

**AGREEMENT FOR TRANSITION OF OPERATIONS AND
MAINTENANCE OF STREET LIGHTS AND HIGHWAY SAFETY LIGHTS
IN THE CITY OF ELK GROVE (DETACHMENT FROM CSA#1)**

This Agreement is made and entered into this _____ day of _____ 2005, by and between the County of Sacramento, a political subdivision of the State of California ("County"), and the City of Elk Grove, a municipal corporation organized and existing under the laws of the State of California ("City").

RECITALS:

WHEREAS, pursuant to Section 6(f) of Resolution No. 99-1044 of the Board of Supervisors of the County making determinations for the approval of the incorporation of the City, the City continued participation within County Service Area 1 ("CSA1") after its first full year of incorporation;

WHEREAS, the City has now filed an application with the Sacramento Local Agency Formation Commission ("LAFCo") to reorganize CSA1 by detaching from it all the territory within the City limits;

WHEREAS, this Agreement is intended to memorialize the financial and operational arrangements between the County and the City to assure an efficient transition to the City of operational control of and financial responsibility for operations, maintenance, and USA locating and marking activities for street light and highway safety light equipment and installations within the boundaries of the City following the detachment if approved by LAFCo;

NOW, THEREFORE, in consideration of the mutual promises, conditions, and covenants hereinafter set forth, the City and the County hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference. However, the recitals create no enforceable obligation(s) and should there be a conflict between a recital and any language in the following paragraphs, the language in the following paragraphs shall control.

2. **Definitions.** For purposes of this Agreement, the following words and terms shall have the following meanings:

"Certificate of Completion" means the document to be executed by the executive officer of LAFCo pursuant to Government Code section 57200 after completion of the proceedings for the detachment of Zone 4 from CSA1.

"CSA1" means County Service Area 1.

"LAFCo" means the Sacramento Local Agency Formation Commission.

"SMUD" means the Sacramento Municipal Utility District.

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“Transition Date” means October 1, 2005, or, if the Certificate of Completion has not been executed by that date, the first day of the calendar month next succeeding the execution of the Certificate of Completion.

“USA” means underground service alert.

“Zone 4” means that part of the territory encompassed by CSA1 that lies within the boundary of the City of Elk Grove.

3. **Assumption of Control.** The City shall assume operational control of and financial responsibility for operations, maintenance, and USA locating and marking activities for street light and highway safety light equipment and installations within the boundaries of the City as of the Transition Date.

4. **Inventory.** The City will enter into a contractual agreement for a complete physical inventory of street lights and highway safety lights within the boundaries of the City. Upon completion of the inventory, the City shall deliver a copy to the County. The County may complete a “windshield survey” or any other scale audit of the inventory at the County’s expense to verify the results. City and County staff will confer to resolve any discrepancies discovered.

5. **Financial Matters.**

2005-2006 Assessments. Execution of the Certificate of Completion is not expected until September 2005. Because the City will not be able to levy and collect assessments to fund street light and highway safety light operations and maintenance until the 2006-2007 fiscal year, the County shall levy assessments on parcels within Zone 4 for the 2005-2006 fiscal year.

Pro-Ration of Assessments. Each time that the County Auditor-Controller transfers or makes available funds from the assessments collected for fiscal year 2005-2006 for the use of CSA1, the County shall pay to the City the assessments collected from Zone 4. The total amount to be paid for fiscal year 2005-2006 is currently estimated to be \$672,536.

Tax Collector’s Costs. The City and the County shall make appropriate arrangements for the timely payment of the County Tax Collector’s costs for the collection of the assessments in Zone 4 for fiscal year 2005-2006.

Working Capital Reserve and Beginning Fund Balance. The CSA1 Engineer’s Report for fiscal year 2005-2006 shows a beginning “working capital reserve” of \$247,149 and a beginning fund balance of \$70,236 for Zone 4, which amounts updated to July 1, 2005, are \$_____ and \$_____, which total \$[total]

The County shall deduct from the first installment of collected assessments an amount equal to any and all outstanding expenditures made by the County on behalf of

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Zone 4 incurred between July 1, 2005 and the date ninety (90) days following the Transition Date and remit the remaining balance to City. The County shall provide the City a detailed accounting of the deductions. The County shall transfer the entire amount of the second installment of collected assessments within thirty days following receipt by the Department of Transportation.

The County shall provide the City with a detailed accounting of expenditures and revenues of Zone 4 for the 2005-2006 Fiscal Year on or before August 31, 2006. Any outstanding bills for Zone 4 expenditures shall be paid by City to County within thirty (30) days following City's receipt of invoice.

SMUD Energy Bills. The City shall be responsible for the energy costs relating to street lights and highway safety lights in its territory on and after the Transition Date. Until SMUD separately bills the City for such costs, the County shall pay the SMUD bills for CSA1 and the City shall pay to the County 21.43% of the billed amount that relates to the time period on and after the Transition Date, plus an appropriate allowance for the actual energy costs for developments where power has been turned on but plans and acceptance letters have not been processed by City and put on the 2005-2006 assessment roll.

The County and the City shall prepare and deliver to SMUD a joint instruction as to the amount to be billed to the County and to the City at such time as SMUD can prepare separate bills.. After the completion of the inventory of lights within Elk Grove, the County and the City shall prepare and deliver to SMUD a joint instruction to make any adjustments necessary to the division of the energy costs billed to each agency.

The County shall provide to the City a description of the scope of work necessary to divide the SMUD bill and an estimate of the cost. Following review by the City and agreement on the allowable costs, the City shall pay the County one-half of the actual costs of dividing the SMUD bill.

Lawsuits. The County hereby represents to the City that, as of the date hereof, no actions have been filed against the County seeking damages related to the operation of street lights or highway safety lights within the boundaries of the City. The County has informed the City of the one claim that has been made, which the County denied, with respect to which the time for filing a lawsuit has not expired.

The County shall defend, indemnify, and hold harmless the City, its officers, employees, and agents from and against all demands, claims, actions, liabilities, losses, damages and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the operations and maintenance of street lights and highway safety lights within the territory of the City during the period prior to the Transition Date caused in whole or in part by the negligent or intentional acts or omissions of the County's Board of Supervisors, officers, employees, or agents.

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The City shall defend, indemnify, and hold harmless the County, its officers, employees, and agents from and against all demands, claims, actions, liabilities, losses, damages and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the operations and maintenance of street lights and highway safety lights within the territory of the City caused in whole or in part by the negligent or intentional acts or omissions of the City Council or the City's officers, employees, or agents.

6. Operational Matters.

Shared Facilities. Certain facilities located at the boundary of the City serve areas on both sides of the boundary. Exhibit A identifies these shared facilities and allocates responsibility for their operation and maintenance. The City and the County shall each pay one-half of the cost of any modifications required to divide systems between the City and the County or shall add these facilities to the current Shared Facilities Agreement between the City and the County.

As-built Plans. On or before the Transition Date, upon request of the City, the County shall deliver to the City any as-built plans within its possession for street light and highway safety light equipment and installations for which the City will assume responsibility as of the Transition Date.

The County shall provide to the City a description of the scope of work necessary to gather the plans and an estimate of the cost. Following review by the City and agreement on the allowable costs, the City shall pay the County one-half of the actual costs of delivering the plans.

Electronic Databases. On or before the Transition Date, upon request of the City, the County shall deliver any electronic databases, including most recent GIS layers, of information concerning the street lights and highway safety lights within the City and the properties levied to fund their operation and maintenance.

Open Service Requests. To the extent not included in the electronic databases delivered to the City, the County shall deliver to the City a listing of each open service request.

Future Service Calls. Prior to the Transition Date, the City will provide the County with an operational telephone number to which to forward any calls requesting service regarding street lights and highway safety lights following the Transition Date.

Easements. County agrees that, upon request of the City, it will transfer to the City its rights under any easement, license, encroachment permit, access agreement or similar arrangement by which the County has access to private property for the operation and maintenance of street lights and highway safety lights within the City.

Equipment. The County shall transfer to the City all spare parts that are specifically held for any lighting fixtures found only in Elk Grove. The County shall

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transfer to the City a proportionate amount of its inventory of spare parts for street lights and highway safety lights (such proportion to be determined taking into consideration the amount of Elk-Grove-specific inventory transferred). The City shall arrange for and pay the costs of transporting the materials.

7. **Effective Date of Agreement.** This Agreement shall be effective as of August __, 2005, or the date it is fully executed by the parties, whichever is later.

8. **Termination of Operations and Maintenance Agreement.** The Agreement for Street Light and Highway Safety Light Maintenance and Operations Services between the County of Sacramento and the City of Elk Grove by and between the City and the County dated December 6, 2000, shall be terminated upon the effective date of this Agreement.

9. **Assignment.** Neither party hereto shall assign, subcontract, or transfer any interest in this Agreement, or any duty hereunder.

10. **Amendments.** This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties hereto.

11. **Entire Agreement.** This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the division of the fund balance and administration, and supersedes all prior negotiations, representations or agreements, oral or written, that may be related to the division of the fund balance and administration.

12. **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, any rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

13. **Waiver.** The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

14. **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal, provided that such invalidity does not materially affect the respective rights and obligations of the parties.

15. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, if any there be.

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16. **Notices.** Any notice, demand, request, consent, or approval that either party hereto may, or is required to, give the other shall be in writing and shall be deemed to have been served on the date deposited, and received three (3) days after being deposited, in the United States mail, first class postage prepaid, and addressed as follows:

TO COUNTY:
Chief of Operations and Maintenance
Department of Transportation
4100 Traffic Way
Sacramento, CA 95827

CITY:
Deputy City Manager of
Development Services
City of Elk Grove
8400 Laguna Palms Way
Elk Grove, CA 95758

Either party hereto shall have the right to serve any notice by personal delivery, and change the address at which it will receive such communications by giving fifteen (15) days' advance notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day of the year first written above.

Dated: _____

CITY OF ELK GROVE, a municipal corporation

By:

Daniel Briggs, Mayor, City of Elk Grove

(SEAL)

Attest: _____
Peggy Jackson, City Clerk

REVIEWED AND APPROVED BY CITY ATTORNEY:

By: _____
Anthony Manzanetti, City Attorney

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

Dated: _____

By: _____
Chair, Board of Supervisors

(SEAL)

Attest: _____
Clerk of the Board

REVIEWED AND APPROVED BY COUNTY COUNSEL:

By: _____
Supervising Deputy County Counsel

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EXHIBIT A

SHARED FACILITIES