

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT ("AGREEMENT") is entered into on December 13, 2012, by and between the **El Dorado Hills Community Services District** (referred to herein as "CSD") and the **County of El Dorado**, a political subdivision of the State of California (referred to herein as "COUNTY").

RECITALS

- (A) CSD and the COUNTY have a common objective in completing a recreational project to construct a Class 1 Bike Trail, the New York Creek Trail (East) Project, within the County of El Dorado and on properties owned by CSD, referred to herein as the "PROJECT," utilizing federal, state and local funds, and desire to define herein the terms and conditions under which the PROJECT is to be planned, engineered, constructed, operated, and maintained.
- (B) The PROJECT is located in El Dorado Hills in El Dorado County on CSD property between Tam O'Shanter Drive and Silva Valley Parkway with portions contiguous with and within the Sacramento Municipal Utility District ("SMUD") 230kV Double Circuit Transmission Line Easement, Pacific Gas and Electric ("PG&E") Company's 230kV Transmission Line Easement, and El Dorado Irrigation District's ("EID") Sewer Line Easement as shown on **Exhibit A**, attached hereto.
- (C) CSD has granted EID an easement to construct, maintain, and operate a sewer pipeline. The easement provides that CSD retains all rights of use of the easement area for all purposes that do not conflict with the maintenance and operation of said pipeline. The easement further provides that CSD shall build no structures thereon, but may use the easement area for roadways, private piping, garden spaces, and other reasonable purposes.
- (D) The PROJECT will be designed and constructed in two (2) phases as shown on Exhibit A. Since the design of Phase 2 is conceptual, and subject to available funding, the limits shown on Exhibit A for Phase 2 are approximate and are subject to change.
- (E) The COUNTY has secured federal, state, and local funds for planning and environmental documentation for both phases of the PROJECT. The COUNTY has secured federal, state, and local funds for the design, construction, and construction administration for Phase 1 of the PROJECT.
- (F) The COUNTY has completed all planning and environmental documentation for both phases of the PROJECT.

NOW, THEREFORE, CSD and the COUNTY deem it mutually advantageous to cooperate in this undertaking, and hereby agree as follows.

SECTION I

COUNTY Obligations:

- (1) Complete the design, construction, and construction administration for Phase 1 of the PROJECT.
- (2) Use reasonable efforts to identify potential federal, state, and local funding to complete the design, construction, and construction administration for Phase 2 of the PROJECT.
- (3) Complete the design, construction, and construction administration of Phase 2 of the PROJECT contingent upon and subject to available funding.
- (4) Accept and comply with the provisions of the Temporary Construction Easement granted by CSD for Phase 1 of the PROJECT to allow construction of Phase 1 of the PROJECT.
- (5) Contingent upon and subject to available funding, accept and comply with the provisions of the Temporary Construction Easement granted by CSD for Phase 2 of the PROJECT to allow construction of Phase 2 of the PROJECT.
- (6) Obtain requisite environmental permits.
- (7) Provide detailed Plans, Specifications, and Estimates (PS&E), submit to CSD for review and comment, and provide a COUNTY staff Civil Engineer registered in the State of California to sign and stamp final Plans and Specifications for the PROJECT.
- (8) Ensure that the applicable provisions of any agreements between CSD, SMUD and PG&E are included in the Plans and Specifications, and that the COUNTY's contractors comply with all such provisions.
- (9) Advertise, open bids, award, and approve the construction contract(s) in accordance with the California Public Contract Code and the California Labor Code.
- (10) Require the construction contractor(s) to furnish payment and performance bonds, and to carry liability insurance in accordance with the PROJECT Specifications.
- (11) Provide a Civil Engineer, licensed in the State of California, to perform the functions of a Resident Engineer.
- (12) Provide a qualified Land Surveyor, registered in the State of California, with support staff to assist in providing mapping and construction staking surveys for the PROJECT.

- (13) Provide qualified support staff to assist the Resident Engineer with construction administration services for all aspects of the construction of the PROJECT.
- (14) Provide record drawings showing all constructed elements of the PROJECT, including any field changes implemented by construction contract change orders. One hard copy and one electronic copy will be provided to CSD by the COUNTY.
- (15) Upon one year from the completion of construction, defined as exactly one year from the date of the recordation of the applicable Notice of Acceptance issued by the COUNTY, control, operate, and maintain the portion(s) of the PROJECT that has been constructed and is located in the COUNTY right-of-way.

SECTION II

CSD Obligations:

- (1) Execute a Temporary Construction Easement with the COUNTY to provide access by the COUNTY, its agents, employees, and contractors to CSD property for construction of Phase 1 of the PROJECT.
- (2) Execute a Temporary Construction Easement to the COUNTY to provide access by the COUNTY, its agents, employees, and contractors to CSD properties for construction of Phase 2 of the PROJECT, contingent upon and subject to available funding for Phase 2 of the PROJECT.
- (3) Provide a qualified CSD representative, acting on behalf of the CSD for the PROJECT, who has authority to review and comment on the COUNTY's work.
- (4) Execute and comply with the applicable provisions of the Consent to Common Use Agreement with SMUD for the portions of the PROJECT which lie within the SMUD easement.
- (5) As applicable for Phase 2 of the PROJECT, obtain use clearance from PG&E for the portions of the PROJECT which lie within its easement sufficient to allow the COUNTY, its agents, employees, and contractors to access and construct, and CSD, its agents, employees, and contractors to control, operate, and maintain the applicable portions of the PROJECT within said easement.
- (6) Provide public outreach, including bulletin board and website postings to notify the public of the trail construction and the closure, to the public, of the existing dirt trail in the construction area. Also provide these notifications to the public of the Project and existing dirt trail closure to the public when necessary to maintain the Project.
- (7) Upon one year following completion of construction, defined as exactly one year from the date of the recordation of the applicable Notice of Acceptance issued by COUNTY, control, operate and maintain the portions of the PROJECT that have been constructed and are located within CSD properties for which the Notice of Acceptance relates. The requirement for control, operation, and maintenance

shall continue for a period no less than the useful life of the PROJECT (defined as ten (10) years) as a condition of the grant funding agency's agreement with the COUNTY. CSD agrees to defend, indemnify and hold the COUNTY harmless for any grant funds that may be requested to be refunded or reimbursed or for other grant obligations that may arise due to CSD's failure to control, operate, and/or maintain its portion of the PROJECT. The duty to maintain CSD's portion of the PROJECT includes maintenance required as a result of SMUD activities arising from the SMUD rights defined in the Consent to Common Use Agreement. As applicable, the duty to maintain CSD's portion of the PROJECT includes maintenance required as a result of PG&E's and/or EID's activities arising from PG&E's rights defined in the PG&E right-of-way clearance document and EID's rights defined in the easement granted by CSD to EID.

- (8) After completion of the PROJECT the CSD shall defend, indemnify, and hold the COUNTY harmless against and from any and all claims, suits, losses, damages, and liability for damages of every kind and description, including attorney fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, CSD or COUNTY employees, and the public, or damage to property, which are claimed to or in any way arise out of, or are connected with the use, operation, and maintenance of the trail. This duty to defend and indemnify expressly includes the duties of defense, including those set forth in Civil Code section 2778. This duty of defense and indemnity shall survive the termination or expiration of this AGREEMENT, and shall remain in full force and effect for a period of five years from the date of completion and acceptance of the PROJECT by the COUNTY.

SECTION III

Mutual Agreement:

- (1) The COUNTY and CSD will perform all obligations in accordance with federal, local and state laws, regulations and standards, including, but not limited to, building and safety codes; Federal Highway Administration (FHWA) Standards, California Public Utility Commission (CPUC) General Order No. 95; and Caltrans Standards.
- (2) The COUNTY and CSD will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the PROJECT in confidence to the extent permitted by law, including the California Public Records Act.
- (3) Excepting any naturally occurring substance (including asbestos), CSD, independent of the PROJECT, is responsible for any hazardous substance, as defined in Title 29 of the Code of Federal Regulations Part 1910.120, including, but not limited to, hazardous waste, as defined in Section 25117 of the California Health and Safety Code, within the existing CSD properties. CSD will undertake hazardous management activities, including any necessary manifest

requirements and disposal facility designations related to any type of hazardous material with minimum impact to the PROJECT schedule.

- (4) The COUNTY and CSD may agree to make reasonable modifications to the Project Plans and Specifications. The COUNTY and CSD agree that CSD will submit to SMUD for review, written approval, and possible inspection prior to commencing or continuing work on the Project any changes or alterations to existing facilities or the Project Plans and Specifications which involve (a) construction activities within 20 feet of SMUD's transmission towers, (b) any actions that could potentially degrade the integrity of the tower footings, or (c) any material modifications to the Project Plans and Specifications.
- (5) Changes to the PROJECT Plans and Specifications during construction shall be implemented by construction contract change orders reviewed and concurred with in writing by both the COUNTY and CSD representatives. CSD shall provide its written concurrence or rejection of construction contract change orders within forty-eight (48) hours of County's notification. CSD shall not unreasonably reject any construction contract change order. If CSD fails to respond within forty-eight (48) hours, County will deem that CSD has approved the construction contract change order. All changes to the Plans shall be shown on the record drawings referred to in SECTION I of this AGREEMENT.
- (6) The COUNTY shall be solely responsible for any and all claims for payment arising from the construction of the PROJECT.
- (7) The COUNTY will provide a Notice of Acceptance for each Phase, as applicable, of the PROJECT upon CSD and the COUNTY's agreement in writing that construction has been satisfactorily completed.
- (8) The COUNTY, COUNTY's contractor(s) and subcontractor(s), and CSD shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such records available at their respective offices at all reasonable times during the entire PROJECT period and for four (4) years from the later of execution of Notice(s) of Acceptance for the PROJECT construction, the resolution of all claims related to the PROJECT construction, or all other pending matters related to the PROJECT that have been resolved. The State, the California State Auditor, or any duly authorized representative of the State or the United States, shall each have access to any books, records, and documents that are pertinent to the PROJECT for audits, examinations, excerpts, and transactions, and the COUNTY and CSD shall furnish copies thereof, if requested.
- (9) Fines, interest, or penalties levied against one party to this AGREEMENT will be paid by the party whose actions or lack of action caused the levy. That levied party shall indemnify and defend the other party for any claim or cause of action relating to said levy.

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- (10) The COUNTY and CSD understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any party to this AGREEMENT initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the County of El Dorado.
- (11) If any provisions in this AGREEMENT are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and the COUNTY and CSD will automatically sever those provisions from this AGREEMENT.
- (12) The COUNTY and CSD do not intend for this AGREEMENT to create any third-party beneficiary or define duties, obligations, or rights in parties not a signatory to this AGREEMENT. The COUNTY and CSD do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling obligations different from the standards imposed by law.
- (13) The COUNTY and CSD will not assign or attempt to assign obligations to parties not signatory to this AGREEMENT.
- (14) No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
- (15) This AGREEMENT shall terminate upon five (5) years from the date this AGREEMENT is executed, exactly one (1) year after the recordation of the Notice of Acceptance of the PROJECT by the COUNTY for Phase 2 of the PROJECT, or an amendment to terminate this AGREEMENT, whichever occurs first. However, the provisions of Section II, Article 7 and Section II, Article 8 and as otherwise provided in this AGREEMENT shall survive expiration or earlier termination of this AGREEMENT.
- (16) CSD's authority to control, operate, and maintain the PROJECT shall survive the expiration of the Temporary Construction Easement(s) and this AGREEMENT.
- (17) The COUNTY officer or employee responsible for administering this AGREEMENT is Matthew D. Smeltzer, Deputy Director of Engineering, Engineering Division.

CSD:

El Dorado Hills Community Services District

By: Brent Dennis
Name: Brent Dennis
Title: General Manager

COUNTY:

County of El Dorado,
a political subdivision of the State
of California

By: John R. Knight
Name: John R. Knight
Board of Supervisors *12-19-12*
Board date 10-30-12

APPROVED AS TO FORM:

By: [Signature]
CSD Attorney

ATTEST:

By: James S. Mitrishin
James S. Mitrishin
Clerk of the
Board of Supervisors

ATTEST:

By: Charlene S. Ambrose
CSD Clerk

By: [Signature]
Deputy Clerk

