

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“Memorandum”) dated as of the \_\_\_\_ day of April, 2021 is between the City of Citrus Heights, a municipal corporation (“City”) and the Sunrise Recreation and Park District, a park district existing under the authority of Public Resources Code Section 5780 et seq., (“SRPD”). The City and SRPD are referred to herein individually as a “Party” and collectively as the “Parties”.

### RECITALS

A. As a part of the City project known as the Arcade Cripple Creek Trail, City desires to construct a portion of the trail on property owned by SRPD, commonly known as Tempo Park, consisting generally of approximately 1,900 Linear Feet of multi-use trail ranging in width between 12 and 14 feet, including 10’ asphalt and 4’ of decomposed granite shoulders.

B. As one source of funds for the Arcade Cripple Creek Trail, the City will use their allocation of grant funds from the California Per Capita Grant Program.

C. The purpose of this Memorandum is to provide the basic understanding between the Parties with respect to the construction of a pedestrian and bicycle trail by the City through the Tempo Park property owned by SRPD and the granting of land tenure to the City for a period of not less than 30 years.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises herein contained, the Parties hereto agree as follows:

#### **I. Term; Termination:**

A. Term: This Memorandum shall be effective as of the date the last of the Parties has executed the same. (“Effective Date”). This Memorandum shall remain in full force and effect for 30 years subsequent to the Effective Date, at which point City shall have the option to renew this Memorandum for an additional ten (10) year term, which shall expire on the date that is forty (40) years from the Effective Date. The option to extend the Term will be effective upon notice from the City to SRPD no later than 180 days prior to the expiration of the Term and with the written consent of SRPD.

B. Termination: In addition to any other remedies or rights it may have by law, the Parties have the right to immediately terminate this Memorandum without penalty for cause unless otherwise specified. Cause shall be defined as any material breach of any provision of this Memorandum by either Party, or any misrepresentation or fraud on the part of either Party.

## **II. PROPERTY RIGHTS GRANTED TO CITY**

During the term of this Memorandum SRPD grants to City permission to enter the park and construct a trail, and to the Public for trail access and use upon completion of the trail improvements, through that certain SRPD owned real property in the City of Citrus Heights, County of Sacramento, State of California, as more particularly described and depicted in Exhibit "A", comprised of Sheets L5, L6 and L7, attached hereto and incorporated herein by this reference (the "Trail Area")

## **III. CITY'S RESPONSIBILITIES:**

A. The City will construct the trail project in the Trail Area as shown in the approved project plans at no cost to SRPD.

B. City will coordinate with SRPD to ensure minimum disruption to the park and any scheduled park activities.

## **IV. SRPD'S RESPONSIBILITIES:**

A. SRPD will coordinate with City to ensure the City construction of the trail project is accomplished in an efficient and safe manner.

B. After construction of the trail project, SRPD will take responsibility for maintenance of the Trail Area through SRPD property for the Term of this Memorandum, which responsibilities will be more specifically set forth in a Maintenance Agreement between City and SRPD.

## **V. DISPUTES, DEFAULTS, AND REMEDIES**

A. General Disputes. Should the Parties be unable to reach a mutual agreement as to any matter necessary to effectively administer and operate the subject matter of this Memorandum, as an alternative to terminating this Memorandum or pursuing an alternative remedy, the Parties may mutually agree to refer the dispute to a neutral arbitrator for resolution, in which case the arbitrator's determination shall be binding unless and until this Memorandum is otherwise amended by the Parties.

B. Defaults.

1. Notice and Time to Cure. The failure by any Party to perform any of its obligations set forth in this Memorandum shall constitute a default. Except as required to protect against further damages, the non-defaulting Parties may not institute legal proceedings against the Party in default until the non-defaulting Parties have provided the defaulting Party notice of the default and the cure period has expired: The cure period for any default shall be thirty (30) days after the defaulting Party's receipt of written notice from the non-defaulting Parties that such obligation was not performed. In the case of a default which cannot be cured within the cure periods set forth in this section, the defaulting Party shall commence efforts to cure within such time periods, and shall

diligently thereafter pursue to cure the default to completion within a reasonable period of time.

2. Cooperative Resolution. During the cure period set forth in paragraph 1, and prior to pursuing any remedies described in this Section, the Parties will attempt, in good faith, to find a mutually agreeable resolution through communicating with each other and attempting to resolve any substantive problems arising under this Memorandum, including challenges arising from funding difficulties, and/or any difficulty with effectively implementing the responsibilities detailed in this Memorandum. Communication and attempts to resolve such problems and difficulties prior to pursuing remedies under this Memorandum include, but are not limited to, meeting together, amending this Memorandum, and/or seeking the assistance of a jointly agreed upon mediator.
3. Remedies. Upon the occurrence of any default, and following written notice and expiration of the time to cure, the non-defaulting Parties may, at their option: declare this Memorandum null and void with respect to the defaulting Party, in which case the defaulting party shall not be entitled to the benefits and privileges of this Memorandum; or pursue damages or specific performance or other legal and equitable remedies the injured Party may have against the non-defaulting Party in accordance with applicable law. Nothing herein shall be construed as the non-defaulting Party's exclusive remedy for the remediation of default by a Party, and the non-defaulting Party reserves the right to pursue any and all available rights and remedies at law or in equity.

## **VI. MISCELLANEOUS**

A. SRPD shall have no right to assign this Memorandum without the express written approval of the City. This Memorandum shall be binding upon and inure to the benefit of the Parties and their permitted successors, assigns and legal representatives.

B. This Memorandum (including for the purpose of clarity, the recitals, to this Memorandum) contain the entire agreement between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein.

C. No alteration or variation of the terms of this Memorandum shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on any of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

D. Notices or other communications, which may be required or provided under the terms of this Memorandum, shall be given as follows:

**City of Citrus Heights**  
Attention: City Manager  
6360 Fountain Square Drive  
Citrus Heights, CA 95621

Fax: (916) 725-5779  
Phone: (916) 725-2448  
Email: [cboyd@citrusheights.net](mailto:cboyd@citrusheights.net)

**Sunrise Recreation and Park District**

7801 Auburn Blvd.  
Citrus Heights, CA 95610  
Attention: District Administrator  
Telephone: (916) 725-1585

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, the Parties may also provide notices by facsimile or electronic transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business, on the following business day.

E. In any action or proceeding to enforce or interpret any provision of this Memorandum, or where any provision hereof is validly asserted as a defense, the Parties shall bear their own attorney's fees, costs and expenses.

F. Parties as Independent Contractors. Each Party is, and at all times shall be deemed to be, an independent contractor of the other Parties. Nothing herein is intended or shall be construed as creating the relationship of employer and employee, or principal and agent, between any Party, or any Party's agents or employees. Each Party shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of the Program pursuant to this Memorandum. Each Party, and its agents and employees, shall not be considered to be employees of any other Party.

G. Each Party warrants, represents, and covenants that the execution, delivery and performance of this Memorandum have been duly authorized by all necessary action of such Party's governing board, and the person executing this Memorandum on behalf of such Party has been duly authorized and empowered to do so on behalf of such Party.

H. The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Memorandum.

I. Any Party shall be excused from performing its obligations under this Memorandum during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to any incidence of fire or flood; acts of God; pandemic; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material wrongful act or omission by the other Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

J. Each Party agrees that the insurance held by the other, whether commercial or self-insurance, is sufficient for the purpose of this Memorandum. The Cities acknowledge and agree that in its performance under this Memorandum, and construction of the trail project, it shall require all of its contractors and subcontractors to carry adequate insurance as specified in any and all applicable local, state and federal laws, and regulations depending the source of the Funds.

K. Interpretation. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Agreement by the other Parties, or by any person representing the other Parties, or both. Accordingly, any rule or law (including Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

L. Severability. If any section, subsection, paragraph, term, or provision of this Memorandum, or the application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, such section, subsection, paragraph, term, or provision, to the extent the same is valid and enforceable, and all other remaining provisions hereof, shall remain in full force and effect, to the fullest extent possible, and shall in no way be affected, impaired or invalidated thereby to the extent such are not rendered impractical to perform taking into consideration the purposes of this Memorandum.

M. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute the same agreement.

N. Authority and Signatures: The individuals signing this Memorandum, and its exhibits, which are incorporated herein by reference, have the authority to commit the Party they represent to the terms of this Memorandum, and do so commit by signing.

CITY OF CITRUS HEIGHTS, CALIFORNIA

By: \_\_\_\_\_  
Christopher W. Boyd, City Manager

Approved as to Form:

By: \_\_\_\_\_  
Ryan R. Jones, City Attorney

Sunrise Recreation and Park District

By: \_\_\_\_\_  
David Mitchell, District Administrator

**EXHIBIT A TO MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF CITRUS HEIGHTS AND  
THE SUNRISE RECREATION AND PARK DISTRICT**

**DESCRIPTION AND DEPICTION OF TRAIL AREA**