common constituents, and are subject to similar public contracting, procurement, and procedural requirements that will influence their ability to carry out their responsibilities under the CAO.

WHEREAS, the Parties have a mutual interest to implement the required actions under the CAO in a timely, efficient, complete, and coordinated manner, including through the engagement of a qualified environmental consultant with the requisite technical and scientific expertise to perform the required actions.

WHEREAS, the Parties wish to enter into this Agreement to provide for the sharing of responsibilities, information, and costs with respect to the required actions under the CAO.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Shared Work. The Parties agree to work cooperatively and in good faith to (i) carry out the required actions necessary to comply with the CAO, and any modifications or amendments thereto, and (ii) perform any other work associated with the Site that is otherwise determined by the Parties to be in their mutual best interests and that the Parties mutually agree to undertake (collectively, the “Shared Work”).

2. Joint Consultant.

a. Retention. The Parties agree to retain a qualified California licensed professional engineer or geologist that the Parties have determined meets the required qualifications set forth under Paragraph F.6 of the CAO (the “Joint Consultant”). The County shall take the lead in preparing a Request for Proposal seeking qualified consultants that the Parties shall jointly issue. The Joint Consultant’s retention agreement shall include an overall scope of work that includes, at a minimum, full implementation of each of the required actions under Section F of the CAO and consistent with the schedule included as Exhibit 4 thereto. The Joint Consultant’s retention agreement shall further provide that all work proposed to be performed by the Joint Consultant under the retention agreement shall be authorized pursuant to one or more task orders, each of which shall be priced on a “not-to-exceed” basis. The Joint Consultant’s retention agreement shall be executed by the Parties and the selected consultant.

b. Management of Consultant. The Joint Consultant’s retention agreement shall provide for the Joint Consultant to conduct day-to-day management of all matters within the scope of its engagement relating to the Shared Work, provided that (i) each Party shall have a right, at their own cost, to review and comment on proposed task orders, workplans, response actions, reports, written notices, or other transmittals from the Joint Consultant to the Regional Board, (ii) all requests for due date amendments pursuant to Paragraph F.10 of the CAO require unanimous written consent of the Parties, and (iii) any material modifications to the Joint Consultant’s retention agreement require unanimous written consent of the Parties.

c. Regional Board Communications. The Joint Consultant shall have the sole and exclusive responsibility to conduct all communications with the Regional Board on behalf of the Parties that relate predominantly to the Shared Work. Notwithstanding the foregoing, each Party shall have the right to be present in all meetings and telephone conferences with the Regional Board on matters relating to the Shared Work.

d. Reimbursement. The Parties agree to reimburse the Joint Consultant for its fees, costs, and expenses incurred to carry out the Shared Work on an equal, one-third pro rata basis. The Joint Consultant's retention agreement shall provide for separate invoicing from the Joint Consultant to each Party according to its pro rata share. Each Party agrees to pay its respective share to the Joint Consultant in accordance with the payment terms of such invoices and the Joint Consultant's retention agreement.

e. Independent Work. Subject to this Agreement, no Party shall be precluded from retaining its own independent consultant or conducting its own independent work on matters relating to the CAO within its own discretion, provided that no Party shall have the right to conduct invasive sampling or testing of the Site or surrounding properties without the written consent of all parties. For the avoidance of doubt, each Party shall be responsible for its own costs associated with such work, including but not limited to legal and consulting fees associated with such work.

3. Funding Outreach. The Parties agree and acknowledge that State of California funding could be available for the initial investigation activities of the former SEMCO site. The Parties further agree that the Airport will take the lead in efforts to identify such funding sources. These efforts will include (i) coordination with the offices of federal, state and local elected and regulatory officials to assist in the process to identify site funding for the SEMCO Site; and, (ii) undertake any other tasks deemed necessary by the Airport to advance such efforts. The Airport will be the point of contact for all governmental agencies. However, the County and City will be integral in the process associated with this effort and will participate in all aspects of such efforts, including providing approval of any application or submittal to secure funding and sharing of any related costs (not including attorney's fees or staff time). Any costs incurred as part of this Paragraph 3 are not related to Paragraph 2, and shall be pre-approved and/or addressed by the Parties on an as-needed basis prior to being incurred.

4. Term. This Agreement shall be effective on the date first written above (the "Effective Date") and shall remain in effect until such time as the Work is completed, unless terminated earlier as provided herein. This Agreement may be extended by written agreement of the Parties.

5. Termination. Any Party may terminate this Agreement upon thirty (30) days' written notice to the other Parties. The terminating Party shall remain responsible for all of that Party's share of the cost of Shared Work incurred through the effective date of termination. Unless written notice is given, this Agreement shall continue to exist as to the non-terminating Parties, who shall be responsible for their equal share of the cost of Shared Work thereafter. The Agreement may also be terminated for breach pursuant to the terms of Paragraph 5.

6. Dispute Resolution. If a dispute arises as to any matter covered under this Agreement, the Parties shall resolve the matter through the following process:

a. For any dispute, the Parties shall first attempt in good faith to resolve such dispute informally through a dialogue between responsible representatives of the Parties.

b. If the Parties are unable to resolve any such dispute during the two-week period immediately following the date on which a disputed matter is first raised in writing, then, at the written request of any Party, the Parties shall attempt to settle the dispute by mediation under the procedures of the American Arbitration Association. The neutral in any such proceeding shall be selected by and agreed to by all Parties, shall be an expert in the matter, and shall be available to serve on short notice. All statements of any nature made in connection with the non-binding mediation shall be privileged and shall be inadmissible in any subsequent court or other legal proceeding involving or relating to the same claim. The mediation process shall continue until the first to occur of (a) resolution of the dispute; (b) the forty-fifth day after the Parties agree on the identity of the neutral for such mediation; or (c) a determination by the neutral that resolution is not reasonably possible in a mediation proceeding. The costs of the neutral shall be borne by the Parties jointly on an equal, pro rata basis. The Parties shall pay their own attorneys' fees, consultant fees, and other costs of mediation. During the course of the work related to this Agreement, the Parties shall each exchange a list of 3 neutral mediators, and the parties shall work in good faith to identify at least two neutral who are acceptable to act in this role.

c. If at the end of the mediation process the Parties fail to resolve the dispute, the Party or Parties claiming breach shall have the right to take any action, in law or equity, available to such Party, including, but not limited to, suing in a court of competent jurisdiction for injunctive or other relief, in California.

7. Confidentiality and Common Interest.

a. General. The Parties have shared interests in the exchange of information related to the Work. Accordingly, the Parties wish to take every lawful, ethical, and proper step to permit counsel to share and exchange strategies, legal theories, confidences and other secrets, information, and documents related to the performance of the Shared Work. By and through their counsel, the Parties therefore agree that, at each disclosing Party's sole discretion, the Parties may disclose and exchange Confidential Materials (as defined below) without waiving any privilege or protection for such materials.

b. Confidential Materials. "Confidential Materials" include any and all of the following: counsels' or the Parties' respective consultants or Joint Contractors' thoughts, opinions, legal research, strategies, or work-product; information provided to or furnished by experts, Joint Contractors, or other consultants, including reports or results of any investigations which are subject to the attorney-client privilege or work product doctrine; and any other information or materials related in any way to the Parties' claims and defenses in any current or future action related to the Shared Work and subject to the attorney-client privilege, work-product doctrine, or any other applicable privilege or doctrine.

c. No Waiver. All disclosures of Confidential Materials between the Parties are made pursuant to the Parties' common interest in performing the Work and are subject to this Agreement. No such disclosure is intended, and none shall be construed, to waive or diminish any

attorney-client privilege, work-product protection or other privilege or protection. All Confidential Materials exchanged or disclosed between the Parties are to be kept strictly confidential and are to be used only in connection with the performance of the Shared Work.

d. Disclosure to Non-Parties. The Parties will not disclose to anyone Confidential Materials provided to them by the other Parties without first obtaining the consent of the disclosing Party, except as otherwise provided in this Agreement. Notwithstanding contrary provisions of this paragraph, Confidential Materials may be shared between the Parties, with the Parties' employees who have a need to know, with legal staff and attorneys representing either Party with respect to the Site, and with any independent consultants and experts retained by the Parties or any Party and assigned any task related to the Site. Confidential Materials that are shared may be used only in connection with the Site and not for any other purpose. All materials exchanged shall be marked "Confidential Materials" by the Party where the materials originate.

e. Subpoenas and Legal Process. If any person or entity requests or demands, by subpoena, California Public Records Act request, or otherwise, any Confidential Materials, counsel for the Party receiving the request will immediately notify counsel for the other Parties, and all counsel will take steps reasonably necessary to permit the assertion of all applicable rights and privileges with respect to said Confidential Materials and cooperate with each other in any proceeding relating to the disclosure of Confidential Materials.

f. Unauthorized Disclosure. Each Party acknowledges that unauthorized disclosure of any Confidential Materials may cause the Parties irreparable harm for which there is no adequate legal remedy. The Parties agree that immediate injunctive relief is an appropriate remedy for unauthorized disclosure of Confidential Materials.

g. Use in Dispute Resolution. Notwithstanding anything above in this Paragraph to the contrary, Confidential Materials may be used in any dispute resolution between the Parties pursuant to this Agreement. In the event of arbitration or litigation between the Parties, and regardless of whether third parties are involved, Confidential Materials may only be introduced as evidence if they are otherwise legally discoverable or if a Party can obtain them by independent means from a third-party source.

8. Waiver or Disqualification of Counsel. The Parties acknowledge that potential conflicts of interest may arise in the context of this Agreement. In the event of any litigation or other dispute between the Parties, each Party expressly waives any claim to argue or assert that any other Party (including any Representative) should be disqualified from representing any other Party by reason of receipt of any Confidential Materials or this Agreement. Nothing in this Agreement shall be construed to affect the separate and independent representation of each Party by its respective Counsel. Notwithstanding the obligation of confidentiality created by this Agreement, the Parties recognize and agree that this Agreement does not create an attorney-client relationship between any attorney and any client other than the client the attorney and his or her firm has independently agreed to represent.

9. Integrated Agreement. This Agreement is the entire understanding of the Parties with respect to this subject matter.

10. Counterparts and Electronically Transmitted Signatures. This Agreement may be executed in counterparts, all of which, when taken together, shall constitute the agreement of the Parties. Electronically transmitted images of signed counterparts of this Agreement shall be deemed authentic and valid as an original of this Agreement.

11. Reservation of Claims. The Parties do not waive, and expressly reserve, all rights and claims they may have against each other or any other third parties.

12. Waiver. The failure of any Party to enforce at any time or for any period of time any of the provisions of this Agreement will not be construed to be a waiver of such provisions or of its right thereafter to enforce such provision and each and every provision thereafter. Termination of this Agreement does not affect the accrued rights and remedies a Party may have prior to such termination.

13. No Admissions. Nothing contained in this Agreement shall be construed to constitute an admission of any fact, law, liability, allocation, or responsibility for any environmental or other conditions at the Site or for any costs of any kind related to the Site except for Shared Work by the Joint Consultant as agreed to herein.

14. Enforcement. The Parties agree that injunctive relief is an appropriate means to enforce this Agreement.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

16. Amendment. Any amendment or modification of this Agreement shall be in writing and signed by all Parties.

17. Survival. Sections 6 and 7 of this Agreement shall expressly survive termination of this Agreement. All other provisions and warranties, which by their nature, shall also survive termination of this Agreement.

18. Notices. Any notices or communications required or permitted to be given under this Agreement will be in writing and sent by email and delivered by prepaid registered or certified overnight mail, addressed as follows:

a. for County of Santa Barbara:

Skip Grey
Assistant Director
General Services Department
260 N San Antonio Rd Casa Nueva
Santa Barbara, CA 93110
sgrey@countyofsb.org

with a copy to Perkins Coie and County Counsel:

Ray Hartman

Perkins Coie LLP
11452 El Camino Real, Suite 300
San Diego, CA 92130
RHartman@perkinscoie.com

Amber Holderness
Chief Assistant County Counsel
Santa Barbara County Counsel
105 East Anapamu Street, Suite 201
Santa Barbara, California 93101
aholderness@countyofsb.org

b. for City of Santa Maria:

City of Santa Maria
Attention: City Manager
110 E. Cook Street
Santa Maria, California 93454

with a copy to City Attorney:

Office of City Attorney
Attention: Thomas Watson
204 E. Cook Street
Santa Maria, California 93454
twatson@cityofsantamaria.org

c. for Santa Maria Public Airport District:

Josh George
Adamski Moroski Madden Cumberland & Green LLP
P.O. Box 3835
San Luis Obispo, CA 93403-3835
george@ammcglaw.com

with a copy to Special Counsel:

Ryan Hiete
Groverman | Hiete LLP
2625 Townsgate Road, Suite 330
Westlake Village, California 91361
rhiete@grovermanhiete.com

Any Party may notify the others if notices or communications should be sent to a different person or entity. Delivery is deemed to have occurred on the date the registered or certified overnight mail has been delivered.

IN WITNESS OF the foregoing, the parties have caused their authorized representatives to execute and deliver this Agreement as of the date first set forth above.

CITY OF SANTA MARIA

DocuSigned by:
By: Thomas Watson
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City Attorney
Title: _____
Date: 1/24/2024 | 4:10 PM PST

SANTA MARIA PUBLIC AIRPORT DISTRICT

DocuSigned by:
By: Josh George
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District Counsel
Title: _____
Date: 2/5/2024 | 5:15 PM PST

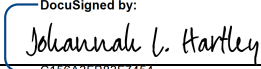
COUNTY OF SANTA BARBARA

DocuSigned by:
By: Kirk Lagerquist
19AEDA90054E4CE...
Director, General Services
Title: _____
Date: 1/24/2024 | 4:48 PM PST

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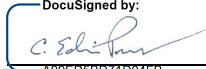
APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

By: 
C156A3FB83E7454...
Deputy County Counsel

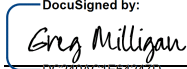
**APPROVED AS TO ACCOUNTING
FORM:**

Betsy M. Schaffer, CPA
Auditor-Controller

By: 
A99ED5BD71D04FB...
Deputy

APPROVED AS TO FORM:

Gregory Milligan, ARM
Risk Manager

By: 
DC240AC1E64247D...
Risk Management