

File No.: ACQ- 04-01-15
Project: Two Rivers Trail Project (PN: HB66)
Parcel No.: 001-0200-033 and 038
Escrow #: 06-5002503
Title Company: Fidelity National Title Company
Date of Preliminary Title Report: 2/28/06

Grantor: GROVE INVESTMENT COMPANY

Grantee: CITY OF SACRAMENTO, a Municipal Corporation

AGREEMENT FOR ACQUISITION OF RECREATION EASEMENT

WHEREAS, the above-named Grantor(s) (hereafter referred to as the "Grantor") own the real property (hereafter referred to as the "Property") described in the recreation easement deed attached hereto as Exhibit "A" (hereafter referred to as the "Easement Deed"); and

WHEREAS, Grantor desires to convey and the City of Sacramento (hereafter referred to as the "City") desires to acquire an easement in the Property (hereafter referred to as the "Easement") as described in the Easement Deed, for public recreational purposes including the right to construct, reconstruct, maintain, repair and use thereon a public bikeway or trail together with necessary appurtenances for bicycle, pedestrian and associated uses, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, Grantor and City mutually agree as follows:

1. Execution and Delivery of Easement Deed. City shall open an escrow with the title company identified above (hereafter referred to as the "Escrow Holder"). Upon execution of this Agreement by both parties, Grantor shall execute and deliver the Easement Deed to the Escrow Holder.

2. Payment.

A. Purchase Price. Upon execution of this Agreement by both parties, City shall tender payment to the Escrow Holder in the amount of **ONE HUNDRED FOURTEEN THOUSAND SIX HUNDRED SEVENTEEN DOLLARS (\$114,617.00)**, which is specifically agreed by the parties to be the full amount of compensation due and owing to Grantor for conveyance of the Easement to the City.

3. Escrow. Unless extended by the mutual agreement of both parties, the escrow shall close **sixty (60) days** after execution of this Agreement by both parties; provided that if a Resolution or Resolutions of Necessity are required in order to condemn any property required for the above-named Project, the escrow shall not close prior to the adoption of the Resolution(s) of Necessity by the City Council. If a Resolution or Resolutions of Necessity are required and the City Council does not adopt the Resolution(s), this Agreement may, at City's election, be deemed cancelled and of no force and effect, in which event both parties shall be released from any and all liability to each other of any sort or nature relating to this acquisition or the project, and all amounts deposited in escrow by City shall be returned forthwith to City by the Escrow Holder. The close of escrow is further conditioned on the Easement being conveyed to City free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except: (a) easements or rights-of-way for public roads or public utilities, if any; and (b) items specifically identified on Exhibit "B" attached hereto, if any. For deeds of trust or similar security interests, in lieu of removal, Grantor may, if approved by City, obtain from each party holding the security interest, by a recordable written instrument, its consent to the terms hereof, and its agreement that its security interest is and shall be subordinate to the terms hereof, and that it is and shall be bound by the covenants and agreements made by Grantor herein.

Upon the close of escrow, the Escrow Holder shall release payment to Grantor, return any credited amounts to City, and record the Easement Deed in the Recorder's Office for Sacramento County. Title to the Easement shall pass to City immediately upon close of escrow.

This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of the City. Grantor agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

4. Title Insurance. City may obtain a CLTA extended coverage owner's policy of title insurance insuring that clear title to the Easement is vested in City upon recording of the Easement Deed.

5. Fees. The City shall pay all escrow, recording and title insurance fees incurred in this transaction.

6. Possession and Use of the Easement. The City shall have the right of possession and use of the Easement including the right to remove and dispose of improvements and construct the above-named project commencing on the date that this Agreement is executed by both parties; provided that City makes no representation that the project shall be constructed, and no liability or obligation whatsoever shall be incurred by City by reason of any failure to construct the project for any reason. If the Easement subsequently is not acquired by City for any reason, City shall restore the Easement to the condition existing prior to the City's possession or use hereunder, unless otherwise agreed by the parties.

7. Eminent Domain.

A. It is mutually understood that the acquisition of the Easement by City is for a public purpose, and therefore, the Easement is otherwise subject to taking by the power of eminent domain. The acquisition by and through this Agreement is in lieu of City's exercise of the power of eminent domain.

B. If any eminent domain action has been filed by the City for acquisition of the Easement, Grantor hereby agrees and consents to the dismissal of such action. The Grantor waives any and all claims to any money that may have been deposited in the Superior Court or with the State Treasurer in any such action and waives any and all claims for damages or costs, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

8. Amendment. This agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto.

9. Just Compensation. Grantor agrees that performance of this Agreement by City, including the payment recited in section 2, above, shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against City by reason of the acquisition, improvement, possession or occupancy of the Easement, and Grantor hereby waives any and all such claims, including claims for severance or taking compensation or damages on account of the acquisition of the Easement or the location, establishment, construction or operation of the above-named project within the Easement. The foregoing waiver shall include any and all rights or claims that Grantor may have under Article 1, section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation.

10. No Leases. Grantor warrants that there are no leases, except as disclosed on Exhibit "C" attached hereto, on all or any portion of the Property, and the Grantor further agrees to hold the City harmless and reimburse the City for any of its losses and expenses occasioned by reason of any lease of all or any portion of the Property, other than as disclosed on Exhibit "C."

11. Grantor's Representations. Grantor makes the following representations and warranties:

A. Grantor certifies that it owns full legal title to the Property, and has full power and authority to convey all property rights described herein to City.

B. To the best of Grantor's knowledge there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Grantor which could (1) affect Grantor's title to the Property, or any portion thereof, (2) affect the

value of the Easement, or any portion thereof, or (3) subject an owner of the Easement, or any portion thereof, to liability.

C. To the best of Grantor's knowledge there are no uncured notices which have been served upon Grantor from any governmental agency notifying Grantor of any violations of law, ordinance, rule or regulation which would affect the Easement or any portion thereof.

D. Grantor has no knowledge of the production, storage, disposal, presence, observance or release of any Hazardous Substances (as defined below) in, upon, about or below the Property.

E. To the best of Grantor's knowledge, there are no notices or other information giving Grantor reason to believe that any conditions existing on the Property or in the vicinity thereof subject or could subject an owner of the Easement to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use.

F. Grantor has no knowledge of any violation of any such law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement arising out of Grantor's ownership or use of the Property, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Property and relating to environmental compliance.

G. To the best of Grantor's knowledge there is no license, permit, option, right of first refusal or other agreement, written or oral, which affects the Easement or any portion thereof.

H. To the best of Grantor's knowledge conveyance of the property rights described herein will not constitute a breach or default under any agreement to which Grantor is bound and/or to which the Property is subject.

Each of the above warranties and representations is material and is relied upon by City. Each of the above representations shall be deemed to have been made as of the date that the Easement Deed is recorded, and shall survive the recording of the Easement Deed by a period of two years following the date that the Easement Deed is recorded. If, before the recording of the Easement Deed, Grantor discovers any information or facts that would materially change any of these warranties and representations, Grantor shall immediately give notice to City of such facts and information. If any of the foregoing warranties and representations cease to be true before the recording of the Easement Deed, Grantor shall be obligated either to

remedy the problem before the recording of the Easement Deed or deduct from the payments required by Section 2, above, as a credit to City, the amount reasonably required to remedy the problem.

As used in this Agreement, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Property shall be governed by the provisions of section 12 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by City.

12. Indemnification. Each party (hereafter the "Indemnifying Party") agrees and covenants to indemnify, defend (with counsel acceptable to the other party, which consent shall not be unreasonably withheld), and hold the other party, and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside or staff counsel), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property damage, or violation of any law or regulation resulting from any acts or omissions related to the performance of this Agreement or the occupancy or use of the Property (including, but not limited to, the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Property), by the Indemnifying Party, its officers, employees, agents or any other person or entity employed by or acting on their behalf.

The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section 12 shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided. The provisions of this Section 12 shall survive the recording of any deeds hereunder.

13. Attorney Fees. Either party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

14. Notices. Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

To City

Real Estate Services
City of Sacramento
5730 24th Street, Building 4
Sacramento, CA 95822
Attn: Supervising Real Property Agent

To Grantor

Grove Investment Company
3184 Airway Avenue, #J
Costa Mesa, CA 92626
Attention: Ernest Gallardo
(714) 754-1420

15. Recording. Either party may record this Agreement in the Recorder's Office for Sacramento County.

16. Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of the City and Grantor, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both parties, and any attempt to assign this Agreement without such consent shall be void.

17. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

18. Special Provisions. The Special Provisions attached hereto as Exhibit "D," if any, are hereby incorporated and made a part of this Agreement by this reference. In the event of any conflict or inconsistency between this Agreement and the Special Provisions, the terms of the Special Provisions shall prevail.

19. Entire Agreement. The parties have herein set forth the whole of their Agreement. All prior oral discussions, representations, and/or agreements, if any, are specifically superseded by this Agreement, which is intended by the parties to contain all of the terms and conditions agreed to by them with regard to acquisition of the Easement by City.

20. **Authority.** Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

Grantor(s):
Grove Investment Company

By: [Signature]
Print Name: BRUCE E. NOTT
Title: BRUCE E. NOTT, TRUSTEE OF NOTT FAMILY TRUST, W/O/A DATED MAY 22, 1990, GENERAL PARTNER
Dated: _____

By: _____
Print Name: _____

Dated: _____

Grantee:
CITY OF SACRAMENTO,
a Municipal Corporation

By: [Signature]
Marty Hanneman, Assistant City Manager
For: Ray Kerridge, City Manager
October 5, 2006

RECOMMENDED FOR APPROVAL:

By: [Signature]
Supervising Real Property Agent

By: [Signature]
Real Property Agent

APPROVED AS TO FORM:

By: [Signature]
City Attorney

ATTEST:

By: [Signature] 10.10.06
City Clerk

**Note: If Grantor is a corporation, the following two signatures are required: (1) the first signature by either the Chairman of the Board, the President or any Vice President of the corporation; and (2) the second signature by either, the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of the corporation.*

S:\Facilities\Real Estate\Work Group Projects\Blandin\HB66-207720 Two Rivers Trail Project\Parcels\Grove Investment Company\ACQ AGREE - RECREATION EASEMENT.Grove Investment Company 4-20-06.doc

CITY AGREEMENT NO. 2006-1066

CITY AGREEMENT NO. 2006-1066

Exhibit "A"

Recreation Easement Deed

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF
CITY OF SACRAMENTO
NO FEE DOCUMENT
Govt Code 6103

WHEN RECORDED MAIL TO
CITY OF SACRAMENTO
Real Estate Services
5730 24th Street, Building 4
Sacramento, California 95822

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ACQ-04-01-15
RES File

06-5002503-PA
Escrow

001-0200-033 and 038
APN

City Agreement #

RECREATION EASEMENT DEED

Grove Investment Company

hereby grant(s) to the CITY OF SACRAMENTO, a Municipal Corporation, in accordance with terms and conditions of that certain Agreement for Acquisition of Recreation Easement dated _____, an easement for public recreational purposes including the right to construct, reconstruct, maintain, repair and use thereon a Public Bikeway or Trail together with necessary appurtenances for bicycle, pedestrian and associated uses upon, over and across all that real property situated in the City of Sacramento, County of Sacramento, State of California, described as follows:

SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBIT 'A'
AND DIAGRAMED IN THE CORRESPONDING PLAT MAP ATTACHED AS EXHIBIT 'B'

The grantors, for themselves, and their successors and assigns, hereby waive any claim for any and all severance damages to their remaining property contiguous to the right-of way hereby conveyed by reason of the location, construction, or maintenance of said recreation trail. (As used above, the term "grantors" shall include the singular, as well as the plural.)

Grove Investment Company

Dated: _____

By: _____
Print Name: _____
Title: _____

Dated: _____

By: _____
Print Name: _____
Title: _____

***Note:** If Grantor is a corporation, the following two signatures are required: (1) the first signature by either the Chairman of the Board, the President or any Vice President of the corporation; and (2) the second signature by either, the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of the corporation.

"Approved as to form - City Attorney"



EXHIBIT A

Description for Two Rivers Trail Easement

All that certain real property situated in the City of Sacramento, County of Sacramento, State of California, described as follows:

All that portion of those lands designated "Southern Pacific Company" as shown on that certain Record of Survey filed in the office of the Recorder of Sacramento County, California, on October 30, 1968, in Book 26 of Surveys, Map No. 28, described as follows:

Beginning at the most northerly corner of Parcel No. 10, as shown on said Record of Survey, said corner being identical with the most easterly corner of that portion of 5th Street vacated and abandoned by City of Sacramento Ordinance No. 2680, recorded in the Office of said Recorder, in Book 6608-30 of Official Records, at page 563; thence, from said point of beginning, along the southerly line of said lands, along a curve to the left having a radius of 312.72 feet and an arc length of 43.98 feet, subtended by a chord bearing North 72° 17' 03" West, 43.94 feet; thence North 76° 18' 45" West, 36.20 feet; thence South 18° 29' 45" West, 6.92 feet; thence North 84° 29' 55" West, 27.86 feet; thence along a curve to the left having a radius of 842.78 feet and an arc length of 84.66 feet, subtended by a chord bearing North 87° 22' 35" West, 84.62 feet; thence South 89° 44' 45" West, 75.00 feet; thence South 85° 16' 26" West, 64.14 feet; thence along a curve to the left having a radius of 276.84 feet and an arc length of 17.81 feet, subtended by a chord bearing South 79° 53' 05" West, 17.81 feet to the most easterly corner of Parcel "D", as said parcel is shown on that Parcel Map filed in the Office of said Recorder, in Book 18 of Parcel Maps, at Page 35; thence leaving said southerly line, along the easterly line of said Parcel "D", North 12° 07' 11" West, 50.00 feet to the northerly line of said lands; thence, leaving said easterly line, and along said northerly line, North 89° 48' 45" East, 161.31 feet; thence along a curve to the right having a radius of 1009.75 feet and an arc length of 101.43 feet, subtended by a chord bearing South 87° 18' 35" East, 101.39 feet; thence South 84° 25' 25" East, 300.33 feet; thence North 85° 54' 35" East, 172.83 feet; thence South 83° 22' 58" East, 14.19 feet; thence leaving said northerly line, South 18° 29' 45" West, 22.88 feet to a point in the northerly boundary of Parcel No. 13 as shown on said Record of Survey and in the southerly line of said lands; thence, along the northerly boundary of said Parcel No. 13, and the southerly line of said lands, South 18° 29' 45" West, 49.73 feet; thence along a curve to the left having a radius of 1465.01 feet and an arc length of 39.08 feet, subtended by a chord bearing North 83° 47' 39" West, 39.08 feet to a point of reverse curve; thence along a curve to the right having a radius of 583.14 feet and an arc length of 21.20 feet, subtended by a chord bearing North 83° 31' 01" West, 21.20 feet; thence North 82° 28' 31" West, 68.67 feet; thence along a curve to the right having a radius of 481.15 feet and an arc length of 61.19 feet,

subtended by a chord bearing North 78° 49' 56" West, 61.15 feet; thence, leaving said northerly boundary and said southerly line, along a non-tangent line, North 83° 27' 58" West, 173.72 feet; thence South 18° 29' 45" West, 18.66 feet, containing 30,885.033 square feet, more or less.

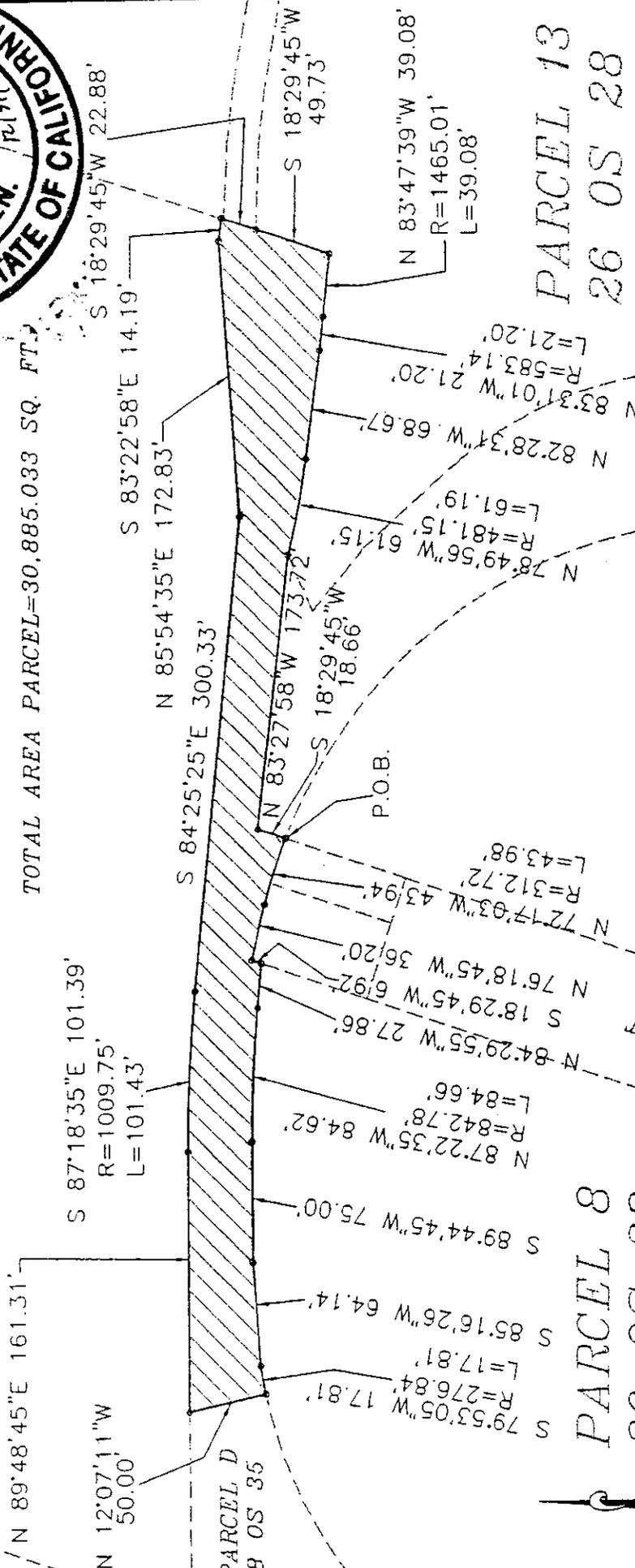
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EXHIBIT B

PARCEL 9
26 OS 28

TOTAL AREA PARCEL=30,885.033 SQ. FT.



PARCEL 10
26 OS 28

PARCEL 8
26 OS 28

PARCEL 13
26 OS 28

NORTH 5TH STREET

PLAT MAP

TWO RIVERS TRAIL
CITY OF SACRAMENTO

APN 001-0200-033

FEB. 2006

SCALE:
1"=100'

EXHIBIT A

Description for Two Rivers Trail Easement

All that certain real property situated in the City of Sacramento, County of Sacramento, State of California, described as follows:

All that portion of 5th Street vacated and abandoned by the City of Sacramento Ordinance No. 2680, recorded in the Office of the Recorder of Sacramento County in Book 6608-30 of Official Records, at Page 563, as shown on that certain Record of Survey filed in the office of said Recorder, on October 30, 1968, in Book 26 of Surveys, Map No. 28, described as follows:

Beginning at the most northerly corner of Parcel 10 as shown on said Record of Survey, said corner being identical with the most easterly corner of that portion of said 5th Street vacated and abandoned; thence from said point of beginning, South 18° 29' 45" West, 82.87 feet; thence North 71° 30' 15" West, 30.00 feet; thence North 18° 29' 45" East, 83.13 feet to a non-tangent curve; thence along a curve to the right with a radius of 312.72 feet and an arc length of 30.00 feet, subtended by a chord bearing South 71° 00' 17" East, 30.00 feet, containing 2,497.201 square feet, more or less.



EXHIBIT B



PARCEL 9
26 OS 28

S 71°00'17"E 30.00'
R=312.72'
L=30.00'

TOTAL AREA=2,497.201 SQ. FT.

P.O.B.

N 18°29'45"E 83.13'

S 18°29'45"W 82.87'

N 71°30'15"W
30.00'

PARCEL 8
26 OS 28

PARCEL 10
26 OS 28

NORTH 5TH STREET

SCALE:
1"=50'

PLAT MAP
TWO RIVERS TRAIL
CITY OF SACRAMENTO

FEB. 2006

CITY
AGREEMENT NO. 2006-1066

Exhibit "B"

Title exceptions that will not be removed:
Items 1 thru 15
as shown in Fidelity National Title Insurance Company
preliminary title report # 06-5002503, dated 02/28/06

Exhibit "C"

Leases, if any

NONE

Exhibit "D"

Special Provisions, if any

NONE

RESOLUTION NO. 2006-713

Adopted by the Sacramento City Council

October 3, 2006

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR ACQUISITION OF RECREATION EASEMENT WITH GROVE INVESTMENT COMPANY FOR THE TWO RIVERS TRAIL PROJECT

BACKGROUND

- A. An Agreement for Acquisition of Recreation Easement has been negotiated with Grove Investment Company to acquire a recreation easement on real property located at North 5th Street, further identified as APNs: 001-0200-033 and 038, and shown in Exhibit A.
- B. The recreation easement is necessary for the completion of the Two Rivers Trail Project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to execute an Agreement for Acquisition of Recreation Easement with Grove Investment Company.

Section 2. The City Manager is hereby authorized to execute such additional documents and to take such additional actions as necessary to implement the agreement.

Table of Contents:

Exhibit A – Map of parcels

Adopted by the City of Sacramento City Council on October 3, 2006 by the following vote:

Ayes: Councilmembers, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

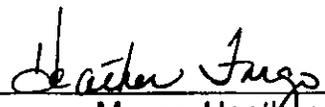
Abstain: None.

Absent: Councilmember Cohn.

Attest



Shirley Lucoleno



Mayor, Heather Fargo

Exhibit A

