

RESOLUTION NO. 2004-316

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE EXECUTION OF ALL RELATED DOCUMENTS FOR THE
STREAMBED ALTERATION AGREEMENT WITH THE CALIFORNIA DEPARTMENT
OF FISH AND GAME FOR ROUTINE MAINTENANCE OF STREAM CHANNELS AND
DRAINAGE FACILITIES IN ELK GROVE**

WHEREAS, the City of Elk Grove notified the California Department of Fish and Game (DFG) about routine maintenance projects it intends to perform in the stream channels in the City of Elk Grove to maintain the designed capacity of channels and other physical features to protect the City's investments, to prevent loss of life and property; and

WHEREAS, the DFG determined that a Streambed Alteration Agreement is required pursuant to Fish and Game Code section 1602 to perform such routine maintenance projects because they could substantially adversely affect fish and wildlife resources in the City and to promote the efficient and wise use or disposal of water; and

WHEREAS, the DFG and City have developed a Streambed Alteration Agreement authorizing the City to perform specified routine maintenance projects in the City; and

WHEREAS, an Initial Study was prepared for the routine maintenance project and a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) was prepared and circulated according to the requirements of the California Environmental Quality Act (CEQA).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby resolves as follows:

Adopt the MND and Mitigation Monitoring and Reporting Program (MMRP), and authorize the City Manager or his designee to sign all related documents for the Streambed Alteration Agreement with DFG for Routine Maintenance of Stream Channels and Drainage Facilities within the City of Elk Grove based on the findings contained in this resolution and the attached MMRP and Streambed Alteration Agreement included as Exhibits A and B.

Findings:

CEQA

Finding: On the basis of the whole record, there is no substantial evidence that the project as designed, conditioned and mitigated, will have a significant effect on the environment. A MND has been prepared and completed in accordance with the CEQA. The proposed mitigation measures described in

the Draft MND are feasible, and therefore will become binding upon the City. The MND reflects the independent judgment and analysis of the City.

Evidence: An Initial Environmental Study was prepared for the proposed project and mitigation measures have been developed that will reduce potential environmental impacts to less than significant levels. The City distributed the Initial Study through the State Clearinghouse, posted it on the City's web site and at the City offices, pursuant to CEQA Guidelines 15072. A 30-day review and comment period was opened on October 20, 2004 and closed November 18, 2004. The City received four written comment letters within the 30-day public review period and responded to those comments in the project staff report. The City has considered the comments received during the public review period, and they do not alter the conclusions in the Initial Study and MND. The City of Elk Grove, Development Services Planning, located 8400 Laguna Palms Way, Elk Grove, California 95758 is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the MND is based.

General Plan

Finding: The project is consistent with the goals and policies of the Elk Grove General Plan.

Evidence: General Plan Policy SA-24 of the Elk Grove General Plan states that drainage facilities should be properly maintained to ensure their proper operation during storms.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 15th day of December 2004.



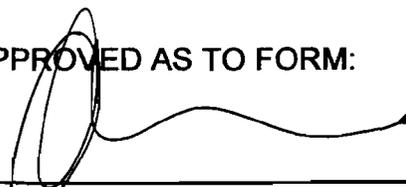
SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

Notification No. 1600-2004-0473-R2

**STREAMBED ALTERATION AGREEMENT
BETWEEN CALIFORNIA DEPARTMENT OF FISH AND GAME
AND THE CITY OF ELK GROVE DEVELOPMENT SERVICES
FOR ROUTINE MAINTENANCE OF STREAM CHANNELS AND DRAINAGE
FACILITIES WITHIN THE CITY OF ELK GROVE**

This Streambed Alteration Agreement ("Agreement") is entered into between the California Department of Fish and Game ("DFG") and the City of Elk Grove Development Services ("City").

RECITALS

WHEREAS, DFG is the trustee for fish and wildlife resources of the State of California; and

WHEREAS, Fish and Game Code section 1602 requires an entity to notify DFG before: 1) substantially diverting or obstructing the natural flow of a stream or lake; 2) substantially changing the bed, channel, or bank of any stream or lake; 3) using any material from the bed, channel, or bank of any stream or lake; 4) depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any stream or lake; and

WHEREAS, Fish and Game Code section 1602 requires DFG to issue a lake or streambed alteration agreement ("agreement") to an entity if DFG determines that the project described in the entity's notification could substantially adversely affect fish and wildlife resources; and

WHEREAS, the purpose of an agreement is to protect fish and wildlife resources by incorporating into the project reasonable measures necessary to protect those resources; and

WHEREAS, the City notified DFG about routine maintenance projects it intends to perform in the stream channels in the City of Elk Grove to maintain the designed capacity of channels and other physical structures to protect the City's investments, to prevent the loss of life and property; and

WHEREAS, DFG determined that an agreement is required to perform such routine maintenance projects because they could substantially adversely affect fish and wildlife resources in the City; and to promote the efficient and wise use or disposal of water and

WHEREAS, this Agreement authorizes the City to perform specified routine maintenance projects in the City, and requires the City to comply with general and specific

measures when performing such projects to prevent any substantial adverse impacts to fish and wildlife resources in the City; and

WHEREAS, this Agreement does not apply to emergency work the City must perform to protect life or property as described in Fish and Game Code section 1610;

NOW, THEREFORE, DFG and the City agree that this Agreement satisfies the requirements in Fish and Game Code section 1602, and agree further as follows:

I. DEFINITIONS

“Day” means work day (based on a five day work week), unless otherwise specified.

“Diameter breast height” (“dbh”) means the diameter of a tree trunk at a distance measured 4½ feet above grade.

“Emergency” has the same definition as in Public Resources Code section 21060.3, specifically “a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.”

“Hand Tools” means chain saws, hand held power equipment, hand held tools, walk behind power equipment (i.e. mowers, chippers) and other tools that are not used in heavy equipment work.

“Heavy equipment work” means work that involves the use of backhoes, front-end loaders, bulldozers, excavators, and other heavy, mechanized equipment used to control vegetation; to remove sediment, large woody debris, and beaver dams; to place large rocks; and to grade.

“Low flow area” means generally the flowing portion of the channel during low flow conditions.

“Routine maintenance work” means work performed regularly (i.e., every one to five years) in the stream zones within those areas identified in Exhibit 1. The City performs routine maintenance work to maintain the functional and structural integrity of its facilities. Routine maintenance work, as described in this Agreement and identified in Exhibit 1, includes, but is not limited to, the following: removing debris, sediment, vegetation, rubbish, downed trees, and other material that could obstruct the natural flow; controlling weeds, grasses, emergent vegetation, and woody vegetation; repairing gates, barricades, and small structures; washing and painting bridges; making repairs to control erosion and stabilize banks; repairing culverts; conducting minor geotechnical sampling; and other work necessary to maintain the functional and structural integrity of the City facilities.

“Special status species” means any species defined in CEQA Guidelines section 15380 (Cal. Code Regs., tit. 14, § 15380); species that are fully protected under the

Fish and Game Code;); and/or species identified by DFG or other state and federal resource agencies as a species of special concern. Such species include, but are not limited to, the following: giant garter snake (*Thamnophis gigas*); Swainson's hawk (*Buteo swainsoni*); bank swallow (*Riparia riparia*); burrowing owl (*Athene cunicularia*); valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*); and Sanford's Arrowhead (*Sagittaria sanfordii*).

"Stream" means a creek, channel, seep, pond, waterway, basin, or area in the City where the City may perform the routine maintenance projects covered by this Agreement, all of which are identified in Exhibit 1.

"Stream zone" means that portion of the stream channel through which water and sediment flow, have flowed, or are capable of flowing. The stream zone is delineated by the top of the bank or the outer edge of any riparian vegetation, whichever is more landward. Levee slopes, channel banks, channel bottoms, low flow channels, and other stream zone features are identified in Exhibit 1.

"Thinning" means the selective cutting of smaller individual trees, leaving larger individual trees to provide canopy.

"Verification Request Form ("VRF") is the abbreviated notification and approval form submitted by the City and reviewed by DFG describing the location, type of maintenance, equipment use and the timing of the maintenance. Except in the case of emergencies, the VRF is submitted prior to commencement of maintenance activities. The VRF may include multiple activities in one specific stream or single activities in a number of streams. The single VRF may be submitted for activities that may take several months of intermittent work periods to complete. A VRF may be for a single activity at a single location.

II. NOTIFICATION PROCEDURE

Except as specified in Section II.A or II.B below, the City is not required to notify DFG to obtain an agreement or other authorization before beginning any routine maintenance project identified in or authorized by this Agreement.

A. Notification to DFG by the City

1. Routine maintenance work: 10 days prior to commencing routine maintenance work, the City shall complete and submit to DFG a Verification Request Form ("VRF") as attached hereto as Attachment A for routine maintenance work. The City shall send the VRF by e-mail to the "E-Mail Distribution List" attached hereto as Attachment B ("distribution list"). In the event that the City delays the project start date specified in the VRF by more than 30 days, the City shall submit a revised VRF before beginning the project.
2. Urgent maintenance work: A minimum of 2 days prior to beginning

urgent maintenance work covered by this Agreement, the City shall complete a VRF and send it by e-mail to the distribution list. For purposes of this Agreement, "urgent maintenance work" is routine maintenance work the City must expedite based on the limited availability of work crews, the need for specialized equipment, anticipated weather conditions, and other limiting factors.

3. Emergency work: The Agreement does not apply to emergency work by the City. The City shall complete any emergency work in accordance with Fish and Game Code section 1610, except that the City shall comply with the notice requirement in section 1610 by completing a VRF and sending it by e-mail to the distribution list within 14 days of beginning the emergency work.
4. Maintenance work not covered by this Agreement: Maintenance work not covered by or consistent with this Agreement shall include any routine maintenance work not identified in Exhibit 1, regardless of whether the work is otherwise consistent with this Agreement. For routine maintenance work not covered by this Agreement and subject to Fish and Game Code section 1602, the City shall notify DFG in accordance with that section before beginning the work.
5. VRF - VRF's may be for work in an entire creek and maintenance season (Elk Grove Creek from May 1 to October 1), grouped by activities (ie. Mowing, cleaning vegetation, tree removal, Basins can be group by activities and maintenance season.

B. DFG Response to Notification by the City

1. Upon receipt of a VRF for routine or urgent maintenance work, DFG shall submit the VRF to appropriate DFG personnel. DFG may acknowledge receipt of any VRF the City submits in the form of an e-mail response to the City contact person identified in the VRF. However, such acknowledgement shall not be deemed an approval by DFG that the City may begin the work described in the VRF.
2. DFG shall determine if the routine maintenance work described in the VRF is covered by and consistent with this Agreement.
3. If DFG determines that the work described in the VRF is consistent with and covered by this Agreement, DFG may either: (a) send by e-mail a notice of concurrence to the City contact person identified in the VRF and all the City employees on the distribution list stating that it may proceed with the work described in the VRF, in which case DFG must send the notice prior to the proposed start date in the VRF; or (b) allow the 10 day (for routine maintenance work) or minimum 2-day (for urgent

maintenance work) comment period to elapse. Upon receipt of a notice of concurrence, or if DFG does not submit a notice of concurrence, upon expiration of the applicable comment period, the City may begin the work described in the VRF, provided it does so in accordance with the terms and conditions in this Agreement.

4. If DFG determines that the routine maintenance work described in the VRF is consistent with and covered by this Agreement, but notwithstanding such consistency additional measures (i.e., measures not included in this Agreement) need to be incorporated into the work to adequately protect fish and wildlife resources, DFG shall specify those measures in its notice of concurrence. Upon receipt of such concurrence, the City may begin the work, provided it does so in accordance with this Agreement and the additional measures in the notice of concurrence.
5. If DFG determines that the routine maintenance work described in the VRF is not covered by or consistent with this Agreement, DFG shall send by e-mail a notice of non-concurrence to the City contact person identified in the VRF and all the City employees on the distribution list, in which case DFG must send the notice prior to the proposed start date in the VRF. If DFG submits a notice of non-concurrence, DFG shall specify the basis for its inconsistency determination and describe the actions the City will need to take before it may begin the work. Such actions DFG may recommend include, but are not limited to, the following:
 - a. augmenting the VRF by submitting to DFG information sufficient to allow DFG to develop additional measures needed to protect fish and wildlife resources;
 - b. working with DFG to augment Exhibit 1 ;
 - c. separately notifying DFG in accordance with Fish and Game Code section 1602 and Section II.A.4 of this Agreement (above);
or
 - d. working with DFG to amend this Agreement.
6. If DFG does not respond within the 10 day (for routine maintenance work) or minimum 2-day (for urgent maintenance work) comment period, the City may begin the work described in the VRF upon expiration of the applicable comment period.

C. Field Confirmation of VRF

1. The City shall ensure that a copy of any completed VRF is readily available on site, even if DFG did not respond to it before the start date in the VRF. If DFG responded to the VRF before the start date, the City shall ensure that a copy of DFG's response is also readily available on site.
2. A copy of a completed VRF and any response to it by DFG shall be presented to any DFG employee upon request.

III. AUTHORIZED MAINTENANCE WORK

The City may perform the maintenance work described below after a VRF has been issued by DFG in accordance with Section IIB above, without further notifying DFG, or obtaining a separate agreement from DFG, provided that the City: 1) limits the work to within those areas identified in Exhibit 1 ; and 2) completes the work in accordance with the terms and conditions specified herein.

- A. Debris or obstruction removal. The City may remove debris, trash, rubbish, beaver dams, flood-deposited woody and herbaceous vegetation, downed trees, dead trees which are in clear danger of falling in or across a channel, branches, and associated debris that substantially obstruct water flow, reduce channel capacity, accelerate erosion, damage concrete box culverts, metal culverts, or bridge structures, or could do so.
- B. Silt, sand, or sediment removal. The City may remove or displace silt, sand, gravel, or sediment in the immediate vicinity (i.e., within 100 feet) of man-made facilities or structures that substantially obstruct water flow, reduce channel capacity, accelerate erosion, damage concrete box culverts, metal culverts, or bridge structures, or could do so.
- C. Vegetation control in channels. The City may cut, mow, disc, bulldoze, or spray herbicides on grasses, shrubs, and woody growth to maintain the designed capacity of floodways. The City may cut, mow, burn, or spray herbicides on weeds, grasses, shrubs, and woody growth on levees to the extent necessary to conduct safety inspections. The City may cut, trim, or remove the lower branches of large trees to facilitate site inspections and maintain channel capacity. The City may remove dead trees, dying trees, and new trees less than 4-inches dbh to maintain channel capacity and prevent erosion. The City may remove non-native vegetation (e.g., giant reed (a.k.a. "false bamboo"), Chinese tallow, red sesbania, Spanish bloom, Tree-of-heaven, black locust, tree tobacco, castor bean, pampas grass, eucalyptus, tamarisk, water hyacinth, and acacia) to maintain channel capacity and improve native habitat. The City may not remove Sanford's arrowhead without DFG approval.
- D. Repair of previous erosion control work. The City may repair previous erosion control work, including, but not limited to, failed rock, sacked concrete, or gabion sections. Such work shall not extend beyond 20 linear feet of the

existing revetted area.

- E. Minor erosion control work. The City may slope, place earthen fill, install rocks and gabions, or take other necessary measures to control erosion on previously unrevetted areas. Such work shall not exceed 40 linear feet in length.
- F. Bridge washing and painting. The City may clean, wash, and paint structures within a stream zone, provided containment measures are used to prevent deleterious material from entering state waters and avoid adverse impacts to fish and wildlife resources.
- G. Geotechnical sampling. The City may obtain core samples and conduct other minor geotechnical testing, provided such work does not adversely affect fish and wildlife resources.

IV. CONDITIONS

- A. The City shall act as the lead agency under CEQA for any maintenance work covered by this Agreement that it undertakes.
- B. The City shall complete the maintenance work covered by this Agreement in accordance with the following conditions and time periods, and any other time periods specified in this Agreement:
 - 1. The City shall perform the maintenance work at a time and in a manner that minimizes adverse impacts to fish and wildlife resources and provides for the protection and continuance of those resources.
 - 2. The City shall time the maintenance work with an awareness of precipitation and other events that could increase stream flows.
 - 3. The City shall time the maintenance work with awareness of the amount of time and materials necessary to implement erosion control measures. The City shall cease the maintenance work and implement all reasonable erosion control measures before all storm events.
 - 4. The City shall restrict routine maintenance work within or immediately adjacent (i.e., within 15 feet) to standing water, flowing water, or areas where the City reasonably anticipates flowing water to the following time periods based on elevation of the water course:

In non-Giant Garter Snake designated stream all work shall be done between April 15th and October 15th.

In stream designated as Giant Garter Snake habitat all work shall be done between May 1st and October 1st.

Vegetation control by mowing on channel banks, levee slopes and access roads: no time restriction.

5. The City shall restrict grading, placement of fill, placement of rock slope protection materials, and other earth moving work greater than 15 feet from standing water, flowing water, or areas where the City reasonably anticipates flowing water to the following time period: April 15 to October 15.

The City may remove debris in critical locations, such as bridges, gates, culverts, and channels, where such removal is necessary to avoid imminent flooding or damage to the City structures and facilities at any time.

The City may control vegetation by using hand tools to selectively trim, "limb-up," or cut-down vegetation and by selectively spraying herbicides to control woody and brushy vegetation only during the following time period: August 15 to March 1.

The City may control woody and brushy vegetation by mechanical means (e.g., by brush hog, excavator, grading, or similar equipment only during the following time period: August 15 to October 15).

6. The City may cut, trim, or remove downed trees and dead or live trees that are in clear danger of falling in or across a channel that will significantly reduce channel capacity, accelerate erosion, or otherwise cause an emergency at any time.
7. The City may control vegetation by pre- and post-emergent herbicide spraying on regularly maintained channel slopes only during the time periods recommended by the California Department of Pesticide Regulation.
8. The City may request DFG to allow it to work outside the time periods listed above in paragraphs 1 through 10 by submitting to DFG a written variance request that contains the following information: 1) the work location; 2) the name of the stream or watercourse near or within which the City intends to perform the work; 3) a description of the work the City intends to perform; 4) the amount of time the City will need to complete the work described in the variance request; and 5) the name and telephone number of the City contact person for the work. DFG may make approval of a variance request contingent on an agreement by the City to complete a biological survey (in accordance with paragraph 9 below); to employ a biological monitor (in accordance with paragraph 10 below); or to incorporate additional measures as part of the proposed work, if DFG determines that the work could adversely affect nesting

birds or special status species. DFG shall approve or disapprove a variance request at its sole discretion within 10 days of its receipt, unless DFG has directed the City to complete a biological survey (see paragraph 9 below).

9. If DFG requires the City to complete a biological survey before approving a variance request, the City shall employ a qualified biologist to survey the work area to verify the presence or absence of nesting birds or special status species. The survey shall be performed no more than 14 calendar days prior to beginning the maintenance work. The biologist shall survey the entire work area and the 50-foot "buffer" adjacent to and around the work area. After the City completes the survey, it shall submit a written report to DFG that describes the biologist's survey protocols and findings, together with a copy of its original variance request. Within 10 days of receiving the survey report and variance request, DFG shall notify the City by e-mail, fax, or regular mail that it approves or disapproves the variance request. Failure by DFG to notify the City within the 10-day period shall not be deemed an approval by DFG of the City's variance request. In the event DFG does not notify the City within the 10-day period, the City should contact DFG to inquire about the status of the variance request.
 10. If DFG requires the City have a qualified biologist on site to monitor the maintenance work described in a variance request as a condition of approving the request, DFG may require the City to have the monitor on site before, during, and after the maintenance work. If a monitor is used, the City shall cease any maintenance work if the monitor determines that doing so is necessary to prevent harm to nesting birds, special status species, or any other fish and wildlife resource. The monitor shall notify the DFG employee who approved the variance request of any work stoppage as soon as practicable. The City may resume work after the monitor determines that doing so will not cause harm to nesting birds, special status species, or any other fish and wildlife resource. If the City wants to employ a monitor when performing the maintenance work described in a variance request, the City should indicate its preference in the request.
- C. The City shall complete maintenance work on the projects identified in Exhibit 1. . The City may not modify any of the projects identified in Exhibit 1 unless it first notifies DFG and DFG, at its sole discretion, approves the modification. DFG and the City shall resolve any disputes regarding any proposed modifications to Exhibit 1 in accordance with Section XII of this Agreement.
- D. Prior to beginning any maintenance work under this Agreement, the City maintenance supervisors and crews who will be completing such work shall be trained by a qualified biologist to identify and avoid harm to special status

species and their habitat.

- E. Some of the City projects this Agreement covers are within the known home range of species that are fully protected under the Fish and Game Code or listed under the California Endangered Species Act ("CESA") (Fish & G. Code, § 2050 et seq.) and/or the Endangered Species Act (16 U.S.C. § 1531 et seq.). The work periods listed in this Agreement are intended to avoid adverse impacts to those species. However, DFG may impose additional measures on any maintenance work covered by this Agreement if DFG determines that such measures are necessary to protect a fully protected or listed species from harm.
- F. If the City encounters a fully protected or listed species while performing maintenance work, the City shall suspend all work until the fully protected or listed species has left the work area. The City shall notify DFG of all confirmed observations of any fully protected or listed species in or adjacent to any work area covered by this Agreement. This Agreement does not authorize the City to take, incidentally or otherwise, any fully protected or listed species, as "take" is defined in the "fully protected" statutes in the Fish and Game Code, CESA, or the Endangered Species Act. DFG may suspend or revoke this Agreement for any unauthorized take by the City of a fully protected or listed species while performing any maintenance work authorized by this Agreement.
- G. Notwithstanding this Section IV, in work areas where fully protected and listed species have been known to occur, a qualified biologist shall conduct appropriate surveys to determine whether such species are present. The City shall not begin work until a qualified biologist determines that the work will not result in the take of such species or otherwise substantially adversely affect them.
- H. The City shall not perform any work within ¼ mile of a nesting Swainson's hawk between March 1 and September 15 without first consulting with DFG and, if necessary, obtaining an incidental take permit in accordance with CESA. When advised by a DFG or a qualified biologist, the City shall suspend any maintenance work that could disrupt or otherwise interfere with Swainson's hawk nesting until DFG provides direction on how to proceed.
- I. The City shall not perform any work within 500 feet of a burrowing owl nest without first consulting with DFG. When advised by a DFG or the City biologist, the City shall suspend any maintenance work that could disrupt or otherwise interfere with burrowing owl nesting until DFG provides direction on how to proceed.
- J. Prior to commencement of activities in areas that have been known to support Sanford's Arrowhead, the City shall have a qualified biologist survey the channel for the presence of this plant. If Sanford's Arrowhead is found in the

maintenance area, the City shall establish an exclusion zone around the plant community with temporary protective fencing or flagging. The City may conduct maintenance work in the channel that does not adversely impact Sanford's Arrowhead. If channel maintenance cannot avoid the area(s) marked as exclusion zone for Sanford's Arrowhead, the City shall submit to DFG a Sanford's Arrowhead transplant plan. The City shall not relocate Sanford's Arrowhead prior to DFG's review and approval the transplant plan.

- K. The City may not perform any maintenance work on a structure or facility between March 1 and September 1 if such work could disturb nesting swallows. If such disturbance cannot be avoided, then prior to February 15, the City shall remove all existing swallow nests that the maintenance work could disturb. The City may discourage the building of new nests by swallows in places where maintenance work could disturb them using methods developed in consultation with DFG and the City biologists. Such methods include nest removal and hazing several times a week until the maintenance work begins, or until a swallow exclusion device (e.g., netting) is installed. The City shall allow swallows to nest on or in structures and facilities where maintenance work will not disturb the nests. Short term activities, such as graffiti removal or paint over may be done at any time.
- L. The City shall avoid maintenance work on bridges between February 15 and September 30 if doing such work could disturb known roosting sites for bats. Short term activities, such as graffiti removal or paint over may be done at any time.
- M. If the City encounters any wildlife during any maintenance work covered by this Agreement, it shall cease the work until the wildlife has left the work area. If necessary, the City may attempt to flush, haze, or herd the wildlife in a safe direction away from the work area, provided the wildlife is not a fully protected or listed species. If the wildlife is a fully protected or listed species, the City shall comply with paragraph F above.
- N. The City shall not disturb any active bird nests until all eggs have hatched and/or young birds have fledged. Unless otherwise specified herein, the City shall operate any equipment at least 50 feet away from active bird nests.
- O. The City shall not use heavy equipment in standing or flowing water unless DFG approves such work. If standing or flowing water is present or reasonably anticipated, the City shall submit to DFG a detailed water diversion or de-watering plan. De-watering may be accomplished by using gravel bags, port-a-dams, water bladder dams, K-rails, or driven sheet metal coffer dams.
- P. The City may cut, trim, spray with herbicides, or remove only that vegetation that obstructs stream flow or significantly reduces channel flood flow capacity. Reasonable precautions shall be taken to avoid other damage to non-target

vegetation by persons or equipment. The City may not remove roots and stumps without first consulting with DFG unless the stumps and roots are exposed when the tree is blown over.

- Q. The City shall clear stream channels in such a manner that it avoids trees greater than 4 inches dbh. The City may trim such trees as necessary to gain access to maintenance areas, but it may not remove such trees without first consulting with DFG. The City may remove trees less than 4 inches dbh without first consulting with DFG.
- R. Recruitment of single trunk species of trees (e.g., oak, sycamore, cottonwood, Gooding willow, and alders) within or adjacent to stream channels is important for the replacement of trees that die or are removed by natural or man-made causes. Where limited tree growth does not substantially interfere with channel capacity or function, the City shall allow young trees to grow. The City may thin young trees only where tree density is likely to cause future problems with regard to stream channel capacity.
- S. The City may trim the lower branches of large trees growing within a stream channel from ground level to a distance of 6 feet above ground level. The 4 inch dbh restriction in paragraph Q above shall not apply to low-hanging limbs that block water flow, catch debris, or otherwise compromise the designed flow of the channel.
- T. In areas where small trees growing densely on both sides of the watercourse create water flow passage problems, thinning of those trees might be an appropriate maintenance technique. If the City intends to cut trees and shrub brush along a stream, it shall do so in an alternating pattern by cutting on one side of the stream one year and the other side of the stream the following year, except that in doing so, the City shall avoid removing all vegetation along long reaches of a stream bank (i.e., greater than 200 feet long), and shall leave isolated patches of vegetated habitat to serve as nesting and cover material. The City shall employ this maintenance technique only with specific notice to and concurrence by DFG.
- U. Elderberry bushes shall be trimmed or removed only in accordance with United States Fish and Wildlife Service protocol.
- V. The City may chemically treat or remove the following non-native plants without restriction: giant reed (a.k.a. "false bamboo"), Chinese tallow, red sesbania, Spanish bloom, Tree-of-heaven, black locust, tree tobacco, castor bean, pampas grass, eucalyptus, tamarisk, and acacia. The City may add other invasive non-native plants to this list if approved by DFG.
- W. The City may only use herbicides registered with the California Department of Pesticide Regulation. The City shall apply herbicides in accordance with

regulations established by that department and in accordance with labeled instructions. Upon request, the City shall make available to DFG labeled instructions for any herbicides used by the City in performing maintenance work. The City shall report immediately to DFG the killing of any non-plant aquatic life caused by the use or spilling of any herbicide, pesticide, or other chemical.

- X. The City shall remove all trash and man-made debris collected in the channel. Any organic debris collected in the channel may be cut into appropriate sizes to be chipped and scattered as mulch at maintenance areas, removed from the channel, or burned in stationed debris piles.
- Y. The City shall prevent chemicals, paint, oil, gas, and other petroleum products, and other substances that could be deleterious to aquatic life from contaminating the soil and/or entering waters of the state. The City shall immediately remove such substances from any place where it could enter waters of the state and/or adversely affect fish and wildlife resources. The City shall attempt to contain any releases or spills of such substances, and shall report the release or spill as soon as possible to DFG at (916) 445-0045 and the Office of Emergency Services at 1-800-852-7550. Additionally the City has a National Pollutant Discharge Elimination System (NPDES) permit No. CAS082597 with the Californian Regional Water Quality Control Board, Central Valley Region.
- Z. The City shall be responsible for providing the Department entry to any work area. The City shall provide DFG keys for all locked gates and fences that restrict public access to maintenance work areas. The City agrees that DFG may inspect maintenance work areas at any time without first notifying, or obtaining consent from the City. If work is ongoing during the time of the inspection, DFG shall make contact with the supervisor/lead worker so the crew is aware that others are on site. DFG shall report to the City any problems it discovers during its inspection.
- AA. If DFG determines that conditions have arisen or changed in such a manner that the work covered by this Agreement could adversely affect fish and wildlife resources, upon notice by DFG, the City shall temporarily stop the work until corrective measures are taken in consultation with DFG.
- BB. Vehicles shall be reasonably free of external petroleum residue. Any equipment or vehicles driven and/or operated adjacent to a stream shall be checked and maintained daily to prevent leaks of materials that, if introduced into the water, could be deleterious to aquatic life. Vehicles shall be moved away from the stream prior to refueling and lubricating.
- CC. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located in areas where such materials if spilled shall not enter

the stream zone. Stationary equipment such as motors, pumps, generators, compressors, and welders located within or adjacent to the stream shall be positioned over drip-pans.

- DD. The City may sandblast, paint, and chip and use gunite, as necessary, provided that materials are contained or placed where they will not enter or be washed into a stream. Chipped paint and rebound materials shall be removed and disposed of in accordance with local, state, and federal law.
- EE. The City and all of its contractors shall be subject to the water pollution regulations found in the Fish and Game Code sections 5650 and 12015.

V. SUBMITTALS

- A. The City shall send or deliver all non-VRF submittals (e.g., standard 1602 notifications, annual reports, fees, and photographs) to the following address:

Department of Fish and Game
Sacramento Valley - Central Sierra Region
Attn: Lake or Streambed Alteration Program
1701 Nimbus Road
Rancho Cordova, California 95670
(916) 358-2929 (telephone)
(916) 358-2912 (fax)

- B. The City shall send all VRF submittals to the appropriate e-mail addresses listed on the distribution list. DFG and the City shall update the distribution list as needed, modify the revision date accordingly, and provide each other with a copy of the most current list.

VI. REPORTING

The City shall provide a written report to DFG on or before July 1 each year. The report shall include a brief description of the projects completed and a complete list of each location/facility where the City performed routine maintenance work during the previous fiscal year (i.e., July 1 through June 30). The report shall include also an impacts analysis (e.g., amount and/or type of vegetation removed, the size or "footprint" of the entire maintenance project, and/or the amount of sediment removed). To the extent feasible, the City shall submit pre- and post-project photographs with the annual report. The photographs shall be labeled and formatted for placement in Exhibit 1. The report shall reference this Agreement by title and by notification number 1600-2004-0473-R2.

VII. FEES

The fees referenced below are based on the current fee schedule. These fees are subject to change. The City shall pay the appropriate fee from the existing fee

schedule at the time the specific fee is paid.

A. Initial Notification Fee

The City shall pay DFG the initial notification fee of \$772.75.

B. Subsequent Fees

The City shall also pay a lump sum to DFG at the end of each fiscal year when it submits its annual report based on the total number of routine maintenance projects undertaken by the City (which shall be equal to the number of VRFs submitted to DFG during the fiscal year) and the following fee schedule:

\$129.50 each for the first 20 maintenance projects;

\$102.75 each for the second 20 maintenance projects; or

\$78.25 each for maintenance projects in excess of 40.

C. Amendment Fee

The fee to amend this Agreement shall be 50% of the initial notification fee, or \$386.38.

D. Renewal Fee

The fee to renew (i.e., extend) this Agreement shall be equal to the initial notification fee, or \$772.75.

VIII. OTHER PERMIT REQUIREMENTS

The City shall notify DFG if it discovers a conflict between any of the terms and conditions of this Agreement and those that another local, state, or federal governmental agency might impose under the laws and regulations it administers and enforces.

IX. AMENDMENT,

A. This Agreement may be amended or modified at any time by mutual written agreement executed by DFG and the City. Any proposal to amend or modify this Agreement shall be submitted for review and approval by the Regional Manager, or the Regional Manager's designee, for DFG and the City, unless otherwise specified.

B. Notwithstanding paragraph A above, upon review and approval by a DFG staff person in the Lake and Streambed Alteration Program, the City may add other work areas to Exhibit 1 after the effective date of this Agreement, in which case all provisions of this Agreement shall apply to the added projects. DFG may

impose additional conditions on the City when performing routine maintenance work on structures in work areas added to Exhibit 1 after the effective date of this Agreement.

- C. Notwithstanding paragraph A above, DFG and the City may modify the distribution list at any time, provided that DFG or the City indicates on the list the date it was modified, and thereafter provides the other party a copy of the list, as modified.
- D. DFG and the City shall meet in each May or at some other mutually agreed to time to discuss this Agreement. Both parties should be prepared to propose any amendments to this Agreement at the meeting.

X. TERMINATION

This Agreement shall remain in effect until it expires or is terminated in writing by DFG or the City. Termination shall become effective 30 days after receipt of the termination notice by the other party. In the event this Agreement is terminated, the City may complete any maintenance work that DFG approved prior to the date of the termination notice.

XI. RENEWALS

This Agreement may be renewed at the end of its term for another period of up to 5 years in accordance with Fish and Game Code section 1605, subdivisions (a) through (e). DFG's decision whether to grant a request to extend this Agreement shall be based in part on a review of the annual reports submitted by the City under Section VI of this Agreement. Notwithstanding Fish and Game Code section 1605, subdivisions (a) through (e), DFG may deny a request by the City to renew this Agreement if DFG determines that the City has failed to fully comply with one or more material terms and conditions of this Agreement. DFG shall not renew this Agreement until it has complied with CEQA, if such compliance is necessary.

XII. DISPUTE RESOLUTION

DFG and the City shall attempt to resolve any alleged violation of Fish and Game Code section 1600 et seq. or any disagreement between DFG and the City regarding this Agreement at the field staff level. If DFG concludes that the City is failing, or has failed to, comply with Fish and Game Code section 1600 et seq. or the terms and conditions of this Agreement, DFG shall notify the City, either verbally or in writing, of the work constituting the asserted violation and the City shall immediately suspend the work, unless the work is emergency work necessary to protect life or property. As expeditiously as possible after the suspension occurs (in the case of an asserted violation) or if field staff cannot resolve an issue (in the case of a disagreement), DFG staff shall inform the Assistant Chief and Regional Manager of the suspension (in the case of an asserted violation), or the Regional Manager only (in the case of a disagreement), and the City staff shall inform the Manager of Water Resources. The

Regional Manager and Manager of Water Resources shall thereafter commence the following dispute resolution process:

- A. The Regional Manager shall contact the Manager of Water Resources in an effort to mutually resolve the asserted violation or disagreement. DFG and the City shall address whether the City was in compliance with Fish and Game Code section 1600 et seq. or this Agreement; whether this Agreement should be modified, suspended, or revoked; whether the City should provide restitution for damage caused to fish and wildlife resources, if any damage occurred; and/or any other relevant issues.
- B. If the Regional Manager and Manager of Water Resources are unable to resolve the asserted violation or disagreement within 7 days of the meeting to discuss the matter, the Regional Manager and Manager of Water Resources shall elevate the matter to a DFG Deputy Director and the City Engineer.
- C. If the Deputy Directors are unable to mutually resolve the asserted violation or disagreement within 7 days of the meeting to discuss the matter, they shall refer the asserted violation or disagreement to the Directors and Public Works Director.

DFG shall exercise its authority in a manner intended to encourage resolution, settlement, and compromise of all asserted violations or disagreements in an effort to avoid seeking prosecution. However, nothing in this Agreement compromises DFG's authority and responsibilities under the Fish and Game Code or other state laws or regulations.

XIII. ENTIRE AGREEMENT

This Agreement, which includes Exhibit 1 and Attachment A , constitute the entire Agreement. This Agreement supersedes the agreement, pertaining to routine maintenance activities, between the City and the County of Sacramento to transfer a portion of the County's Memorandum of Understanding (MOU) by and between DFG and the County of Sacramento Public Works Agency. The agreement between the City and the County shall terminate upon the effective date of this Agreement.

XIV. EFFECTIVE DATE AND TERM

This agreement shall become effective on the date of last signature below, and shall expire five years from the date of last signature below, unless it is terminated at an earlier date or renewed prior to its expiration.

The City of Elk Grove

Michael Kashiwagi, Public Works Director

Date: _____

APPROVED AS TO FORM:

Anthony B. Manzanetti, City Attorney

Date: _____

CALIFORNIA DEPARTMENT OF FISH AND GAME

Banky E. Curtis, Regional Manager
Sacramento Valley - Central Sierra Region

Date: _____

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-316

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 15th day of December 2004 by the following vote:

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

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS:



A handwritten signature in cursive script, appearing to read "Peggy E. Jackson", written over a horizontal line.

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