

**AGREEMENT BETWEEN
THE CITY OF SACRAMENTO AND
THE RECLAMATION DISTRICT 1000
FOR THE OPERATION AND MAINTENANCE OF THE UEDA PARKWAY TRAIL**

THIS AGREEMENT is made and entered into this ____ day of May, 2006 by and between the Reclamation District 1000 (RD1000) and the City of Sacramento ("City").

RECITALS

WHEREAS, the City is planning and designing a paved recreational trail called the Ueda Parkway Trail ("Trail") on top of the west levee of Steelhead Creek, managed and maintained by RD1000. (City Resolution # _____)

WHEREAS, the primary purpose of the levee system is to provide flood protection to the Sacramento area.

WHEREAS, RD1000 fully supports and encourages the use of its flood control properties by members of the public for authorized recreational purposes, as long as those activities do not interfere with RD1000's ability to operate and maintain the levees to the highest standard.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, RD1000 and the City agree as follows:

AGREEMENT

1. Easements/permits:

RD1000 has consented to joint use by City of easements/permits for recreational trail use previously granted by RD1000 to the County of Sacramento.

2. Levee Standards:

The Trail and all related improvements at a minimum shall satisfy the planning, location, design, construction, access, signage, and other applicable standards established by the California Reclamation Board. However, RD1000 reserves the right to impose such additional requirements as it believes are reasonably necessary to adequately protect: (i) RD1000 levees and other facilities, (ii) public and private property that is protected from flooding by RD1000 levees and other facilities, and (iii) the health and safety of individuals who use the levee (including, without limitation, members of the public and employees of RD1000).

3. Maintenance:

The City or a representative of the City will operate and maintain the Trail. The City will be responsible for all aspects of operating and maintaining the Trail, including but not limited to public safety, litter control, graffiti control, signage, access control, security, compliance enforcement, repair, rehabilitation, replacement, and removal of Trail facilities and a plan and budget for financing and accomplishing the operation and maintenance.

The City shall obtain written permission from RD1000 for all activities involving the construction, operation, maintenance, repair, rehabilitation and removal of the Trail other than routine maintenance. Routine maintenance does not include any excavation of a levee or other flood control facility.

The City shall bear all costs associated with the planning, design, construction, operation, maintenance, repair, rehabilitation, and removal of the Trail, including, but not limited to, any repairs required as a result of actions by RD1000 or others to perform its operation and maintenance obligations including responding to a flood emergency. Should the City not fulfill its obligations with respect to operation and maintenance of the Trail, RD1000 shall promptly notify the City in writing of such failure. The City shall have thirty (30) days from the receipt of such notice either to cure such failure or to submit an acceptable plan to RD1000 to cure such failure. If, within thirty (30) days after receipt of RD1000's notice, the City does not either cure such failure or submit a plan acceptable to the RD1000 to cure such failure, RD1000, at the sole expense of the City, may perform the City's obligations with respect to operation and maintenance of the Trail. Alternatively, RD1000 may close the trail to the public recreational use until the City takes corrective action satisfactory to RD1000. Notwithstanding the foregoing, in the event of an emergency caused by the City's failure to fulfill its obligations with regard to operating and maintaining the Trail, which RD1000 reasonably believes jeopardizes the safety or security of: (i) RD1000's levees and other facilities, (ii) public and private property that is protected from flooding by RD1000's levees and other facilities, and (iii) the health and safety of individuals who use the levee (including, without limitation, members of the public and employees of the RD1000), RD1000, after providing notice to the City and at the City's sole expense, may perform those obligations immediately. In any of these circumstances, the RD1000 may begin proceedings with the State Reclamation Board to revoke the recreation trails permit.

4. Indemnification and Legal Expenses:

To the fullest extent permitted by law, the City shall indemnify, hold harmless and pay counsel mutually selected by RD1000 and the City (including, but not limited to, the City Attorney's Office) for all reasonable fees and costs associated with the defense of RD1000, its Board members, officers, employees, agents, and authorized volunteers, and each of them from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses, or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person, including but not limited to any Board members, officers, employees, agents, or authorized volunteers of RD1000 or the City and damages to or destruction of property of any person, including but not limited to, RD1000 and/or the City and their Board members, officers, employees, agents, or authorized volunteers, arising out of or in any manner directly or indirectly connected with this permit/easement, however caused, regardless of any negligence of RD1000 or its Board members, officers, employees, agents, or authorized volunteers, except the sole negligence or willful misconduct of RD1000 or its Board members, officers, employees, agents, or authorized volunteers.
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or in account of the violation of any governmental law or regulation, compliance with which is the responsibility of the City.
- c. Any and all losses, expenses, damages (including damages to the work itself), attorney's fees, expert's fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of the City to faithfully perform all of its obligations under the permit/easement. Such costs, expenses, and damages shall include all costs, including attorney's fees and expert's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

The City shall pay and satisfy any judgment, award, or decree that may be rendered against RD1000 or its Board members, officers, employees, agents, or authorized volunteers, in any suit, action or other legal proceeding.

The City shall reimburse RD1000 and its Board members, officers, employees, agents, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

5. Insurance:

The City hereby represents and warrants that it is self-insured and that it has or will acquire sufficient resources to fully and faithfully carry out its obligations under this Agreement.

The City shall cause any contractors or subcontractors that perform work that is the responsibility of the City under the terms of this Agreement to name RD1000, its Board members, officers, employees, agents, or authorized volunteers, as additional insureds by endorsement on any insurance policy(ies) required by the City's contracts with those contractors or subcontractors. The City shall provide RD1000

with a copy of such endorsement prior to allowing the City's contractor or subcontractor to commence work that is the City's responsibility under the terms of this Agreement.

By signature hereon, the City certifies that the City is aware of the provisions of Section 3700 of the California Government Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and the City will comply with such provisions in connection with any work performed on the subject Trail.

Any persons providing services with or on behalf of the City shall be covered by workers' compensation (or qualified self-insurance).

The City shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their officers, employees, agents, and authorized volunteers working on or about the subject Trail, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.

6. Flood Control Activities:

RD1000's use of its properties for flood control purposes, including, but not limited to, the maintenance, repair, construction, and reconstruction of levees, will have priority over the use of those properties as a recreational trail. RD1000 will endeavor to avoid interfering with the use of its properties, or any portion thereof, as a recreational trail in conducting its operations whenever feasible; however, RD1000 shall not be under any obligation to avoid such interference. RD1000 reserves the right to close the Trail and to prohibit recreational uses of its properties, or any portion thereof, during flood emergencies, during flood fights, and during routine maintenance, repair, construction, or reconstruction of levees. Whenever possible, RD1000 will endeavor to give advance notice of such closings; however, it shall be under no obligation to do so. Trail closures may be of short duration during maintenance activities but may also be for extended periods for major repairs or capital improvement projects. The City shall be responsible for developing a trail detour plan, including appropriate signage, to allow temporary closure of the trail for flood control purposes, all to the satisfaction of the District.

7. Third Party Use:

RD1000 reserves the right to grant to third parties the right to use all or any portion of its properties, so long as any such right granted to a third party does not unreasonably interfere with the exercise of the rights conveyed/issued to the City. It shall be presumed, as a presumption affecting the burden of proof that any rights granted to any third party by RD1000 within all or any portion of RD1000's properties will not unreasonably interfere with the exercise of the rights conveyed/issued to the City.

The City may not convey the right to use all or any portion of RD1000's properties for recreational purposes, or for any other purpose, to any third party without the prior written consent of RD1000, which consent shall not be unreasonably withheld or delayed. Any such conveyance shall be subject to the terms and conditions of the original easement/permit, subject to any and all terms and conditions additionally imposed by RD1000, and subject to RD1000's encroachment control procedures (i.e. permit will be required to be issued by RD1000 to the third party). RD1000 reserves full discretion to condition such permit as its Board of Trustees deems appropriate.

8. Surrender of Joint Use:

The City may surrender its right to joint use of the easement/permit at any time by (1) providing written notice of its intent to surrender it to RD1000 and to the County of Sacramento at least one hundred twenty (120) days prior to the proposed date of actual surrender, and (2) not less than one hundred twenty (120) days after giving such notice, preparing a document surrendering to RD1000 all rights to joint use of the original easements in a form acceptable to RD 1000.

9. Conditions of Easement:

As a condition of the continued existence of City's rights to joint use of the easement/permit, the City agrees that (1) if construction of the Trail is not commenced within twelve (12) months and completed within sixty (60) months of the date hereof, or (2) if the City fails to maintain the Trail in the manner contemplated in this Agreement or carry out any duties or responsibilities required as a condition of the easement/permit for a period of twelve (12) consecutive months after it has been completed, or (3) if the City ceases making the Trail available to the public for the recreational purposes for which the entitlement has been granted, the City shall be conclusively presumed to have surrendered its rights to joint use of the easement/permit. Following such surrender, upon written request by RD1000, the City shall execute and record a good and sufficient quitclaim deed terminating all of its interest therein. If the City fails to provide such a quitclaim deed within thirty (30) days after requested, RD1000 may prepare for the City's execution such quitclaim deed. All costs of preparing and recording the quitclaim deed to be borne by the City.

10. Conditions of Surrender or Withdrawal:

As a condition of any voluntary or involuntary surrender or withdrawal of this agreement, the City must remove the Trail and all associated facilities from RD1000 properties, at the sole cost and expense of the City, within one hundred eighty (180) days of receipt/delivery of notice of surrender/withdrawal; except those parts/facilities, if any, that RD1000 may request to be left in place. RD1000 shall notify the City which portions, if any, of the Trail must be left in place within ninety (90) days of receipt/delivery of notices of surrender/withdrawal of this agreement. If the City has not removed the Trail and restored RD1000's properties to the condition that existed before construction of the Trail within the required time period, or made other arrangements satisfactory to RD1000 for such removal and restoration, the City agrees that RD1000 may carry out the removal and restoration and the City shall be liable for all costs thereof.

11. Easement Use:

Should RD1000 ever determine that a particular use of the easement/permit unduly stresses the flood control facilities or unreasonably increases RD1000's costs of maintaining its levees or other facilities, RD1000 reserves the right to prohibit such particular use of the easement/permit.

12. Trail Operation and Maintenance:

The City shall operate and maintain the Trail so as to avoid injury or damage to any person or property.

In operating and maintaining the Trail, the City shall, at all times, exercise all necessary precautions for the safety and environment protection of RD1000's property, and be in compliance with all federal, state and local statutory and regulatory requirements including, but not limited to, State of California, Division of Industrial Relations (Cal/OSHA) regulations, Cal/EPA, and the US Department of Transportation, including the Omnibus Transportation Employee Testing Act (as applicable).

The City shall not use or allow anyone else to use the Trail or RD1000's property to generate, manufacture, refine, transport treat, store, handle, recycle, release, or dispose of any hazardous material, other than as reasonably necessary for the operation of the City's activities as contemplated under the permit/easement. The term "hazardous material" means any hazardous substance, material, or waste, including but not limited to those listed in 49 CFR 172.101 (US Department of Transportation), the Cal/EPA Chemical Lists, or lists of petroleum products and their derivatives. However, this shall not apply to the use of petroleum products and related substances incidental to operation of motorized equipment and vehicles whose operation are necessary to the construction, operation, and maintenance of the Trail or RD1000's flood control facilities.

The City shall immediately notify the RD1000 in writing upon becoming aware of any release of hazardous material, violation of any environmental law, or actions brought by third parties against the City alleging environmental damage.

13. Compliance with Law:

The City shall give all notices required by law and shall comply with all laws, ordinances, rules, and regulations pertaining to the activities authorized by this agreement. The City shall be liable for all violations of the law in connection with this easement/permit.

14. Waivers:

No waiver of any violation or breach of the covenants or conditions of this agreement shall be considered to be a waiver or breach of any other violation or breach of the covenants and conditions of this agreement.

15. Succession:

This agreement shall be binding on and inure to the benefit of the successors of RD1000 and of the City. Consistent with other terms and conditions of this conveyance/approval, the City may not assign its interest in, or obligations under, this agreement without the written consent of RD1000, which consent shall not be unreasonably withheld or delayed.

16. Provisions:

If, after the date of execution of this agreement, any of its provisions are held to be illegal, invalid, or unenforceable under present or future law, such provisions shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

17. Notices:

All notices, requests, or other communications ("notices") required under this agreement shall be in writing and shall be deemed to have been duly given and received on (i) the date of service if served personally or served by facsimile transmission on the party to whom notice is to be given at the address(es) provided below, or (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

To: District Engineer
RD1000
1633 Garden HWY
Sacramento, CA 95833
Telephone: (916) 922-1449
Facsimile: (916) 922-2129

With a copy to:

James M. Day Jr.
Downey Brand
555 Capitol Mall – 10th Floor
Sacramento, CA 95814
Telephone: (916) 444-1000
Facsimile: (916) 444-2100

City:

Director of Parks & Recreation
City of Sacramento
915 I Street – 5th Floor
Sacramento, CA 95814
Telephone: (916) 808-5200
Facsimile: (916) 808-7643

Any party may change such address for notification purposes by sending written notice thereof to the other parties consistent with the terms of this paragraph.

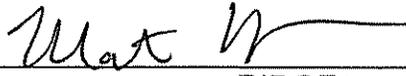
[Signatures to commence on the following page]

RECLAMATION DISTRICT 1000

CITY OF SACRAMENTO

By _____
PAUL T. DEVEREUX
District Engineer

By  _____
ROBERT G. OVERSTREET II
Director of Parks and Recreation

By  _____
Marty Hanneman, Assistant City Manager
For: Ray Kerridge, City Manager

APPROVED AS TO FORM:

By _____
JAMES M. DAY JR.
RD1000 Counsel

By  _____
JERRY HICKS
Deputy City Attorney

Distribution:
Auditor-Controller
Consultant
Consultant File

By _____
SHIRLEY CONCOLINO
City Clerk