

RESOLUTION NO. 2010-130

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF
AGREEMENT REGARDING CONTINUED FUNDING OF THE SOUTH SACRAMENTO
HABITAT CONSERVATION PLAN**

WHEREAS, City of Elk Grove (Elk Grove), the City of Rancho Cordova (Rancho Cordova), the County of Sacramento (County), the Sacramento County Water Agency (Water Agency), the Sacramento Regional County Sanitation District (SRCSD) (collectively referred to as the "Current Plan Participants") are in the process of preparing the South Sacramento Habitat Conservation Plan (SSHCP); and

WHEREAS, the cost of preparing the SSHCP has to date been shared by the Current Plan Participants; and

WHEREAS, the Elk Grove – Rancho Cordova – El Dorado Connector Authority, also doing business as the Capital Southeast Connector Joint Powers Authority (Connector JPA) desires to become a Plan Participant under the SSHCP and to play a formal role in the preparation of the SSHCP; and

WHEREAS, it is currently anticipated that completion of the SSHCP will take an additional eighteen months and will require an additional expenditure of approximately \$3,000,000; and

WHEREAS, the City of Elk Grove believes that timely completion of the SSHCP will require monetary contributions from all Current Plan Participants; and

WHEREAS, the City of Elk Grove desires to establish a formal cost sharing mechanism to allocate the cost of completing the SSHCP between them in an equitable manner; and

WHEREAS, a draft Memorandum of Agreement (MOA) has been prepared that includes provisions for authorizing the Connector JPA to become a Plan Participant and for accomplishing the funding goals of the SSHCP by Plan Participants.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk Grove, California, that the City Council authorizes the City Manager to finalize and sign the Memorandum of Agreement regarding continued funding of the South Sacramento Habitat Conservation Plan attached as Exhibit A.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 23rd
Day of June 2010.



SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, INTERIM CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

EXHIBIT A

MEMORANDUM OF AGREEMENT REGARDING CONTINUED FUNDING OF THE SOUTH SACRAMENTO HABITAT CONSERVATION PLAN

This Memorandum of Agreement ("MOA") is entered into this ____ day of _____, 2010 by and between the City of Elk Grove ("Elk Grove"), the City of Rancho Cordova ("Rancho Cordova"), the County of Sacramento ("County"), the Sacramento County Water Agency ("Water Agency"), the Sacramento Regional County Sanitation District ("SRCSD") (collectively referred to as the "Current Plan Participants") and the Elk Grove – Rancho Cordova – El Dorado Connector Authority, also doing business as the Capital Southeast Connector Joint Powers Authority ("Connector JPA") (all parties collectively referred to as "Plan Participants").

WHEREAS, the Current Plan Participants are currently in the process of preparing the South Sacramento Habitat Conservation Plan ("SSHCP"); and

WHEREAS, the cost of preparing the SSHCP has to date been shared by the Current Plan Participants; and

WHEREAS, the Connector JPA, was identified as a potential transportation project in the Sacramento Area Council of Government's Metropolitan Transportation Plan 2025; and

WHEREAS, the Connector JPA was created to, among other things, provide for the acquisition of real property, planning, design, financing, regulation, permitting, environmental evaluation, public outreach, and construction of the Connector project or any identifiable portion of the Connector project; and

WHEREAS, the Connector project is proposed to include transportation improvements from Interstate 5 south of Elk Grove northeast through the boundaries of the SSHCP to Highway 50 in El Dorado County just east of El Dorado Hills; and

WHEREAS, the Connector JPA desires to become a Plan Participant under the SSHCP and to play a formal role in the preparation of the SSHCP; and

WHEREAS, it is currently anticipated that completion of the SSHCP will take an additional eighteen months and will require an additional expenditure of approximately \$3,000,000; and

WHEREAS, the out-of-pocket costs of preparing the SSHCP to date have largely been funded by the County, the Water Agency and SRCSD; and

WHEREAS, the Water Agency has to date funded the SSHCP through Zone 13 fees which are collected from residents of the unincorporated area, Elk Grove and Rancho Cordova; and

WHEREAS, the County to date has funded the SSHCP with general fund revenue budgeted to the County Planning Department; and

WHEREAS, SRCSD has provided \$200,000 in funding to date toward the preparation of the SSHCP; and

WHEREAS, the County and the Water Agency do not have sufficient general fund and Zone 13 revenue, respectively, available to continue funding the preparation of the SSHCP at the levels necessary to allow for its timely completion; and

WHEREAS, the Current Plan Participants believe that timely completion of the SSHCP will require monetary contributions from all Current Plan Participants; and

WHEREAS, the Current Plan Participants have determined that it is appropriate to establish a formal cost sharing mechanism to allocate the cost of completing the SSHCP between them in an equitable manner; and

WHEREAS, it is the intention of the Plan Participants that SSHCP plan permittees shall be limited to the parties to this MOA unless the MOA is amended to include additional plan participants; and

WHEREAS, the Current Plan Participants and the Connector JPA believe that it is appropriate for the Connector JPA to become a Plan Participant and participate in the completion of the SSHCP, such that it will become a plan permittee upon approval and adoption of the SSHCP; and

WHEREAS, in consideration for becoming a Plan Participant as defined in this MOA, the Connector JPA is willing to share in the costs of preparing the SSHCP and its supporting environmental documentation as set forth in this MOA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Role of the Plan Participants in the SSHCP.

(a) The Plan Participants shall have coequal roles in the preparation, negotiation, and adoption of the SSHCP, including but not limited to the following:

(i) The Plan Participants shall be allowed to attend and participate equally in meetings of the SSHCP Local Agency Working Group.

(ii) The Plan Participants shall be allowed to attend and participate equally in meetings of the SSHCP City-County Managers Team.

(iii) The Plan Participants shall be allowed to attend and participate equally in meetings of the SSHCP Steering Committee.

(iv) The Plan Participants shall be allowed to attend and participate equally in meetings and negotiations with state and federal regulatory agencies.

(v) The Plan Participants shall be allowed to attend and participate equally in meetings regarding budgeting and the overall administration of the SSHCP preparation process.

(vi) The Plan Participants shall be allowed to attend and participate equally in the process of developing the implementation agreement and the form of the implementing entity.

(b) The Plan Participants recognize and acknowledge that the preparation, negotiation, and adoption of the SSHCP is intended to be a collaborative process between the Plan Participants and that no individual party has the right to dictate how the SSHCP is being prepared or its ultimate content. Any Plan Participant is free to terminate its participation in the SSHCP process at any time prior to its adoption as provided for in Section 9 hereof and participation in the SSHCP process does not create any obligation to approve or participate in the final SSHCP.

2. Anticipated Costs and Available Revenues For Completion of the SSHCP.

(a) The Plan Participants anticipate that the costs of preparing the SSHCP will be approximately \$950,000 for the remainder of fiscal year 2009-10 and approximately \$1,900,000 for fiscal year 2010-11. It is also anticipated that there may be further costs in fiscal year 2011-12 to finalize the SSHCP but estimating such costs at this time would be far too speculative.

(b) The remaining budgeted funds for preparation of the SSHCP in fiscal year 2009-10 consist of \$300,000 from the County and \$120,000 from the Water Agency resulting in a revenue shortfall of \$530,000. The anticipated revenues from the County and the Water Agency, respectively, for fiscal year 2010-11 are \$350,000 and \$750,000 resulting in a revenue shortfall of \$800,000.

3. Additional Revenue Contributions From Plan Participants For Fiscal Years 2009-10 and 2010-11.

(a) The Connector JPA shall contribute \$500,000 and SRCSD shall contribute an additional \$300,000 toward the cost of preparing the SSHCP. These contributions shall be paid as follows:

- (i) 50% shall be due and payable upon the completion of an administrative Draft SSHCP (minus Chapter 9) and its release to the Plan Participants for internal review;
- (ii) 15% shall be due upon completion of the Draft Programmatic 404 Permit application, and all associated documents, and its release to the Plan Participants for internal review; and
- (iii) 35% shall be due and payable upon the publication of the Notice of Availability, the Draft EIR/EIS, the Draft HCP, and the Draft Implementation Agreement.

(b) Whatever contributions are received from the Connector JPA and SRCSD shall be credited against the unfunded SSHCP costs for the fiscal year in which they are received. The remaining unfunded SSHCP costs in fiscal years 2009-10 and 2010-11 shall be allocated between the other Plan Participants as follows: Water Agency/County – 60%; Rancho Cordova – 20%, and Elk Grove – 20%.

(c) It is assumed for purposes of administering this MOA that the milestones identified in Section 3(a)(i) will be achieved in fiscal year 2009-10 and that the milestones identified in Section 3(a)(ii) and (iii) will be achieved in fiscal year 2010-11 in which case the respective unfunded SSHCP costs will be \$80,000 and \$450,000. Payment of those costs, as allocated by Section 3(b), shall be made by the Water Agency/County, Rancho Cordova and Elk Grove as follows: the contributions for Fiscal Year 2009-10 shall be paid to the County within thirty days after the effective date of this MOA and the contributions for Fiscal Year 2010-11 set forth in Section 3 above shall be paid to the County within thirty days after adoption of the County's final budget for Fiscal Year 2010-11. To the extent that there is a discrepancy between the amounts paid and those actually owed due to the milestones being achieved within different fiscal years than those assumed above, any such discrepancies shall be reconciled pursuant to the procedure set forth in Section 6(a) hereof.

4. Other Potential Revenue. The potential exists for other revenue to be available to assist in the preparation of the SSHCP in the form of federal grants and monetary participation by the County Department of Transportation. To the extent that any such additional revenue is received in fiscal years 2009-10 and 2010-11, it shall serve first to offset the contributions made by the Water Agency/County, Rancho Cordova and Elk Grove provided for

in Section 3(b) above based on the same percentage allocations and then to offset the contributions made by the County, SRCSD and the JPA Connector based on their respective share of contributions.

5. Plan Participant Contributions After Fiscal Year 2010-11. In the event that the SSHCP is not approved and adopted by the end of Fiscal Year 2010-11, the Plan Participants shall meet and confer in good faith in an effort to reach agreement as to the estimated cost of completing the SSHCP process and how such additional costs should be allocated. Any such agreement shall be memorialized in the form of an amendment to this MOA. To the extent that there is no such agreement, this MOA shall not serve to obligate any Plan Participant to make any financial contribution to completion of the SSHCP after the end of Fiscal Year 2010-11.

6. Payment of Contributions and Refund of Unused Contributions.

(a) The County shall establish a separate fund in the County Treasury to account for contributions by the Plan Participants and the disbursement of those funds towards completion of the SSHCP. The County shall complete a reconciliation of the SSHCP costs and contributions within ninety days after the end of each fiscal year to determine the credits or debits owed by or to the Plan Participants based on actual SSHCP costs and revenue in such fiscal years. This reconciliation shall be provided in writing to each Plan Participant who shall have thirty (30) days from receipt to challenge any provision of the reconciliation. If a Plan Participant fails to submit a challenge within such period, the right to do so is waived and the reconciliation will be deemed approved as to all undisputed items. Any credits shall be allocated toward contributions for the next fiscal year until the SSHCP is approved and adopted. Any amounts owing by Plan Participants for the preceding fiscal year shall be paid within sixty days of the later of the end of the reconciliation challenge period or the resolution of any challenges that are submitted.

(b) The Plan Participants each recognize and acknowledge that their funding capacity is constrained and limited. Each Plan Participant will use all reasonable efforts to obtain the funds necessary to make the full contributions set forth in Section 3(a) above. If a Plan Participant fails to make any such payments when due, the defaulting Plan Participant shall be deemed to be in breach of this MOA and shall have thirty (30) days from the date of such breach to cure the breach by making the required contribution or by entering a contribution payment plan agreement that is mutually agreeable to all other Plan Participants. The failure to cure any such breach within this thirty (30) day period shall result in the defaulting Plan Participant (i) being excluded from further participation in the SSHCP and (ii) being excluded as a plan permittee should the SSHCP be approved and adopted.

(c) Any unexpended funds remaining after approval and adoption of the SSHCP shall be refunded first to offset the contributions made by the Water Agency, Rancho Cordova and Elk Grove provided for in Section 3(b) above based on the same percentage allocations and then to offset the contributions made by the County, SRCSD and the JPA Connector based on their respective share of contributions.

7. Unanticipated Escalation of SSHCP Costs. The parties hereto have made a good-faith estimate of the anticipated costs in fiscal years 2009-10 and 2010-11 necessary to complete the preparation and adoption of the SSHCP. Their respective commitment to fund this process as set forth herein is based on the assumption that the actual costs will be within 10% of the estimated costs described herein. If the actual costs in any fiscal year exceed the estimated costs by more than 10%, all work on the SSHCP and any obligations of the Plan Participants to make additional payments shall be suspended until such time as the parties reach a mutual agreement on a new budget for the completion of the SSHCP process and how any additional costs should be allocated.

8. Payment of Plan Participant Specific Costs. In addition to the payments provided for in Section 3 above, it is anticipated that there may be additional costs attributable exclusively to the incorporation of the Elk Grove spheres of influence into the SSHCP. Such costs would include collateral materials, biological or other studies, and aerial imagery that would not be required but for the inclusion of the Elk Grove sphere of influence. Any such costs shall be borne by Elk Grove.

9. Contributions Non-Refundable and Termination of Participation. Any Plan Participant may terminate its participation in the SSHCP process by providing thirty days prior written notice of such termination to the other Plan Participants. In the event of such termination of participation by either the JPA Connector or SRCSD, such parties shall not be entitled to any refund of contributions previously made pursuant to Section 3(a) above but shall be relieved of any obligation to make any contribution required under the MOA after the effective date of its termination of participation. Upon termination of participation by the Water Agency, Rancho Cordova or Elk Grove, such terminating Plan Participant shall be entitled to a pro rata refund of any contributions made for the remaining portion of the fiscal year after the effective date of its termination. Contributions made by a Plan Participant are otherwise non-refundable and represent the consideration paid by the contributing Plan Participant for its participation in the SSHCP process as set forth in Section 1 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

City of Elk Grove, a municipal corporation.

By: _____
Name: Laura S. Gill
Title: City Manager

APPROVED AS TO FORM:

Susan Burns Cochran, City Attorney

ATTEST:

Jason Lindgren, Interim City Clerk

DRAFT

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2010-130**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

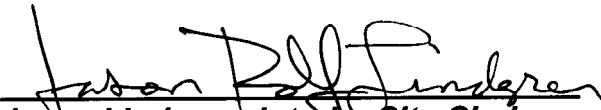
I, Jason Lindgren, Interim City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on June 23, 2010 by the following vote:

AYES : COUNCILMEMBERS: *Scherman, Detrick, Cooper, Davis, Hume*

NOES: COUNCILMEMBERS: *None*

ABSTAIN : COUNCILMEMBERS: *None*

ABSENT: COUNCILMEMBERS: *None*


**Jason Lindgren, Interim City Clerk
City of Elk Grove, California**