



Guidelines for Use of Sacramento Regional County Sanitation District Economic Development Treatment Capacity Bank Credits

Indemnification and Hold Harmless Agreement

1. Parties. This Agreement is entered into this _____ day of _____ by and between _____ (“Applicant/Developer”) and the City of Elk Grove (“Elk Grove”), a municipal corporation duly organized and existing under the laws of the State of California.

2. Disclosure. Applicant/Developer is informed and hereby acknowledges that Elk Grove is uncertain as to whether the award/receipt of SRCSD credits creates a public work for prevailing wage purposes which, in turn, requires the payment of prevailing wages on the project. Applicant/Developer expressly and affirmatively acknowledges that Elk Grove’s representation of uncertainty, as specifically set forth in this Agreement, is the sole and complete representation made by Elk Grove regarding the prevailing wage issue. Applicant/Developer hereby acknowledges that Applicant/Developer has been informed of Elk Grove’s uncertainty in this regard. Applicant/Developer may wish to treat the award/receipt of SRCSD credits as an event triggering the consequences attendant with a prevailing wage project to remove any uncertainty. Applicant/Developer is encouraged to seek the advice of its own attorney(s) as to this issue, prior to the execution of this Agreement. Applicant/Developer’s execution of this Agreement is an acknowledgement that such independent advice and counsel has been obtained.

3. Obligations/Scope of Agreement.

(a) Prior to making an application pursuant to the Guidelines for the Use of Sacramento Regional County Sanitation District Economic Development Treatment Capacity Bank Credits (“SRCSD Credits”), and as a condition of the receipt of any SRCSD Credits, which Credits are not guaranteed unless and until Applicant/Developer is notified of the award of the same by Elk Grove, pursuant to the sole and exclusive discretion of Elk Grove, Applicant/Developer expressly agrees to the following:

(1) Applicant/Developer agrees to protect, defend (with legal counsel acceptable to the City of Elk Grove), indemnify and hold harmless the City of Elk Grove, its council members, officers, agents, independent contractors and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys’ fees and court costs), injuries and liabilities of every kind resulting from Applicant/Developer’s award/receipt of the SRCSD Credits, including, but not limited to, all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys’ fees and court costs), injuries and/or liabilities arising out of all claims that Applicant/Developer’s award/receipt of SRCSD credits creates a public work for prevailing wage purposes thereby requiring the payment of prevailing wages. This section shall apply regardless of whether or not the claim, damage, penalty, loss, cost, expense, injury and/or liability complained of arises out of or relates in any way to any negligence on the part of Elk Grove.

(2) Elk Grove's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury or liability sustained by the Applicant/Developer and/or its contractors, subcontractors, agents and/or employees. In the event that Elk Grove tenders the defense and indemnification of a claim contemplated by this Agreement to Applicant/Developer and/or to his/her/its contractors, subcontractors, agents and/or employees, Elk Grove shall be entitled to actively supervise the claim and/or the defense of the same, shall be authorized to select and retain its own separate, independent counsel, at Applicant/Developer's and/or his/her/its contractors, subcontractors, agents and/or employees' expense, as necessary, which decision shall be made solely and exclusively by Elk Grove, and Elk Grove must consent to the disposition of any such claim, including but not limited to, the settlement of any such claim.

(3) Applicant/Developer hereby expressly agrees that Applicant/Developer shall cause its contractors, subcontractors, agents and/or employees engaged in the development/project to which any SRSCD credits are applied and/or awarded, to sign the indemnity provisions of this Agreement.

4. Term. The obligations of indemnity set forth in this Agreement, and the indemnity obligations created by the Agreements to executed by Applicant/Developer's contractors, subcontractors, agents and/or employees, shall continue indefinitely, and shall survive completion of the development/project for which any SRSCD credits are awarded, applied and/or received.

5. Integration. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement.

6. Miscellaneous. The person or persons executing this Agreement on behalf of the parties warrant and represent that they have the authority to execute this Agreement and represent that they have the authority to bind the parties to the performance of their obligations hereunder.

Dated: _____

Applicant/Developer

Dated: _____

City of Elk Grove