

## **RELEASE AND REIMBURSEMENT AGREEMENT**

This **Agreement** is made entered into by and between the County of El Dorado a political subdivision of the State of California ("County"), and the Sacramento Municipal Utility District ("SMUD") related to reimbursement for costs related to repairs conducted by County on Mosquito Road in 2021.

### **RECITALS**

**WHEREAS**, as part of the Upper American River Project SMUD carried out repairs to White Rock Tunnel, and those repairs involved heavy truck usage across Mosquito Road, which is part of the County's maintained mileage system;

**WHEREAS**, County identified 91,482 square feet of asphalt repairs, which was partially attributed to the effects of the SMUD project located on Kona Drive;

**WHEREAS**, County conducted those repairs under Agreement #5513 with Doug Veerkamp General Engineering;

**WHEREAS**, SMUD is willing to pay to the County an amount of one hundred thousand seven thousand eight hundred and fifty-five dollars (\$107,855.00) to reimburse County for a reasonable share of SMUD's purported impact on Mosquito Road;

**WHEREAS**, the parties agree that the amount is fair and reasonable.

### **AGREEMENT**

**NOW, THEREFORE**, in reliance on the above recitals, and in consideration of the mutual covenants, conditions, and releases set forth below, and for other good and valuable consideration, the Parties agree as follows:

#### **Article 1: Release and Reimbursement**

1. SMUD agrees to pay to County the amount of one hundred seven thousand eight hundred and fifty-five dollars (\$107,855.00), the receipt of which is hereby acknowledged, upon execution of this Agreement as full payment of any purported impact on Mosquito Road caused by SMUD's project to repair White Rock Tunnel. The payment will offset funds the County has already spent to repair the road; County may use the funds transferred by this paragraph for any lawful purpose.
2. In consideration of that payment, each Party; on its own behalf and on behalf of its officers, employees, agents, or volunteers; agrees to waive, release, forever discharge, and covenants not to sue the other Party for any and all actions, claims, and demands that now exist or may accrue related to or arising out of the purported

impact to the condition of Mosquito Road by SMUD's project to repair White Rock Tunnel.

3. It is understood and agreed by the Parties that the claims released in the above paragraph of this Agreement include all claims of every nature and kind whatsoever, whether known or unknown, suspected, or unsuspected, and all rights under California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.  
Civ. Code, § 1542

The Parties acknowledge that they may hereafter discover facts different from, or in addition, those which they now know or believe to be true with respect to the released claims, and the Parties agree that this Agreement, including, without limitation, the releases contained herein, shall be and remain effective in all respects notwithstanding such different or additional factors or the discovery thereof.

4. It is further understood that this release is in compromise of a doubtful and disputed claim and that the payment is not to be construed as an admission of liability on the part of SMUD by whom liability is expressly denied.
5. The Parties agree that if any action or proceeding is covered by paragraph 2 of this Article is instituted; this Agreement may be plead as a full and complete defense thereto.

## **Article 2: Notice**

All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado  
Department of Transportation  
2441 Headington Road  
Placerville, California 95667  
Attn.: Brian Mullens  
Deputy Director

or to such other location as County directs.

With a copy to:

County of El Dorado  
County Counsel's Office  
330 Fair Lane  
Placerville, California 95667  
Attn.: Daniel Vandekoolwyk  
Deputy County Counsel

Notices to SMUD shall be addressed as follows:

Sacramento Municipal Utility District

6201 S Street, MS B404

Sacramento, CA 95817

Attn.: Eric T. Crane

Government Affairs Representative

or to such other location as SMUD directs.

### **Article 3: California Forum and Law**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

### **Article 4: Contract Administrator**

The County Officer or employee with responsibility for administering this Agreement is Brian Mullens, Deputy Director, Department of Transportation, Maintenance and Operations Division or successor.

### **Article 5: Authorized Signatures**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

### **Article 6: No Third Party Beneficiaries**

Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement

### **Article 7: Attorney Fees**

If suit is brought to enforce or interpret any part of this Agreement, or the rights or obligations of any Party, including, but not limited to, an action to recover damages for the breach of this Agreement or to secure specific performance of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expenses, and costs.

### **Article 8: Interpretation**

This Agreement shall be interpreted as is drafted by all Parties. No provision of this Agreement shall be interpreted or construed against any Party because such Party or its counsel was the sole or principal drafter of the Agreement or any provision thereof.

## Article 9: Entire Agreement

This Agreement and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings. This Agreement may only be modified by mutual consent of the Parties in writing fully executed by duly authorized officers of the Parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By:   
Board of Supervisors

Dated: 12-14-21

Attest:

Kim Dawson  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated: 12-14-21

-- SACRAMENTO MUNICIPAL UTILITY DISTRICT --

By:   
Paul Lau  
Chief Executive Officer & General Manager

Dated: 11/4/2021

APPROVED AS TO FORM

DATED: 12-17-2021

COUNTY OF EI DORADO

By: 

Daniel Vandekoolwyk  
Deputy County Counsel

DATED: November 3, 2021

SACRAMENTO MUNICIPAL  
UTILITY DISTRICT

By: 

Joe Schofield  
Deputy General Counsel