

**RESOLUTION NO. 2013-181**

**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, AND  
AMENDING THE FISCAL YEAR 2013-14 BUDGET**

**WHEREAS**, City of Elk Grove (Elk Grove), the City of Rancho Cordova (Rancho Cordova), the County of Sacramento (County), the Sacramento Regional County Sanitation District (SRCSD) and the Capital Southeast Connector JPA (collectively referred to as the "Current Plan Participants") are 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**, it is currently anticipated that completion of the SSHCP will take an additional eighteen months and will require an additional expenditure of approximately \$3,300,000; and

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

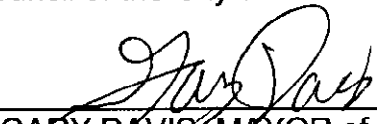
**WHEREAS**, the City of Elk Grove desires to establish a formal cost sharing mechanism to allocate the cost of completing the SSHCP between them in an equitable manner; and

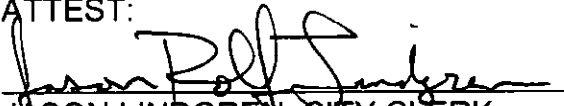
**WHEREAS**, a Memorandum of Agreement (MOA) has been prepared to accomplish the funding goals of the SSHCP by Plan Participants.


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

**BE IT FURTHER RESOLVED** that the City Council of the City of Elk Grove hereby 'reserves' \$100,000 from the Fiscal Year 2012-13 Budget – Drainage Fund to appropriate \$100,000 in the Fiscal Year 2013-14 Budget – Drainage Fund.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 25<sup>th</sup> day of September 2013.

  
\_\_\_\_\_  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:  
  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

**MEMORANDUM OF AGREEMENT REGARDING ONGOING FUNDING OF  
THE SOUTH SACRAMENTO HABITAT CONSERVATION PLAN FOR FISCAL  
YEARS 2012-13 and 2013-14**

This Memorandum of Agreement ("MOA") is entered into as of October 8, 2013, 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") 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 Plan Participants are currently in the process of preparing the South Sacramento Habitat Conservation Plan (SSHCP); and

**WHEREAS**, the Plan Participants have previously entered into Memoranda of Agreement Regarding Continued Funding Of The South Sacramento Habitat Conservation Plan that defined their respective responsibilities for funding the SSHCP preparation costs in fiscal years 2009-10, 2010-11 and 2011-12; and

**WHEREAS**, the Plan Participants desire to enter into a new Memorandum of Agreement that establishes their respective funding obligations for fiscal years 2012-13 and 2013-14.

**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 (LAWG).
  - (ii) The Plan Participants shall be allowed to attend and participate equally in meetings of the Leadership Committee. The Leadership Committee will be composed of the executive leadership from each Jurisdiction or Agency that is a Plan Participant.

- (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 such as the Regulatory Agency Working Group (RAWG). To the extent feasible and practicable negotiation parameters will be established through the Project Manager and discussed with relevant Plan Participants prior to conducting meetings with the 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 the need to keep executive leadership of their respective organizations regularly apprised as to the budget and schedule of the SSHCP as work on its preparation continues during fiscal years 2012-13 and 2013-14. The County will therefore be responsible for scheduling regular Leadership Committee meetings throughout fiscal years 2012-13 and 2013-14 to provide appropriate updates on the SSHCP budget and schedule and to plan for such additional efforts beyond fiscal year 2013-14 to complete the SSHCP as reflected in the budget dated August 28, 2013 which is attached hereto as Exhibit "A".
- (c) If any Plan Participant believes that the County has not fulfilled its obligation to keep executive leadership of the Plan Participants appropriately involved in the issues related to preparation of the Plan, or is otherwise dissatisfied with the manner in which the Plan is being prepared or decisions that are being made regarding the Plan preparation, such Plan Participant may contact the Director of the County's Department of Community Development, who shall be responsible for timely convening a meeting of the Leadership Committee to discuss and attempt to resolve the issue of concern.
- (d) 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. The Plan Participants share the goal of adoption of the SSHCP to benefit each of the Plan Participants and

the region as a whole. Therefore, each Plan Participant acknowledges an obligation to advise the Leadership Committee about factors they become aware of, such as actions on individual projects, negotiations on the BDCP, and the like, that might adversely impact adoption and implementation of the SSHCP. 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 6 hereof and participation in the SSHCP process does not create any obligation to approve or participate in the final SSHCP.

(e) The County will be responsible for hiring and managing consultants.

**2. Anticipated Cost of and Revenue Available For SSHCP Preparation During Fiscal Years 2012-13 and 2013-14.**

- (a) The Plan Participants anticipate that the cost of preparing the SSHCP, including appropriate environmental documentation, during fiscal year 2012-13 will be \$953,267 and during fiscal year 2013-14 will be \$2,263,374 subject to the overall expenditure limitation of \$953,267 in fiscal year 2012-13 and \$2,263,374 in fiscal year 2013-14, amounts within any of the line items identified in Exhibit A may be shifted to another budget line item subject to the written approval of the County Department of Community Development Director, Agency Engineer for the Sacramento County Water Agency, the Elk Grove and Rancho Cordova City Managers, the SRCSD District Engineer and the Executive Director of the Connector JPA.
- (b) The Plan Participants consider the costs set forth in Exhibit A to be shared costs that will be jointly funded pursuant to the provisions of subsections (c), (d), (e), and (f) of this Section. Except as provided in Section 5 hereof, the Plan Participants have no authority to expend any funds contributed by the Plan Participants for any costs not included in Exhibit A, or for any costs in excess of those identified in Exhibit A, without first amending this MOA to reflect any different or increased costs.
- (c) The Plan Participants shall make the following contributions to the cost of preparing the SSHCP in fiscal year 2012-13 in accordance with Section 4 (a): grant revenue from the United States Fish and Wildlife Service in the amount of \$83,439 shall be made available by the County to fund those portions of the cost of preparing the SSHCP that are eligible for such grant funding; the SRCSD will contribute \$40,000; the Connector JPA will contribute \$40,000 ; Elk Grove shall contribute \$87,500; Rancho Cordova shall contribute \$87,500; and the Water Agency shall contribute \$589,828.

All contributions for fiscal year 2012-13 shall be due and payable upon the completion of Chapters 6, 7, and 11 of the Plan Document and its release to the Regulatory Agencies (based on the schedule of deliverables which is attached hereto as Exhibit "B") for review and completion of the 1<sup>st</sup> Administrative Draft EIR and its release to the Plan Partners for review.

If Chapters 6, 7 and 11 have been released to the Regulatory Agencies and the 1<sup>st</sup> Administrative Draft has been released to the Plan Partners prior to the execution of this MOA by any partner, then that partner will provide its fiscal year 2012-13 contribution within 30 days of execution of this MOA by that party.

- (d) The Plan Participants shall make the following contributions to the cost of preparing the SSHCP in fiscal year 2013-14: grant revenue from the United States Fish and Wildlife Service in the amount of \$500,000 shall be made available by the County to fund those portions of the cost of preparing the SSHCP that are eligible for such grant funding; the County shall contribute \$418,344; the Water Agency shall contribute \$368,344; SRCSD shall contribute \$70,000; the Connector JPA shall contribute \$170,000; Elk Grove shall contribute \$368,344; and Rancho Cordova shall contribute \$368,344. Contributions for fiscal year 2013-14 shall be made payable to the County of Sacramento Department of Community Development. With the exception described in Section 2 (e) and (f), the Plan Participants shall provide their contributions as follows:
  - (i) 25% of the total sum owed by each Plan Participant shall be due and payable upon the completion of an appropriate Administrative Draft SSHCP and its release to the Plan Participants for internal review; and
  - (ii) 25% of the total sum owed by each Plan Participant shall be due and payable upon completion of an appropriate Administrative Draft Aquatic Resource Plan and its release to the Plan Participants for internal review; and
  - (iii) 25% of the total sum owed by each Plan Participant shall be due and payable upon completion of an appropriate Administrative Draft Implementation Agreement and its release to the Plan Participants for internal review; and
  - (iv) 25% of the total sum owed by each Plan Participant shall be due and payable upon the completion of the Public Review Draft EIR/EIS..

- (e) The Sacramento County Water Agency shall provide its full funding contribution in advance, upon execution of this MOA by all the Plan Participants, to ensure adequate funding is available to proceed with work on the Plan.
- (f) The Sacramento County Department of Water Resources (DWR) will provide an advance contribution from the Sacramento County Stormwater Utility, upon execution of this MOA by all Plan Participants, to ensure that adequate funding is available to proceed with work on the Plan. The amount of that advance contribution from the County Stormwater Utility will be reduced to reflect that the County DWR directly funds a Senior Planner (1 FTE) to provide support for Technical Plan Preparation, as is shown in the attached funding table. The total contribution by DWR from the County Stormwater Utility represents the County's share of Plan funding for fiscal year 2013-14.
- (g) In the event that there is insufficient revenue at any point during fiscal year 2013-14 to continue to fund the costs identified in Exhibit A, the Plan Participants who administer the contracts for the tasks identified in Exhibit A are free to suspend work under such contracts until such time as supplemental funding is identified and agreed upon by the Plan Participants.

**3. Plan Participant Contributions After Fiscal Year 2013-14 and Funding Shortfalls.**

- a) In the event that the SSHCP and related documents are not completed by the end of Fiscal Year 2013-14, 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 a new MOA or 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 for the completion of the SSHCP after the end of Fiscal Year 2013-14.
- b) If any or all of the anticipated revenue is not received, then the County, Water Agency, City of Elk Grove and City of Rancho Cordova shall meet and confer in good faith in an effort to reach agreement as to the cost share of such shortfall. Any such agreement shall be memorialized in the form of a new MOA or 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 for revenue not received.

**4. Payment of Contributions and Refund of Unused Contributions.**

- (a) Contributions for fiscal year 2012-13 shall be made payable and delivered to the Sacramento County Water Agency. The Water Agency shall reconcile and apply these contributions against the total SSHCP costs carried by SCWA through fiscal year 2012-13. This reconciliation shall be provided in writing to each Plan Participant who shall have sixty (60) 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.
  
- (b) Contributions for fiscal year 2013-14 shall be made payable and delivered to the County of Sacramento Department of Community Development. For fiscal year 2013-14, the County will continue to 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 sixty (60) 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.
  
- (c) 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 subsections (c) and (d) of Section 2 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 sixty (60) 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 sixty (60) 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.

- (d) Any unexpended funds remaining after reconciliation of Fiscal Year 2012-13 will be credited to the Water Agency. Any unexpended funds from Fiscal Year 2013-14 remaining after reconciliation shall be refunded first and equally amongst the County, Water Agency, Rancho Cordova and Elk Grove to offset the contributions provided for in Section 2(d) above based on the same percentage allocations and then to offset the contributions made by SRCSD and the Connector JPA based on their respective share of contributions.

**5. Payment of Plan Participant Specific Costs.**

In addition to the payments provided for in Section 2 above, it is anticipated that there may be additional costs attributable exclusively to one or more of the Plan Participants. Notwithstanding the provisions of Section 2(b) hereof, such additional costs may be shown within the budgeted SSHCP costs for Fiscal Year 2013-14 at the request of that Plan Participant provided that:

- a) The requesting Plan Participant agrees, through an action of its governing board, that the identified costs are the exclusive financial obligation of the requesting Plan Participant.
- b) Any such costs for Fiscal Year 2013-2014 shall be paid by the requesting Plan Participant to the County Department of Community Development upon its request and will be reconciled as specified in 4 (b).

**6. 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 Connector JPA or SRCSD, such parties shall not be entitled to any refund of contributions previously made 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 caused this Agreement to be duly executed as of the day and year first written above.

**SACRAMENTO REGIONAL COUNTY  
SANITATION DISTRICT**, a sanitation district  
organized under the laws of the State of  
California

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

By \_\_\_\_\_  
Stan Dean, District Engineer  
SRCSD

By: \_\_\_\_\_  
Chair, Board of Supervisors  
County of Sacramento

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement Approved by the Board of  
Directors with Authority Delegated to the  
District Engineer to execute the Agreement  
on behalf of District.

Agreement Approved by the  
Board of Supervisors:

Agenda Date: \_\_\_\_\_

Agenda Date: \_\_\_\_\_

Item Number: \_\_\_\_\_

Item Number: \_\_\_\_\_

Resolution Number: \_\_\_\_\_

Resolution Number: \_\_\_\_\_

Approved as to form by:

Approved as to form by:

By: \_\_\_\_\_  
Lisa Travis, Counsel for District

By: \_\_\_\_\_  
Krista Whitman, Supervising Deputy

**SACRAMENTO COUNTY WATER AGENCY**, a statutorily created district operating under the authority of and pursuant to the provisions of the Sacramento County Water Agency Act (California Water Code-Appendix, Chapter 66, commencing at Section 66-1 et seq.)

**CITY OF ELK GROVE**, a municipal corporation

By: \_\_\_\_\_  
Michael L. Peterson, Director  
Department of Water Resources  
Municipal Services Agency  
County of Sacramento

By: \_\_\_\_\_  
Laura S. Gill, City Manager

“AGENCY”

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Agenda Date \_\_\_\_\_  
Item Number \_\_\_\_\_  
Resolution No. \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Sarah Britton, Deputy County Counsel

\_\_\_\_\_  
City Attorney

**CITY OF RANCHO CORDOVA**, a municipal corporation

**RANCHO CORDOVA – EL DORADO CONNECTOR AUTHORITY**, currently known as the Capital Southeast Connector Joint Powers Authority

By: \_\_\_\_\_  
Ted A. Gaebler, City Manager

By: \_\_\_\_\_  
Name, title

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2013-181**

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


***I, Jason Lindgren, 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 September 25, 2013 by the following vote:***

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

**NOES:            COUNCILMEMBERS:     *None***

**ABSTAIN :        COUNCILMEMBERS:     *None***

**ABSENT:         COUNCILMEMBERS:     *None***

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