

**RESOLUTION NO. 2004-57**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE TO AUTHORIZE THE MAYOR TO EXECUTE AND DELIVER THE AGREEMENT FOR THE TRANSFER OF DRAINAGE PARCELS AND RIGHTS-OF-WAY IN LAGUNA WEST AND AUTHORIZE THE CITY MANAGER OR HIS DESIGNEE TO ACCEPT QUITCLAIM DEED(S) FROM THE COUNTY OF SACRAMENTO AND SACRAMENTO COUNTY WATER AGENCY TO THE CITY OF ELK GROVE**

**WHEREAS**, on December 15, 2003, the City of Elk Grove annexed the Laguna West territory to the City of Elk Grove and terminated its drainage responsibilities previously provided by the County of Sacramento and began providing its own drainage services within the boundary of Laguna West; and

**WHEREAS**, many easements and parcels have been acquired by the County of Sacramento and the Sacramento County Water Agency for the purposes of constructing, operating and maintaining drainage facilities and conveying storm drainage flows within the boundary of Laguna West; and

**WHEREAS**, the City of Elk Grove desires to sign this agreement which requires the City of Elk Grove to be responsible for the maintenance of the constructed Drainage Facilities; and

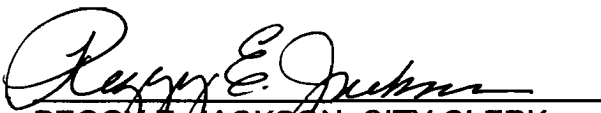
**WHEREAS**, the City of Elk Grove desires to accept the Quitclaim Deed(s) from the County of Sacramento and the Sacramento County Water Agency transferring the easements and parcels approved by the City during the due diligence period.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the Mayor to execute and deliver the Agreement and authorizes the City Manager to accept the Quitclaim Deed(s) to and from the County of Sacramento and the Sacramento County Water Agency.

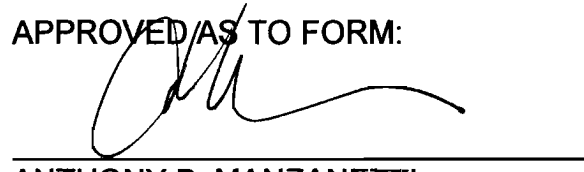
**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 7<sup>th</sup> day of April 2004.

  
\_\_\_\_\_  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**AGREEMENT FOR THE TRANSFER OF DRAINAGE EASEMENTS  
AND RIGHTS-OF-WAY IN LAGUNA WEST TO THE CITY OF ELK GROVE**

This Agreement (AGREEMENT) dated for convenience as of July 1, 2003 (AGREEMENT DATE), is made by and between THE CITY OF ELK GROVE, a municipal corporation (CITY and/or TRANSFEREE), the COUNTY OF SACRAMENTO, a political subdivision of the State of California (COUNTY), and the SACRAMENTO COUNTY WATER AGENCY, a special District formed pursuant to the California Water Code (AGENCY) (collectively COUNTY and AGENCY shall be referred to as TRANSFEROR), in consideration of the mutual covenants and agreements herein contained, and is subject to the conditions set forth below.

**RECITALS**

WHEREAS, on July 18, 1989, the Board of Directors of AGENCY adopted Resolution WA-0865 and thereby established Zone 12 of the Sacramento County Water Agency (hereinafter referred to as "Zone 12"), pursuant to the Sacramento County Water Agency Act (hereinafter referred to as the "Agency Act"); and

WHEREAS, Zone 12 was established to operate, maintain, repair, or otherwise improve any and all storm drain improvements or facilities in said zone; and

WHEREAS, Chapter 15.10 of the Sacramento County Code provides for the Sacramento County Stormwater Utility to provide all drainage and flood control services within the boundaries of Zone 12; and

WHEREAS, COUNTY owns many drainage easements and fee title to property for drainage related purposes within the boundaries of the CITY, which property is further described in Exhibit "A" to this AGREEMENT; and

WHEREAS, AGENCY owns many drainage easements and fee title to property for drainage related purposes within the boundaries of the CITY, which property is further described in Exhibit "A" to this AGREEMENT; and

WHEREAS, on December 15, 2003 the City of Elk Grove annexed the Laguna West area and assumed the drainage responsibilities previously provided by the County of Sacramento; and

WHEREAS, the TRANSFEROR, in order to finalize the conveyance of the drainage parcels to the CITY, desires to transfer any and all interest and ownership of the property described in Exhibit "A" to this AGREEMENT (PROPERTY); and

WHEREAS, subject to the terms and conditions set forth in this AGREEMENT, CITY desires to accept the PROPERTY.

Now therefore, in consideration of the mutual promises contained herein, the parties agree as follows.

## TERMS AND CONDITIONS

1. TRANSFER OF THE PROPERTY. TRANSFEROR hereby agrees to transfer to the CITY, and CITY agrees to accept, subject to the terms and conditions of this AGREEMENT, the PROPERTY located in the City of Elk Grove, California, as described in Exhibit "A" hereto, together with all improvements thereon, and all rights, hereditaments, easements, appurtenances thereto belonging. It is also the intention of the TRANSFEROR to transfer to CITY any and all property rights acquired through prescriptive rights for drainage purposes within the current boundaries of the CITY.

2. PROPERTY. The PROPERTY consists of drainage easements and fee title described in Exhibit "A" to this AGREEMENT. The PROPERTY includes but is not limited to all drainage channels, underground drainage pipe systems, drainage detention basins, and drainage pump stations along with any and all associated drainage facilities contained within the PROPERTY as described in Exhibit "A".

3. CITY INSPECTION OF THE PROPERTY.

(a) City shall have sixty (60) days following the full execution of this AGREEMENT (DUE DILIGENCE PERIOD) to inspect the physical and environmental condition of the PROPERTY as set forth below:

(1) During the Due Diligence Period, CITY may determine, in its sole discretion, that further studies, environmental assessments, or investigations are required to fully investigate the PROPERTY, its environmental condition, including, but not limited to, the presence of, hazardous materials and underground storage tanks, its suitability for CITY'S intended use, and any other matters CITY determines relate to the PROPERTY, CITY shall have the right to conduct such further studies, environmental assessments, or investigations during the Due Diligence Period.

(2) In the event that after the conclusion of further studies, environmental assessments, or investigations, CITY determines, in its sole discretion, that the PROPERTY, or and portion thereof, is not acceptable to CITY, CITY shall provide TRANSFEROR written notice of its disapproval of the PROPERTY or portion thereof and CITY shall have no further obligation to accept the disapproved PROPERTY and TRANSFEROR shall have the option to proceed with abandoning the PROPERTY.

(3) CITY, its assignees, employees, or contractors, as of the AGREEMENT DATE, shall be allowed access to the PROPERTY for the purpose of conducting its investigations. CITY shall repair any damage to the PROPERTY as a result of such investigations, and return the damaged portion of the PROPERTY to its condition immediately prior to such investigation. CITY will hold TRANSFEROR harmless for any personal injury or property damage

caused by CITY, its assignee, employees or contractor's negligence while conducting such investigation.

(4) During the Due Diligence Period, CITY shall have the right to order and review a preliminary title report (the "Preliminary Report") for the PROPERTY, together with legible copies of all documents evidencing exceptions to title referred to therein. Prior to the expiration of the DUE DILIGENCE PERIOD, CITY shall either approve any of the exceptions contained in the title reports received by CITY, or notify TRANSFEROR in writing, specifying any exceptions CITY disapproves (TITLE OBJECTION NOTICE). Prior to the transfer of the PROPERTY to CITY, TRANSFEROR shall remove any monetary encumbrances from the PROPERTY. If, prior to the transfer of the PROPERTY to CITY, TRANSFEROR does not remove any disapproved exception set forth in the TITLE OBJECTION NOTICE, CITY shall have the right to not accept that portion of the PROPERTY encumbered by the exception.

4. CONVEYANCE. The TRANSFEROR will by quitclaim deed(s) in the form attached hereto as Exhibit "B" (DEED) convey to CITY all of its right, title and interest in and to the PROPERTY approved by CITY, under and subject to all reservations, easements, rights-of-way, covenants, conditions, restrictions, and other encumbrances not disapproved to by CITY, and CITY agrees to accept such conveyance. Failure of CITY to accept proper delivery of the DEED, or the failure of either party to perform or observe any other term, covenant, or condition of this AGREEMENT after written notice and ten (10) days to cure, shall be deemed to be a breach of this AGREEMENT, and the other party may exercise any of the remedies for breach or default set forth in this AGREEMENT or otherwise provided at law or in equity including the initiation of proceedings to abandon its right, title and interest in and to the PROPERTY.

5. TITLE. TRANSFEROR shall execute and deliver to CITY by quitclaim deed(s) conveying title to the PROPERTY to CITY. When all of the conditions to the conveyance contained in this AGREEMENT have been either satisfied or waived by the parties and so confirmed in writing, CITY shall cause the quitclaim deed to be recorded and evidence of the CITY's acceptance thereof executed by the CITY Council or its designee.

6. COSTS. The cost of escrow fees, if any, recording fees, and title insurance are to be paid solely by CITY.

7. DESCRIPTION OF PROPERTY. It is the intent of the parties to this AGREEMENT to convey all property interests associated with the PROPERTY and all other drainage-related property interests held by the TRANSFEROR within the boundaries of CITY. The description of the PROPERTY is based on the best information available to the parties and is believed to be correct, but an error or omission of any description of the Property shall not constitute grounds or reasons for nonperformance of this AGREEMENT. The CITY shall cooperate in executing and delivering a corrective deed necessary to convey omitted land or facilities intended to be included in the PROPERTY and to correct any description of the PROPERTY.

8. CONDITIONS PRECEDENT. The transfer of the PROPERTY is expressly conditioned upon the occurrence of the following events:

a. To CITY's Obligation. The following shall be conditions precedent to CITY's obligation to accept the PROPERTY:

(1) TRANSFEROR'S compliance with each of its obligations herein, and the accuracy in all material respects of each of its representations and warranties as of the closing date.

(2) No administrative or judicial proceeding shall have commenced seeking to prevent or restrain the consummation of the transaction contemplated by the AGREEMENT or which would materially and adversely affect the PROPERTY or its use.

(3) CITY'S satisfaction, in its sole discretion, of the condition of title to the PROPERTY and the physical and environmental condition of the PROPERTY.

(4) CITY's City Council approval of the terms hereof.

b. To AGENCY's Obligation. The following shall be conditions precedent to the AGENCY's obligation to convey the PROPERTY.

(1) CITY's compliance with each of its agreements herein, and the accuracy in all material respects of each of its representations and warranties as of the closing date.

c. To COUNTY's Obligation. The following shall be conditions precedent to the COUNTY's obligation to convey the PROPERTY.

(1) CITY's compliance with each of its agreements herein, and the accuracy in all material respects of each of its representations and warranties as of the closing date.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF TRANSFEROR.

a. To the best of TRANSFEROR'S knowledge and belief, TRANSFEROR represents, warrants and covenants to CITY that the following are true as of the AGREEMENT DATE and shall be true as of the date of conveyance:

(1) TRANSFEROR has not received notice of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation or administrative or judicial order with respect to the PROPERTY.

(2) There is no action, suit or proceeding, which is pending or threatened against the PROPERTY or any portion thereof relating to or arising out of the ownership or use of the PROPERTY, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality.

(3) That (i) there are no leases, licenses, prescriptive easements or other third party rights to use or occupy any portion of the PROPERTY; (ii) there are no adverse parties in possession of any portion of the PROPERTY; and (iii) there are no rights to purchase the PROPERTY or any portion thereof prior to those set forth herein which are held or claimed by any third party.

(4) As of the date of transfer, there shall be no unpaid bills or claims by TRANSFEROR in connection with any work on the PROPERTY.

(5) Notwithstanding anything in the AGREEMENT to the contrary, in the event either party becomes aware of any substantive matter within thirty (30) days of the full execution of this AGREEMENT which would make any of the representations or warranties contained in this section untrue, the parties shall have the right, within fifteen (15) days following their discovery of such matter or their receipt of notice of such matter, as appropriate, (i) to proceed to close this transaction with a mutually-acceptable indemnity from AGENCY, COUNTY or CITY, as applicable, as to any liability arising out of the matter discovered, or (ii) to treat such matter as a failure of a condition and terminate this AGREEMENT.

(6) That the PROPERTY is not in violation of any federal, state, or local law, ordinance, or regulation relating to the environmental conditions on, under, or about the PROPERTY and that TRANSFEROR has no knowledge, except as disclosed in writing to CITY, of the existence on the PROPERTY of any Hazardous Materials.

"Hazardous Materials" for purposes of this AGREEMENT includes, but is not limited to, substances defined as "hazardous substances, hazardous materials, or toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code Section 9601, et seq.); the Hazardous Materials Transportation Act (49 United States Code Section 1801, et seq.); the Resource Conservation and Recovery Act (42 United States Code Section 6901, et seq.); the Substances defined as "hazardous wastes" in California Health and Safety Code Section 25117 or as "hazardous substances" in California Health and Safety Code Section 25316; and the chemicals known to cause cancer or reproductive toxicity as published in the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5 et seq.); and in the regulations adopted and publications promulgated under each of the aforesaid laws.

(7) That the PROPERTY, including the drainage channel and all related

appurtenances, is in good working order and that the TRANSFEROR has no knowledge, except as disclosed in writing to CITY, of defects or deficiencies.

10. PRESERVATION OF PROPERTY. TRANSFEROR agree that the PROPERTY herein described shall remain as it now is until conveyance of the PROPERTY, and that TRANSFEROR will prevent and refrain from any use of the PROPERTY for any purpose or in any manner, which would adversely affect the value of the PROPERTY. Except as otherwise provided in this AGREEMENT, TRANSFEROR shall not transfer, lease or encumber any interest in the PROPERTY prior to conveyance. In the event of such actions, the CITY may, without liability, refuse to accept the conveyance of title, or alternatively may elect to accept conveyance of title to such PROPERTY or a portion thereof.

11. INDEMNIFICATION. CITY shall protect, defend (with legal counsel acceptable to TRANSFEROR), indemnify and hold harmless TRANSFEROR and its respective officers, agents, and employees from any and all claims, damages, losses, costs, expenses (including reasonable attorney's fees and court costs), injuries, or liabilities of every kind on account of damage to property or injury to person (including death), which directly or indirectly arise from or relate to the acts or omissions of CITY, its officers, agents, employees, contractors, and subcontractors subsequent to the transfer of the PROPERTY to CITY, except to the extent that such claims, damages, losses, costs, expenses, or liabilities result from the sole, active negligence, or willful misconduct of TRANSFEROR or its respective officers, agents and employees. Notwithstanding any thing in this AGREEMENT to the contrary, the obligations in this Section shall survive the termination of this AGREEMENT.

TRANSFEROR shall protect, defend (with legal counsel acceptable to CITY), indemnify and hold harmless CITY and its respective officers, agents, and employees from any and all claims, damages, losses, costs, expenses (including reasonable attorney's fees and court costs), injuries, or liabilities of every kind on account of damage to property or injury to person (including death), which directly or indirectly arise from or relate to the acts or omissions of TRANSFEROR, its officers, agents, employees, contractors, and subcontractors prior to the transfer of the PROPERTY to CITY, except to the extent that such claims, damages, losses, costs, expenses, or liabilities result from the sole, active negligence, or willful misconduct of CITY or its respective officers, agents and employees. Notwithstanding any thing in this AGREEMENT to the contrary, the obligations in this Section shall survive the termination of this AGREEMENT.

12. POSSESSION. TRANSFEROR will deliver possession of the PROPERTY to CITY after recordation of the QUITCLAIM DEEDS as required in Section 5 of this AGREEMENT.

13. BINDING. The terms and conditions of this AGREEMENT shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

14. TIME. Time is of the essence of this AGREEMENT and the obligations of the parties to perform hereunder.

15. AS IS TRANSFER. CITY acknowledges that, except as expressly contained in this AGREEMENT, neither TRANSFEROR nor anyone acting for or on behalf of the TRANSFEROR has made any representation, warranty or promise to CITY concerning the physical aspects or condition of the PROPERTY; the feasibility or desirability of the PROPERTY for any particular use; the conditions of soils, subsoils, groundwater and surface waters; or the presence or absence of any other physical aspect of the PROPERTY; and that in entering into the AGREEMENT, CITY has not relied on any representation, statement or warranty of TRANSFEROR or anyone acting for or on behalf of TRANSFEROR, other than as may be expressly contained in this AGREEMENT, and that all other matters concerning the PROPERTY shall be independently verified by CITY and that CITY shall accept the PROPERTY on CITY's own examination of the other matters and that if CITY elects to acquire the PROPERTY, it does so in its "as-is" condition and its "as-is" state of repair as of the date of the transfer.

16. CONSTRUCTION AND INTERPRETATION. It is agreed and acknowledged by the parties hereto that the provisions of this AGREEMENT have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this AGREEMENT and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this AGREEMENT.

17. MISCELLANEOUS. Any provision of this AGREEMENT found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this AGREEMENT. This AGREEMENT represents the entire AGREEMENT of the parties and may not be amended except in writing, signed by each party hereto. Each party to this AGREEMENT warrants to the other that it is duly organized and existing and each signatory hereto represents to the other party that it has full right and authority to enter into and consummate this AGREEMENT and all related documents. Except as otherwise expressly provided herein, the obligations, covenants, representations, warranties, and remedies set forth in this AGREEMENT shall not merge with transfer of title but shall remain in effect until fulfilled and shall survive the termination of this AGREEMENT. This AGREEMENT shall be governed by the laws of the State of California.



AGREEMENT FOR THE TRANSFER OF DRAINAGE EASEMENTS  
AND RIGHTS-OF-WAY BETWEEN THE CITY OF ELK GROVE,  
THE COUNTY OF SACRAMENTO AND THE SACRAMENTO COUNTY WATER AGENCY

Page 8 of 10

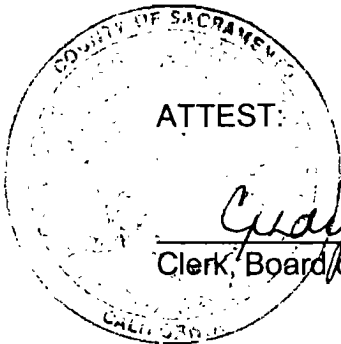
IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the day set forth next to its signature.

COUNTY:

COUNTY OF SACRAMENTO,  
a political subdivision of the State of California

Dated: FEB 03 2004

By:   
Chairperson, Sacramento County Board of  
Supervisors



  
Clerk, Board of Supervisors

REVIEWED AND APPROVED BY COUNTY COUNSEL

  
Deputy County Counsel

In accordance with Section 25103 of the Government Code  
of the State of California a copy of the document has been  
delivered to the Chairman of the Board of Supervisors, County  
of Sacramento on FEB 03 2004

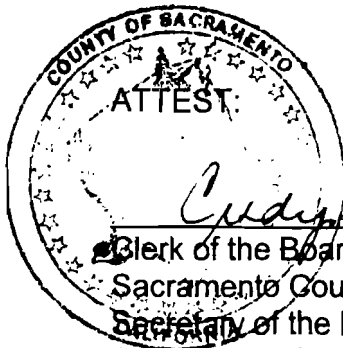
By   
Deputy Clerk, Board of Supervisors

AGENCY:

SACRAMENTO COUNTY WATER AGENCY,  
a District formed pursuant to the Water Code

Dated: FEB 03 2004

By: *Maril F. Johnson*  
Chairperson, Board of Directors of  
Sacramento County Water Agency



*Cathy H. Turner*  
Clerk of the Board of Supervisors of  
Sacramento County, California and Ex-officio  
Secretary of the Board of Directors of the  
Sacramento County Water Agency

REVIEWED AND APPROVED BY COUNTY COUNSEL

*L. G. 25*  
Deputy County Counsel

In accordance with Section 25103 of the Government Code  
of the State of California, a copy of this document has been  
delivered to the Chairman of the Board of Supervisors, County  
of Sacramento on 2.11.04

By: *Cathy Pata*  
Deputy Clerk, Board of Supervisors

AGREEMENT FOR THE TRANSFER OF DRAINAGE EASEMENTS  
AND RIGHTS-OF-WAY BETWEEN THE CITY OF ELK GROVE,  
THE COUNTY OF SACRAMENTO AND THE SACRAMENTO COUNTY WATER AGENCY

Page 10 of 10

CITY:

CITY OF ELK GROVE,  
a municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Sophia Scherman, Mayor, City of Elk Grove

ATTEST:

\_\_\_\_\_  
Peggy E. Jackson, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony B. Manzanetti, City Attorney

**CERTIFICATION**  
**ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-57**

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

***I, Peggy E. Jackson, 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 the 7<sup>th</sup> day of April 2004 by the following vote:***

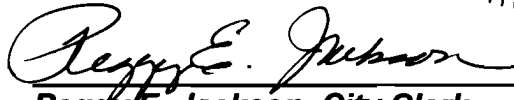
**AYES 5:     COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary**

**NOES 0:     COUNCILMEMBERS:**

**ABSTAIN 0: COUNCILMEMBERS:**

**ABSENT 0: COUNCILMEMBERS:**



  
\_\_\_\_\_  
**Peggy E. Jackson, City Clerk**  
**City of Elk Grove, California**