



January 7, 2021

Board of Directors  
Ventura Regional Sanitation District  
Ventura, California

## **CONSIDER AND APPROVE OF AN AGREEMENT ON THE SUBROGATION AND ASSIGNMENT OF CLAIMS ARISING OUT OF THE THOMAS FIRE AND SANTA BARBARA MUDFLOWS WITH THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES**

### **RECOMMENDATION**

Approve, and authorize the Board Chairperson to sign, the Agreement on the Subrogation and Assignment of Claims Arising out of the Thomas Fire and Santa Barbara Mudflows (the Agreement) with the California Governor's Office of Emergency Services.

### **FISCAL IMPACT**

Expected fiscal impacts to this action are nominal in that any funding recovered by the State of California Attorney General will be forwarded to those parties which provided funding to VRSD. The nominal cost that VRSD will incur are staff and General Counsel costs.

### **BACKGROUND**

The Thomas Fire in December 2017 resulted in VRSD's receiving funds from the Federal Emergency Management Agency (FEMA) through the California Governor's Office of Emergency Services (Cal OES).

According to Federal and State Regulations, VRSD is required to seek reimbursement from the party responsible for its damages associated with FEMA funding received. Then it must return the recovered funds to FEMA through Cal (OES).

VRSD was requested to enter into the Agreement by the State of California Attorney General's Office. By entering into this agreement VRSD will transfer its claim rights to the State with regard to recovery of FEMA funding received from culpable parties, and the state will pursue the recovery of this funding from the culpable parties.

By signing the Agreement, VRSD will be relieved of its statutory obligation to seek reimbursement from culpable parties for FEMA funds received.

A summary of the losses that VRSD sustained as a result of the Thomas Fire and the amount of funding received from both insurance reimbursements and FEMA is shown below.

(a) Overview of Thomas Fire Losses Incurred by VRSD:

VRSD sustained \$2,020,445 in damage-related expenses, including the following losses:

- three water tanks and 6,000 feet of water line
- a mobile home structure that served as a storage facility
- truck scale
- hundreds of feet of fencing (wire and split-rail)
- a section of landfill liner
- 2,000 feet of drainage pipeline
- 9,000 feet of landfill gas pipeline
- a radio tower and other telecommunications equipment
- fire debris clean-up

(b) Emergency Financial/Insurance Sources:

VRSD filed a claim through its property insurance carrier and also applied for federal and state assistance through the Federal Emergency Management Agency (FEMA) and the California Office of Emergency Services (CalOES). The insurance claim yielded a settlement of \$1,730,310, and an additional \$161,350 was received from FEMA/CalOES. There is an additional \$240,764 pending FEMA review.

(c) Amount of Loss Incurred Not Covered by Insurance or Emergency Financial Sources:

As of this date, VRSD's exposure is as follows:

|                 |             |
|-----------------|-------------|
| Total Expenses: | \$2,020,445 |
| Total Payments: | \$1,891,660 |
| Difference:     | \$ 128,785  |

Pending Review: \$ 240,764

Once the FEMA /Cal OES application reaches the close-out stage, an analysis of payments received may result in VRSD having to repay a portion of the FEMA/Cal OES payments if they are identified as duplicate reimbursement to insurance coverage. This is standard FEMA procedure. Staff is working on that analysis.

This letter and the associated contract have been reviewed by Legal Counsel as to form.

If you have any questions or need additional information, please contact me by phone at (805) 568-4600 or via email at [ChrisTheisen@vrzd.com](mailto:ChrisTheisen@vrzd.com)

CHRIS THEISEN, GENERAL MANAGER

APPROVED FOR AGENDA:  \_\_\_\_\_  
Chris Theisen, General Manager

Attachments: 1. Agreement on the Subrogation and Assignment of Claims Arising out of the Thomas Fire and Santa Barbara Mudflows

**AGREEMENT ON THE SUBROGATION AND ASSIGNMENT OF CLAIMS ARISING  
OUT OF THE THOMAS FIRE AND SANTA BARBARA MUDFLOWS**

This Subrogation and Assignment of Claims (“Agreement”) is entered into by and among the following parties:

- i. Ventura Regional Sanitation District (“Assignor”); and
- ii. The California Governor’s Office of Emergency Services (“Assignee”).

WHEREAS, after the December 2017 Thomas Fire and the January 2018 mudflows in Santa Barbara County (collectively, the “Events”), Assignee made significant expenditures to numerous public entities to assist with public health and safety efforts and other public works to address the various damage suffered from the Events.

WHEREAS, these expenditures, including but not limited to funds originally distributed by the Federal Emergency Management Agency (“FEMA”), covered a number of different categories of costs, including repairs to public infrastructure and buildings, debris and ash removal, search and rescue efforts, and/or evacuation and shelter operations, among others.

WHEREAS, Assignor received funds from Assignee and used those funds to take necessary actions to safeguard public health and remedy harms arising from the Events.

WHEREAS, pursuant to federal and state regulations, parties that receive emergency funds from FEMA, due to the negligence of a third party, are responsible for taking “all reasonable steps to recover all costs attributable to the negligence of the third party.” 44 C.F.R., § 204.62(c); see also 19 Cal. Code Reg. § 2910. FEMA would then be entitled to reimbursement of any costs recovered from the culpable third party. 44 C.F.R., §204.62(a) and (c). Accordingly, in exchange for the funds Assignor received from Assignee, it was responsible for pursuing “reasonable efforts” to recover those costs from the responsible party whose negligence contributed to the Events.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignee and Assignor (individually a “Party” and jointly the “Parties”) agree as follows:

1. Assignor assigns and transfers to Assignee any and all claims, demands, and causes of action of whatever kind and nature that Assignor has or may later have, under any legal or equitable theory of recovery, relating to harms Assignor suffered as a result of the Events, and for which Assignor received funds from Assignee (“Assigned Claims”). By virtue of Assignee’s payments for damage and loss incurred by Assignor arising from the Events, the Assignee subrogates to Assignor’s rights on the Assigned Claims. The Assigned Claims do not include any claims for which the Assignor did not receive funds from Assignee.

2. Assignee will assume any and all responsibility Assignor has under state and federal law to pursue reimbursement from any third party for expenditures by Assignee or FEMA that were made to address effects caused by the Events.
3. Assignee further agrees to indemnify and defend Assignor against any allegation that it did not adequately pursue reimbursement of any expenditures it received to address the effects of the Events from FEMA or any other federal agency.
4. Assignee shall have no obligation to pursue from any potentially responsible third party any expenditure made directly by Assignor as a result of the Events.
5. This Agreement is effective upon execution by the Parties, and may be signed in counterparts.
6. This Agreement contains the entire Agreement between the Parties, and no statement, promise, or inducement made by any Party to this Agreement that is not set forth in this Agreement shall be valid or binding, nor shall it be used in construing the terms of this Agreement as set forth herein.
7. This Agreement in all respects shall be interpreted, enforced, and governed by and under the laws of California. The terms of this Agreement shall be specifically enforceable by the Parties.
8. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this agreement and to legally bind such Party to all terms and conditions of this document. This agreement shall be binding upon the Parties.

**SIGNATURES**

The California Governor’s Office of Emergency Services consents to the terms and conditions of this Agreement by its duly authorized representative on this \_\_\_\_day of \_\_\_\_\_, 2020.

By:\_\_\_\_\_

Ventura Regional Sanitation District consents to the terms and conditions of this Agreement by its duly authorized representative on this \_\_\_\_day of \_\_\_\_\_, 2020.

By:\_\_\_\_\_

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