

## **RELEASE AND AGREEMENT**

**THIS RELEASE** is given

**BY** the Releasor(s)           City of Milpitas  
455 E Calaveras Blvd.  
Milpitas, CA 95035  
referred to as “Claimant”

**TO** the Releasee(s)           The Kuskokwim Corporation  
4300 B Street, Suite 207  
Anchorage, AK 99503

Suulutaaq, Inc.  
110 Railroad Avenue, Suite A  
Suisun City, CA 94585  
and its Insurers, including Crum & Forster Specialty Insurance Company,  
referred to as “Releasees”. The Kuskokwim Corporation and Suulutaaq, Inc may sometimes be collectively referred to as “Contractor” and Crum & Forster Specialty Insurance Company may sometimes be referred to as “insurance carrier”.

### **RECITALS**

WHEREAS, on or about May 17, 2016, Santa Clara Valley Water District (“SCVWD”) and the U.S. Army Corp of Engineers (“USACE”) entered into a Project Partnership Agreement for the construction of the Berryessa Flood Risk Management Project (“Project”);

WHEREAS, a portion of the Project included removal, construction and modifications to improvements owned by Claimant. As a result, Claimant and SCVWD entered into a master agreement for the removal & construction of City Improvements, modifications to Claimant’s facilities and work within Claimant’s right-of-way;

WHEREAS, in or about June 2016, USACE published an invitation and solicitation to bid on the Project which invitation and solicitation was expressly based on a set of contract specifications;

WHEREAS, Suulutaaq, Inc. and Kuskokwim Corporation (collectively referred to as “Contractor”) submitted a bid on the Project and was awarded a contract as the lowest responsible bidder thereby accepting the contract specifications which were part of the published invitation and solicitation to bid;

WHEREAS, as part of the contract specifications to which Contractor agreed, Contractor was to secure additional insured endorsements under its insurance policy covering Claimant, USACE and SCVWD for any and all damage caused as a result of the construction activities;

WHEREAS, Claimant’s property was allegedly damaged by Contractor as a result of construction activities on the Project, which occurred on or after April 2017 (“dispute”) and which generally included landscaping damage;

WHEREAS, Claimant presented a claim to SCVWD for the alleged damages, and in turn, SCVWD tendered the claim to Contractor and its insurer;

WHEREAS, in lieu of the expense and time involved in litigation, the parties have agreed to the resolution, compromise and settlement of all disputes, claims and controversies among them as provided herein;

WHEREAS, a separate and unrelated construction project is currently underway and involves Claimant and SCVWD which includes the removal, construction and modification of Claimant's facilities which have heretofore been constructed and for which Claimant owes SCVWD a reimbursement. Said separate project is commonly known as the Lower Berryessa Creek Flood Protection Project.

WHEREAS, as consideration for the release herein, and in lieu of payment by SCVWD for a portion of the alleged damages involved in the dispute, SCVWD will provide a credit to Claimant for monies owed by Claimant to SCVWD for work performed on the Lower Berryessa Creek Flood Protection Project through a separate agreement between SCVWD and Claimant.

WHEREAS, Contractor through its insurer is entering into this separate release which contemplates the payment by Contractor and its insurer to Claimant the amount of \$45,000 which represents payment for the remaining portion of the alleged damages involved in the dispute.

WHEREAS, upon payment by Contractor and its insurer and acknowledgment of the set off by Claimant in favor of SCVWD, said consideration will represent the full consideration paid or attributed to Claimant.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Release.** Claimant, for and in consideration of the sum of Forty Five Thousand and no/100 Dollars (\$45,000.00), and together with the setoff provided by SCVWD pursuant to a separate but related agreement, the receipt of which is hereby acknowledged, does hereby remise, release and forever discharge, the Releasees, their heirs, executors, administrators, successors or assigns, owner or employees, together with all other persons, firms and corporations whomsoever of and from any and all actions, claims and demands, whatsoever which Claimant now has or may hereafter have on account of or arising out of property damages sustained on or after April, 2017 resulting from work on the Project, and including any known or unknown damages, injuries and/or the consequences thereof which may hereafter develop, as well as those which have already developed or are now apparent.

2. **Representations and Warranties**

Claimant represents, warrants and agrees that:

A. Claimant has read this entire Release and Agreement, that the terms hereof are contractual and not merely recitals, and that Claimant has signed this Release and Agreement of Claimant's own free act and, in making this Agreement, Claimant has obtained the advice of his legal counsel.

B. *In executing this Release and Agreement, Claimant also acknowledges it has entered into a separate release with SCVWD for the receipt of a setoff from SCVWD for amounts owed by Claimant related to the removal, construction and modification of Claimant's facilities as part of the separate Lower Berryessa Creek Flood Protection Project*

C. No promise or agreement not herein expressed has been made to Claimant, that in executing this Release and Agreement, Claimant is not relying upon any statement or representation made by the Releasees concerning the nature, extent or duration of injuries or damages, or concerning any other thing or matter but is relying solely upon Claimant's and his counsel's judgment and knowledge that the above mentioned sum is received by Claimant in full settlement and satisfaction of all claims and demands whatsoever, that Claimant is of legal age and competent to execute this Release and Agreement; and that before signing this Release and Agreement, Claimant has been fully informed by his counsel of its contents and meaning and has executed it with full knowledge thereof.

D. The within Release and Agreement is not to be construed as an admission of liability on part of the said Releasees and that the within Release and Agreement shall not be used by the Claimant or anyone on Claimant's behalf as a defense or estoppel in any action which is now pending or may be brought hereafter.

3. **Who is Bound.** Claimant and Releasees are bound by this Release and Agreement along with anyone who succeeds to each of those parties' rights and responsibilities, including but not limited to heirs or the executor of the parties' respective estates. Each party on behalf of itself, and on behalf of its heirs, executors, administrators, successors and assigns, and on behalf of all those for whom it filed a claim related to the dispute, if applicable, hereby remises, releases and forever discharges the other parties and their respective subsidiaries, divisions, affiliates, insurers and agents from all claims, suits, actions, charges, demands, judgments, costs and executions present and future, known or unknown, both legal and equitable, in any manner arising out of the dispute. **Each party hereby waives the provisions of Civil Code section 1542 which states:**

**"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."**

4. **Signatures**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Agent for  
THE KUSKOKWIM CORPORATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Agent for  
SUULUTAAQ, INC.

Date

Authorized Agent for  
Steven McHarris, City Manager,  
CITY OF MILPITAS

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher Diaz, City Attorney  
CITY OF MILPITAS