

**JOINT USE  
PRESERVE MANAGEMENT AND MAINTENANCE  
AGREEMENT**

This JOINT USE PRESERVE MANAGEMENT AND MAINTENANCE AGREEMENT (the “Agreement”) dated \_\_\_\_\_, 2007, for reference, is made and entered into by the Southgate Recreation and Park District, a political subdivision of the State of California (the “District”) and the County of Sacramento, a political subdivision of the State of California (the “County”) with reference to the following facts.

**RECITALS**

A. This Agreement relates to the planned development of the North Vineyard Station Specific Plan (the “NVSSP”) Area, and specifically to the construction of certain habitat, drainage and water quality improvements needed to serve the NVSSP Area pursuant to the NVSSP Drainage Master Plan (the “DMP”). The purpose of this Agreement is to allocate between the District and the County the rights and responsibilities for the joint use and maintenance of the improvements to be installed pursuant to the DMP within the portions of the NVSSP Area described in Recital H and Exhibit A hereto as the “Preserve,” as and when ownership of each the real properties comprising the Preserve vests in the District. This Agreement supersedes the draft form of Joint Use Preserve Management and Maintenance Agreement approved by the District at the meeting of its Board of Directors held on \_\_\_\_\_, and by the County at the meeting of its Board of Supervisors held on \_\_\_\_\_.

B. The DMP was designed to provide mitigation and habitat preservation and enhancement opportunities, flood protection, and water quality treatment for the NVSSP Area. The NVSSP was created in response to direction contained in the Sacramento General Plan and was approved by the Sacramento County Board of Supervisors in November of 1998. The NVSSP was prepared following public input, extensive analysis of environmental conditions, adjacent land use, and a comprehensive review of area-wide infrastructure needs. The NVSSP places a high priority on aesthetics, quality of life, and land use compatibility.

C. The DMP identified existing drainage facilities and flooding patterns and analyzed alternatives to recommend preferred flood control and conveyance facilities to serve the drainage needs of the NVSSP Area. Consistent with the findings in the NVSSP Environmental Impact Report (the “EIR”), the DMP emphasizes enhancement and long-term preservation of the Elder Creek and Gerber Creek drainage/open space corridor’s functions and values. The initial design of new creeks focused primarily on flood-flows and water quality treatment requirements. The preliminary design was then revised to incorporate a meandering low-flow channel with adjacent wetlands, wetland and riparian benches, and nesting islands to mitigate for affected wetlands and their functions and values. This enhanced design was possible because the creek channels were redesigned to accommodate Federal Emergency Management Agency (“FEMA”) 100-year flood

flows. Allowances were made such that the creeks will require minimal maintenance and vegetation that will allow for the establishment of riparian corridors consisting of mature woody vegetation that does not compromise flood protection.

D. The County's construction of the DMP improvements requires a permit from the U.S. Army Corps of Engineers (the "Corps"), pursuant to Section 404 of the Clean Water Act, to place fill material within those portions of Gerber Creek and Elder Creek and adjacent wetlands considered to be waters of the United States (the "DMP 404 Permit"). The County anticipates that conditions of the DMP 404 Permit will include (i) the creation of mitigation for filled waters of the United States pursuant to a Corps-approved creek and wetland mitigation/restoration plan for the Elder and Gerber Creek drainage/open space corridors which, as it may be amended from time to time, is incorporated herein by this reference (the "DMP Mitigation Plan," attached hereto as Exhibit "B"), (ii) establishment of a long-term management plan, which is described more particularly in Recitals E and G, below, for the Preserve including the Elder and Gerber Creek drainage/open space corridors, and (iii) the recordation of a conservation easement, substantially in the form of the instrument attached hereto and incorporated by reference as Exhibit "G," to protect the wetland, riparian and upland habitat values of the Preserve including the Elder and Gerber Creek drainage/open space corridors in perpetuity (the "Conservation Easement"). A Clean Water Act Section 404 permit has already been issued by the Corps for a small segment of the DMP area known as Vineyard Pointe (Corps Permit No. 199300651, dated June 29, 2006 and amended November 17, 2006, referred to herein as the "Vineyard Pointe 404 Permit"), and that permit contains conditions similar to those described above. It is anticipated that the DMP 404 Permit will cover the remaining segments of the DMP area, and that all segments, including Vineyard Pointe, will be managed in a similar fashion.

E. To fulfill the applicable requirements of the NVSSP EIR, and the anticipated conditions of the DMP 404 Permit, the parties in consultation with the Corps prepared that certain long-term management plan entitled "Open Space Preserve Operations and Management Plan for the North Vineyard Station Specific Plan – Elder Creek and Gerber Creek," dated \_\_\_\_\_, 2007, which, as it may be amended from time to time, is incorporated herein by this reference (the "DMP O & M Plan," attached hereto as Exhibit "C").

F. To fulfill the applicable requirements of the NVSSP EIR and related environmental documentation and the Vineyard Pointe 404 Permit, the Vineyard Pointe land owner in consultation with the Corps has prepared a wetland and creek restoration plan entitled "Vineyard Pointe Habitat Restoration Plan – Gerber Creek" dated June 29, 2007, which, as it may be amended from time to time is incorporated herein by this reference (the "Vineyard Pointe Mitigation Plan," attached hereto as Exhibit "D"). Also in consultation with the Corps, the Vineyard Pointe landowner prepared that certain long-term management plan entitled "Vineyard Pointe Open Space Preserve Operations and Management Plan–Gerber Creek," dated \_\_\_\_\_, 2007, which, as it may be

amended from time to time, is incorporated herein by this reference (the "Vineyard Pointe O & M Plan," attached hereto as Exhibit "E").

G. The DMP O & M Plan and the Vineyard Pointe O & M Plan (collectively, the "O & M Plans") are intended to ensure that the DMP continues to meet its goals of habitat preservation, flood protection and water quality treatment for the NVSSP area. The O & M Plans set out specific methods to maintain these goals, including (i) methods for and obligations to maintain preserved and created wetland, riparian, and upland habitats within the Preserve in good condition such that they will continue to support the flora and fauna that the Preserve was established to protect (the "Conservation Values") in perpetuity, and (ii) methods for and obligations to maintain flood protection and water quality treatment improvements constructed within the DMP project area.

H. The Preserve consists of approximately \_\_\_ acres – including segments covered or to be covered by either the DMP 404 Permit or the Vineyard Pointe 404 Permit – located in Sacramento County, California and falls almost entirely within the NVSSP Area. It is more particularly described on the attached Exhibit "A" titled the Preserve which is incorporated herein by this reference.

I. It is the intention of the parties that the fee title to the lands comprising the Preserve shall become vested in the District free and clear of all encumbrances except for (i) drainage easements to be held by the County, substantially in the form of the easement instrument attached hereto and incorporated herein by reference as Exhibit "F" (the "County's Drainage Easements"); (ii) the Conservation Easement; (iii) such existing or future utility easements as are consistent with the provisions of the DMP O & M Plan and the Vineyard Pointe O & M Plan, as applicable, and (iv) and any other encumbrances which the District, in its sole discretion, determines to be acceptable. It is the further intention of the parties that, if the District accepts title to any portion of the Preserve prior to approval by the Corps of the respective forms of the County Drainage Easements and Conservation Easement, the District shall record the County Drainage Easements and the Conservation Easement, in that specific order, within forty-five (45) days of the Corps' approval of the forms of those instruments.

J. It is anticipated that fee title to some segments of the Preserve will be conveyed to the District prior to improvements being completed within the Preserve. As development on surrounding lands occurs in accordance with the NVSSP, segments of the Preserve will be improved for habitat, drainage and water quality purposes in accordance with the O & M Plans, and the DMP Mitigation Plan and Vineyard Pointe Mitigation Plan (both mitigation plans collectively referred to herein as the "Mitigation Plans"). The O&M Plans include provisions governing the terms and conditions under which the District will grant the necessary temporary construction easements to allow such improvements to be undertaken on the affected Preserve segments.

K. It is the intent of the parties that the District may elect, in its sole discretion, not to accept the conveyance of fee title to any segment of the Preserve until

such time as the Corps has approved the final forms of the DMP 404 Permit, the O&M Plans, the Mitigation Plans, the Drainage Easement and the Conservation Easement. It is the further intent of the parties that, if the terms and conditions of any of the DMP Permit, the O&M Plans, the Mitigation Plans, the Drainage Easement or the Conservation Easement as finally approved by the Corps differ substantially from those contained in the exhibit forms of those documents set forth in this Agreement, including but not limited to any changes that increase the District's and/or the County's costs and/or responsibilities and/or other requirements or conditions, then the parties will negotiate in good faith to modify this Agreement to address such changes in a manner consistent with the original objectives of this Agreement. It is the further intent of the parties that each conveyance to the District of fee title to property to be included in the Preserve shall be pursuant to a conveyance agreement in form and substance acceptable to the District in its sole discretion.

L. It is the intent of the parties that, pursuant to and as set out in more detail the O&M Plans, the District will be responsible for coordinating trash removal and maintenance of Preserve segments upon acceptance of fee title to each particular segment of the Preserve. It is the further intent of the parties that, after improvement of the Preserve has been completed by the County or responsible developer(s), (i) the County and the responsible developer(s) shall be responsible for complying with all of their respective obligations under the DMP Mitigation Plan and the Vineyard Pointe Mitigation Plan until the Corps finally accepts as complete the mitigation performed in accordance with those plans, except as otherwise provided in either of the O&M Plans; (ii) the District shall be responsible for certain maintenance and monitoring obligations with respect to the Preserve and some of the improvements constructed therein, as provided in the O&M Plans; and (iii) the County shall be responsible for maintenance of certain drainage improvements constructed therein. The actual construction of these improvements will be performed by others.

M. It is the intent of the parties that upon the Corps' final acceptance of the performance of the mitigation obligations under the Mitigation Plans, any and all continuing obligations related to management of the Preserve shall be solely in accordance with the O&M Plans as herein stated. It is the intent of the parties that the County's or relevant developer's responsibilities under the Mitigation Plans will be funded by a Sacramento County Water Agency Supplemental Drainage Development Fee Plan or other funding mechanism that is the sole responsibility of the County or the responsible developer, and will be performed by a consultant retained by the County or responsible developer for that purpose.

N. The District and County are entering this Agreement to memorialize their respective understandings concerning their rights and their maintenance and monitoring obligations with respect to the improvements to be located within the Preserve.

## AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in consideration of the covenants and conditions of this Agreement, the parties agree as follows:

1. **Recitals.** Each of the above recitals is incorporated herein, and each is true and correct.
2. **Preserve Ownership and Condition of Title.** Each conveyance to the District of fee title to property to be included in the Preserve shall be pursuant to a conveyance agreement in form and substance acceptable to the District in its sole discretion. Fee title to each segment of the Preserve shall vest in the District subject only to the County's Drainage Easements, the Conservation Easement, such existing or future utility easements as are consistent with the provisions of the O&M Plans, and any other encumbrances which the District, in its sole discretion, determines to be acceptable. If the County Drainage Easements and Conservation Easement are not recorded prior to fee title to a particular segment of the Preserve vesting in the District, the District shall record the County Drainage Easements and the Conservation Easement, **in that specific order**, within forty-five (45) days of the later occurrence of the vesting of fee title in the District or the Corps' approval of the recording form of the County Drainage Easements and the Conservation Easement.
3. **District's Maintenance and Monitoring Obligations.** It is anticipated by the parties that the District may acquire fee title to segments of the Preserve prior to any habitat, drainage or water quality improvements being constructed and/or the Preserve or surrounding areas being developed. As and when segments of the Preserve are completed by others, District shall accept ownership of the improvements constructed within the Preserve, and thereupon manage, monitor and maintain such completed improvements within the Preserve pursuant to the terms and conditions of the O&M Plans. The parties acknowledge and agree that they intend to fund their respective obligations under this Agreement utilizing fee sources and not their respective general funds..
4. **County's Maintenance and Monitoring Obligations.** As and when segments of the Preserve are completed by others and County acquires and accepts a drainage easement thereover as contemplated herein, the County shall, at its sole cost and expense, maintain the drainage and ancillary flood control improvements therein as is allocated to and required of the County, pursuant to the terms and conditions of the O&M Plans and the Mitigation Plans. Such obligations shall include, without limitation any drainage maintenance needed within the Preserve for the purpose of flood control and flow conveyance, maintenance of structures relating to flow conveyance, detention, or water quality, assessing threats to flood control and removing any such threats, correcting erosion related to flow conveyance, and negotiating and obtaining all required permits and authorizations needed to carry out such work. In addition, the County or responsible

developer shall perform all success monitoring and maintenance obligations required by the Mitigation Plans, to assure the successful establishment of restored habitat during the restoration monitoring period called for in the Mitigation Plans and as referenced in Recital M above, until the Corps provides written final acceptance of mitigation to the County or responsible developer. This includes, without limitation, the hiring of a qualified biologist to monitor the status of the restored habitat and submitting an annual report to the Corps as outlined in the Mitigation Plans.

5. **Joint Use of Preserve Property.** Given their respective ownership rights and responsibilities in the Preserve as herein set forth, the parties agree to cooperate in their joint use of the property. District shall have the right to use the Preserve as necessary to perform District's obligations under this Agreement and for any other manner consistent with its mission as a Recreation and Park District. District's use of the Preserve shall be consistent with and shall comply with all limitations and restrictions within the Preserve imposed by the DMP 404 Permit, the County's Drainage Easements, the Conservation Easement and the O&M Plans.

The County shall have the right to use such areas as permitted by and consistent with the terms of the County Drainage Easements and as necessary to perform the County's obligations under this Agreement, subject to and as bounded by the terms and conditions of the DMP 404 Permit, the O&M Plans, and the Mitigation Plans.

Each party shall make reasonable efforts (by phone, email, fax or other such method intended to provide immediate actual notice) to provide the other party with advance notice before performing work within the Preserve and subsequent notice when they have completed such work. The District and the County shall use good faith efforts to coordinate their respective activities on the Preserve in order to enable each party to efficiently carry out their respective maintenance and monitoring obligations under this Agreement

6. **Funding of Obligations.** The District has formed the Community Facilities District No. 1 (North Vineyard Station) (the "CFD") to fund its obligations under the O&M Plans, and will participate in forming such additional community facilities districts as may be necessary, advisable or convenient to fund such obligations. The District agrees to accept title for maintenance purposes to the completed improvements constructed in the Preserve as the improvements are completed by others to the satisfaction of the District pursuant to the applicable requirements of the O&M Plans and as the District has collected adequate funding from the CFD and additional community facilities districts to initiate, sustain and perform the maintenance obligations allocated to the District hereunder. The County acknowledges that its existing drainage fee program is anticipated to provide the funding needed by the County to perform the maintenance obligations allocated to the County.

8. **Compliance with All Laws.** When using the Preserve as permitted hereunder or when performing any of its obligations hereunder, each party agrees to comply with all

rules, regulations and requirements of any local, state or federal agency applicable thereto, including without limitation, the applicable limitations, restrictions and requirements of the O&M Plan and the Mitigation Plan.

9. **Annual Compliance Review.** The District and the County shall meet at least annually to review and coordinate the parties' performance under this Agreement. The parties, at such meeting, shall confirm the parties' respective maintenance and monitoring obligations as set forth herein and attempt to resolve in good faith any dispute or disagreement with respect to the allocation among the parties of any particular maintenance obligation or matter covered by this Agreement.

10. **Default.** A party hereto shall be deemed in default hereunder if such party fails to observe or perform any of its obligations hereunder, where such failure continues for sixty (60) days after written notice thereof is received by such party from the other party, or fails to cure such default within any shorter period of time required by the Corps or other public entity having jurisdiction over the maintenance of the Preserve. Provided, however, if the nature of such default is such that the same cannot reasonably be cured within such sixty (60) day (or shorter) period, such party shall not be deemed to be in default of its obligations to the other party hereunder if the party shall, within such sixty (60) day (or shorter) period, commence such cure and thereafter diligently prosecute the same to completion. If, after sixty (60) days from its receipt of a notice to cure, the defaulting party has not cured (or has not commenced and diligently prosecuted the cure of) the noticed default, then the non-defaulting party hereto may cure the event of default described in the notice at the defaulting party's expense. If a non-defaulting party hereto pays any sum or incurs any expense in curing an event of default, the defaulting party shall reimburse the non-defaulting party upon demand for the amount of such payment or expense with interest at the current rate for the Sacramento County Treasury Pool from the date the sum is demanded in writing until the non-defaulting party is reimbursed by the defaulting party.

11. **Indemnification.**

a. **Of County by District.** In the event that the District, in carrying out its obligations hereunder, disturbs improvements or facilities to be maintained by the County hereunder, the District shall replace and restore such improvements or facilities to their prior condition. In addition the District shall indemnify, defend and hold the County harmless from and against all damages, liabilities, causes of action, and expenses (including reasonable attorney fees and costs) (collectively, "**Claims**") arising out of, or in any way connected with, the performance or non-performance by the District, or the District's agents, employees, or contractors, of the District's obligations required under this Agreement.

b. **Of District by County.** In the event that the County, in carrying out its obligations hereunder, disturbs improvements or facilities to be maintained by the District hereunder, the County shall replace and restore such improvements or facilities to their

prior condition. In addition the County shall indemnify, defend and hold the District harmless from and against all Claims (as defined in paragraph 11.a., above) arising out of, or in any way connected with, the performance or non-performance by the County, or the County’s agents, employees, or contractors, of the County’s obligations required under this Agreement.

It is the intention of the County and the District that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, County’s Board of Supervisors and District’s Board of Directors.

12. **Notice.** Notice shall be sent to the parties at the addresses set forth below. Either party may change the address by giving written notice to the other:

**County:**

Sacramento County  
Department of Water Resources  
Attention: Senior Engineer, Drainage  
Development  
827 7<sup>th</sup> Street, Room 301  
Sacramento, CA 95814

**District:**

Southgate Recreation and Park District  
Attention: General Manager or his  
designee  
6000 Orange Avenue  
Sacramento, CA 95823-3225

13. **Successors and Assignees.** This Agreement may not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld. Subject to an approved assignment, this Agreement shall inure to the benefit of and be binding upon the parties’ respective successors and assigns.

14. **Construction.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

15. **Performance.** Time is of the essence in the performance of this Agreement and every covenant and condition hereto.

16. **Entire Agreement.** This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written



instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

17. **Waivers.** No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

18. **Attorney's Fees.** In the event any action is initiated by either party seeking to enforce any of the terms or provisions of this Agreement, the prevailing party in such action shall be awarded its reasonable attorney's fees and costs.

19. **Severability.** Each provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement, so long as the provisions determined to be illegal or invalid do not materially alter the essential terms of this Agreement.

20. **Governing Law.** The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California and, where applicable, federal laws.

21. **No Third Party Beneficiaries.** No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the District and County, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

22. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

Executed in Sacramento, California, as of the date set forth above.

**COUNTY**

**DISTRICT**

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

SOUTHGATE RECREATION AND PARKDISTRICT, a political subdivision of the State of California

By: \_\_\_\_\_  
Keith DeVore, Director  
Department of Water Resources  
County of Sacramento

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Deputy County Counsel

\_\_\_\_\_  
District Counsel

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**Exhibit A  
The Preserve**

(legal description to be inserted upon approval of  
the Plan by the Corps of Engineers)

**Exhibit B  
On-Site Wetlands Restoration and Monitoring Plan for North Vineyard  
Station Drainage Master Plan**

(mitigation plan to be attached upon final approval  
by the Corps of Engineers)

**Exhibit C  
Open Space Preserve Operations and Management Plan for the North  
Vineyard Station Specific Plan – Elder Creek and Gerber Creek**

**Exhibit D  
On-Site Wetlands and Riparian Mitigation and Monitoring Plan for  
Vineyard Pointe Project**

**Exhibit E  
Vineyard Pointe Open Space Preserve Operations and Management  
Plan–Gerber Creek**

**Exhibit F  
County Drainage Easement**

**Exhibit G  
Conservation Easement**