

ORIGINAL

ENCROACHMENT AGREEMENT BETWEEN THE COUNTY OF EL DORADO AND THE EL DORADO IRRIGATION DISTRICT

This Encroachment Agreement (hereinafter "Agreement") is entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter "County"), and the El Dorado Irrigation District, a special district created pursuant to the California Water Code (hereinafter "EID" or the "District"), as of Feb. 29, 2019 (hereinafter the "Effective Date").

RECITALS

- A. The County owns and operates Hazel Valley Road as a County Highway.
- B. The District owns and operates the El Dorado Canal ("Canal") under the Federal Energy Regulatory Commission ("FERC") License 184.
- C. The County has developed plans for the Hazel Valley Road Bridge Replacement Project, CIP No. 77125 (the "Project"), which generally consists of the following work: Construction of a precast pre-stressed single span deck slab bridge over EID's Canal; Construction of concrete bridge abutments on Cast-In-Drilled-Hole piles, concrete wingwalls, midwest guardrail system, concrete retaining wall, drainage systems, grading and paving for new bridge approaches and re-aligned roadway and removing existing bridge.
- D. The County requires access to the Canal to construct the Project and to install certain permanent structural elements of the Project, including but not limited to the following: precast pre-stressed bridge, bridge foundation, and rock slope protection.
- E. Pursuant to the Mining Act of 1866, EID claims an easement interest in the Canal and the adjacent area on either side of the canal (the "Subject Property") and currently utilizes the Canal for the transmission of water from the South Fork American River to generate hydropower and for the conveyance of approximately one third of the District's water supply.
- F. In recognition of the unique circumstances presented by the Project and in order to clarify the parties' respective rights and obligations concerning the Project and its effect on the Canal, the parties wish to enter into this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, terms, restrictions, and conditions hereafter set forth, the County and EID hereby agree as follows:

1. **Scope of Agreement.** This Agreement shall govern the respective rights and obligations of the County and EID only as to the Project and its effect on the Subject Property.

2. **Access to the Subject Property.** EID hereby provides its consent to the County and its consultants, contractors, subcontractors, agents, and representatives to access the Subject Property in furtherance of the construction, use, and maintenance of the Project, as depicted on Exhibit A hereto. The improvements constructed by the County on the Subject Property shall remain on the Subject Property and shall be maintained by the County at its sole cost and expense. The access granted by this Agreement shall be subject to all existing rights of the parties, which rights are hereby reserved. At all times, the County, and its consultants, contractors, subcontractors, employees, and agents shall manage its operations and the storage of equipment and materials on the Subject Property and shall not unreasonably encumber the Subject Property with construction equipment or other materials in such a manner that, except as specified hereafter, prevents District's access or impairs the safe operation of the Canal or other District facilities. District and County acknowledge that through access for vehicles on the District's maintenance path along the northerly side of the canal will not be available during pile installation, footing construction, abutment construction, and superstructure construction.

3. **Review of Plans and Specifications.** Prior to advertising for bids for the Project, the County shall provide EID with a copy of the plans and specifications for the Project. EID shall have ten (10) working days to review and provide written comments to the County concerning the plans and specifications. EID's review shall be limited to the Project's temporary and permanent impacts on existing EID facilities. The County shall make all reasonable attempts to address the District's written comments by revisions to its plans and specifications, and if the County does not address the District's comments, the Parties will meet and confer, prior to the bid advertisement in an effort to informally resolve any disputes.

4. **Construction Administration.** Except as provided otherwise herein, the County shall be solely responsible for all items of construction administration and management for the Project, including but not limited to surveying, staking, soils testing, traffic control, water and dust pollution control, and County inspections.

5. **EID Inspections.** EID shall provide one or more inspectors for all work within the Subject Property and/or involving, pertaining to, or affecting EID's facilities to verify that construction is performed in a manner that does not damage existing EID facilities. If EID's inspector observes conditions which, in his sole opinion, constitute unreasonable risk to District facilities, the Parties will immediately meet and confer in an effort to resolve the inspector's concerns. EID shall in no case be liable for delay damages as a result of changes to the Project that arise out of EID's inspections.

6. **As-Built Drawings.** Following completion of construction, the County shall, at its sole cost and expense, provide EID with a set of as-built drawings (in electronic PDF format) for the Project.

7. **Warranty.** The County shall require that its contractor provide a written guarantee of all of its work for one (1) year from acceptance by the County. The guarantee shall inure to both the County's and EID's benefit, by naming EID as an additional beneficiary of the guarantee in the construction contract.

8. **Insurance.** The County shall require that its contractor, by policy endorsement, include EID and its officers, employees, and representatives as additional insureds on the contractor's general liability insurance policy for the Project.

9. **Protection, Repair, and Replacement of Existing Facilities.** The County and its consultants, contractors, subcontractors, employees, and agents shall protect and assume full responsibility for any damage to District facilities within the Subject Property, including land and improvements located thereon, resulting from construction of the Project. During construction of the Project, the County and its consultants, contractors, subcontractors, employees, and agents shall not load, nor permit any part of the District Canal within the Subject Property, to be loaded in any manner that will endanger the Canal or subject any part of the adjacent property to stresses or pressures that will endanger it. Additionally, because the District Canal provides one third of the District's drinking water supply, the County and its consultants, contractors, subcontractors, employees, and agents shall take all reasonable measures to prevent storm water runoff and discharges of pollutants associated with construction activities, including discharges that contain hazardous pollutants or chemicals such as drilling, curing, and release compounds, concrete washout, soaps, solvents, fuels, oils, grease, wastewater, and other pollutants from entering and impairing the quality of water within the Canal.

Should the County or its consultants, contractors, subcontractors, employees, or agents, cause damage to EID's facilities within the Subject Property, the County shall, at its sole cost and expense, promptly repair or replace such facilities to the condition in which they existed prior to the Project. Replacing or repairing facilities to their pre-

existing condition requires returning the facility to a condition that meets current design standards (inclusive of EID's design and construction standards and technical specifications as reflected in the design and construction of recent improvements to the Canal), but does not require upgrading or improving said facilities. Should EID request that the County make upgrades or improvements to its facilities, such work shall be at EID's sole cost and expense and shall require a separate agreement between the County and EID.

10. **Liquidated Damages.** The parties hereby acknowledge that the El Dorado Canal carries water that is used by EID for the purpose of generating hydroelectric power and one-third of the District's drinking water supply. The parties further acknowledge that, should EID be forced to suspend the flow of water through the Canal, it may suffer damages, including but not limited to lost revenue from reduced or halted hydroelectric power generation, reductions in water sales, and the incursion of costs associated with utilizing alternative water supplies such as pumping costs, staff time, etc., and that such damage is in an amount that is otherwise impractical or extremely difficult to ascertain. Accordingly, should EID be required to suspend the flow of water through the Canal as a result of construction activities for the Project, the County shall pay to EID as liquidated damages, and not as a penalty, the sum of \$25,000 for each calendar day that such unanticipated suspension is in effect.

11. **Indemnity.** As between the County and EID and to the fullest extent allowed by law, the County shall hold harmless, defend at its own expense, and indemnify EID and the officers, agents, and employees of EID from any and all fines, penalties, liability, claims, losses, delays, damages or expenses, including reasonable attorney's fees, and economic or consequential losses, which are claimed to or in any way arise out of construction activities for the Project, excepting only the sole or active negligence or willful misconduct of EID.

Each party shall notify the other party immediately in writing of any anticipated claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege.

In addition, the County's construction contract for the Project shall require the contractor to indemnify and save harmless and defend, including attorney's fees and expenses, EID and its officers, agents, and employees from and against any and all fines, penalties, liability, claims, losses, delays, damages or expenses, including reasonable attorney's fees, and economic or consequential losses, which are claimed to or in any

way arise out of the negligence or willful misconduct of the contractor, its subcontractor(s), or the agents, servants or employees of any of them.

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

Notices to County shall be addressed as follows:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, Ca 95667
Attn.: John Kahling
Deputy Director

or to such other location as County directs in writing.

Notices to EID shall be addressed as follows:

El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Attn.: Brian Mueller
Director of Engineering

or to such other location as EID directs in writing.

13. **Contract Administrators.** The County officer or employee with responsibility for administering this Agreement is John Kahling, Deputy Director, Department of Transportation, or successor. The EID officer or employee with responsibility for administering this Agreement is Brian Mueller, Director of Engineering, El Dorado Irrigation District, or successor.

14. **Authority.** 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 to the obligations set forth herein.

15. **Amendments.** This Agreement and the attached exhibits contain all of the terms of agreement between County and EID. All modifications or amendments to this Agreement must be in writing and signed by both parties.

16. **Venue.** 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.

17. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

18. **Waiver.** The waiver by either party of any requirements, condition or provision of this Agreement shall not be deemed a waiver of any subsequent breach of that or any other requirement, condition or provision of this Agreement.

19. **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 instrument.

20. **Third Party Beneficiaries.** County and EID understand and agree that this Agreement creates rights and obligations solely between County and EID and is not intended to benefit any other party. No provision of this Agreement shall in any way inure to the benefit of any third-person so as to constitute any such third-person as a third-party beneficiary of this Agreement or any of its terms or conditions, or otherwise give rise to any cause of action in any person not a party hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: 
Chairman, Board of Supervisors
"County"

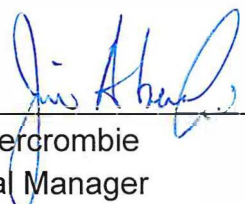
Dated: 2/26/2019

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 2/26/2019

-- EL DORADO IRRIGATION DISTRICT --

By: 
Jim Abercrombie
General Manager
"EID"

Dated: 2/15/19


Reviewed & Approved as to Form on: 2/15/19
EID, Office of the General Counsel