# Development of Trails along Canals, Flood Channels, and other Waterways

## Opportunities, Challenges, and Strategies

Prepared by Darrow Vanderburgh-Wertz
Rails-to-Trails Conservancy
July 2011

Shared-use pathways along the banks of irrigation canals, flood channels, and other waterways can serve important recreational and transportation functions. The easy grade, scenic interest, and minimal road crossings make shared-use paths along waterways highly attractive as trails for recreation, transportation, and a healthy, active lifestyle, particularly in urbanized areas.

Community members participate in a trail walk along the Rio Hondo bicycle path in Los Angeles County.

The linear, unbroken character of waterways provide opportunities for shared-use paths of significant length and importance. The 110-mile-long trail located on top of Herbert Hoover Dike surrounding Lake Okeechobee in Florida is a prime example of a levee trail. The Chesapeake and Ohio Canal Trail follows an old canal path along the Potomac River for 184.5 miles and is a fabulous recreational resource for the region. In the more urban environment of Santa Fe, New Mexico, the Arroyo de los Chamisos Trail, which runs along a cement-lined arroyo (wash), provides an important and direct pedestrian and bicyclist connection from densely populated residential neighborhoods into major commercial districts, schools, hospitals and other trails such as the Santa Fe Rail Trail. The Rio Hondo bicycle path in eastern Los Angeles County follows the Rio Hondo, a tributary of the Los Angeles River, and connects residents to schools, community centers, businesses, and regional trails on the San Gabriel and Los Angeles rivers.

There are also some common concerns that arise from cities, trail users, adjacent homeowners, and water districts, such as water security, public safety and maintenance costs. This paper discusses, in brief, the following preliminary considerations as well as strategies to address common concerns that arise in the process of developing a trail along a waterway:

1. Who owns the land?
2. Developing an Agreement
3. Owner Use
4. Liability
5. Maintenance, Public Safety, and Other Considerations

**1. Who Owns the Land?**

The question of who has the right to provide access for the recreational and transportation use of the waterway corridor needs to be determined at the outset. For use to occur, the underlying landowner needs to provide permission. Ownership and legal standing of irrigation canals and flood channels is varied. Waterways are owned by cities, counties, water districts, companies, or private landowners If a city owns a waterway, it is often only a small portion of the total distance. Canal rights-of-way can also be privately owned by canal companies, sometimes in partnership with public entities. Flood channels and other human-made waterways are often owned by water districts. Securing access is further complicated when the land up to the waterway is owned in fee title by multiple adjacent landowners. In these cases, canal companies usually possess a form of easement through each of the individual properties.

Generally, in the cases studied for this report (see Referenced Shared-use Pathways list at end of report), the land was owned by a public entity (water and/or irrigation district, public works, etc.), but was often surrounded by private property. For the most part, agencies negotiated an easement for trail use, as opposed to acquiring land outright. In cases where a private company owned the canal or levee, the

process was usually similar and some type of “right of use” agreement was made between the owner and the trail developer.

## 2. Developing an Agreement

For cities seeking to improve and expand the recreational and transportation options for their residents, trails along existing waterways have many advantages. In a number of cases, the water districts already have service roads that can easily be adapted into trails. In urban areas, waterways are often among the few continuous grade-separated rights-of-way, providing ideal locations for trails. These reasons, together with the many health and community benefits of any trail, prompt cities to seek agreements with the public entities that own the land; however, these owners often have concerns that need to be addressed.

The main concerns of the public entities that own waterway land are: the ability to perform their function uninhibited, liability, maintenance, and public safety. The following sections will address the key elements of an agreement between a public entity (such as a water district) and a municipality or other trail-developing agency seeking to provide recreational access along the waterway.

In all the examples in the following sections, the landowning water agency and the trail-managing entity developed a formal written agreement. However there are cases of water agencies that do not always require formal “right of use” agreements to open up land for public use; one such example is the Sonoma County Water Agency.

Along with providing water to the residents of the county of Sonoma, one of the primary missions of the Sonoma County Water Agency is flood control. In the 1950s, 60s, and 70s the agency constructed a number of flood control reservoirs and many miles of flood channels with dirt and gravel access roads along them. In recent decades, the Agency has been opening the access roads along these channels for public access and recreation. According to the Water Agency Stream Maintenance Program Coordinator, the Agency began opening the access roads because of public demand. The only prerequisite is that a city or another entity, such as the Sonoma County Regional Parks, agree to police the trail. If the improvements needed are modest – such as opening a gate or putting in a bollard – the Water Agency does not require a formal agreement to open the access road to the public. In these cases, the Water Agency continues to be responsible for the liability of activity along the flood channel. They also continue to maintain the access road as they would have otherwise. When the requesting city or agency wants to do more, such as pave the road like the Sonoma County Regional Parks has done with three access roads under their jurisdiction, a formal written agreement is required, similar to the ones discussed below. The paving entity then becomes responsible for liability and maintenance of the paved trail while the Water Agency is no longer responsible for any damage to the pavement that they create in the course of maintaining the flood channel.

## 3. Owner Use

The land-owning water agency may be concerned about a trail impacting its ability to perform its functions. Agreements between water agencies and trail-developing entities specifically state that the water agency may do whatever it needs to continue operate and maintain the water supply.

The Contra Costa Canal Trail was created through a cooperative effort among the Contra Costa Water District, the Bureau of Reclamation, and the East Bay Regional Park District (EBRPD). The EBRPD was granted rights to construct, operate, and maintain a trail on the Contra Costa Canal System so long as it did not interfere with the Water District’s ability to use the land to transport and distribute public water and electrical power. Under this condition, the Water District is allowed to limit the construction and/or use of

the trail when it deems necessary for maintenance of the Contra Costa Canal System and is not liable for any damages that may occur to the trail during such maintenance.

Though unimpeded use by the owner is an important aspect of reaching an agreement with water districts, it can limit trail developers' willingness to spend limited resources on trails that may then be damaged by the water district. For example, in San Jose, the Santa Clara Valley Water District has warned trail managers that trail development in certain areas may only be temporary because of flood control projects planned by the Army Corps of Engineers. Specifically, the San Jose trail development program left one portion of a trail unpaved and used only packed dirt because they did not want to waste funds on a paved trail that may be inundated or demolished by future flood control projects.

**4. Liability**

One of the largest concerns for land owners is liability. If they are not in the business of providing recreation or transportation facilities, they often do not want to be responsible for any of the costs or risks associated with trail activity on their property. In all the cases studied here, except Sonoma County, as discussed above, the entity seeking to build the trail assumed full liability for any risks, costs, or damages associated with trail use.

City and Water District Liability

There are benefits to water districts to providing trail access, in that their liability is often reduced. In Santa Maria, the County of Santa Barbara Department of Public Works' Flood Control District transferred to the City one-hundred percent of the liability for the Santa Maria Levee Trail, a multi-use trail along a flood control levee, and the Flood Control District is allowed to use the trails for their own maintenance purposes. If signage or other structures related to the trail are damaged, the City is responsible for clean-up and replacement. In addition, the City must provide a patrol service to protect the safety of users and prevent unauthorized use of the trail, as well as provide signage and fencing where necessary.

Santa Maria Levee Trail in Santa Maria, California. Photo credit: City of Santa Maria.

The City of San Jose executed a Collaborative Action Plan and associated Joint Trail Agreement with the Santa Clara Valley Water District, which streamlined the process of development of public trails on their lands, while also clearly defining the roles, responsibilities, and risks. According to the trail manager for the City, "the District's primary concern was that they not be held liable for public injury." The plan makes clear that San Jose assumes the responsibility for all liability associated with the trails.

Private Landowners' Liability

Many states have Recreational Use Statutes to provide some protection against liability to private landowners. Recreational Use Statutes generally provide that a landowner does not owe, to one

using his or her property for recreational purposes and without charge, either a duty of care to keep the property safe, or a duty to give any warning of a danger on their property.[1]

In California, the Recreational Use Statute and the California Recreational Trails Act provide private land owners broad immunity from liability arising from injuries or property damage suffered on their land or adjacent land when the injured party was partaking in recreational activities. As stated in the California Recreational Use Statute[2]:

> An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

Further:

> Nothing in this section creates a duty of care or ground of liability for injury to person or property.

The California Recreational Trails Act[3] further protects landowners adjacent to trails:

> No adjoining property owner is liable for any actions of any type resulting from, or caused by, trail users trespassing on adjoining property, and no adjoining property owner is liable for any actions of any type started on, or taking place within, the boundaries of the trail arising out of the activities of other parties.

## 5. Maintenance, Public Safety, and Other Considerations

Maintenance

In most agreements reviewed here, the trail developer is responsible for maintaining the trail, including cleaning and any repairs. In many agreements, similar to the Contra Costa Canal Trail and the Santa Maria Levee Trail mentioned above, the city also covers any costs of repair associated with damages caused by the water district/land owner.

Estimates of maintenance costs range from minimal to close to $9,000 per mile per year. One way to share maintenance cost with trail-users is to develop an "Adopt-a-Trail" program, such as San Jose has done. For more information, please visit http://www.sjadoptapark.org/.

Public Safety

While studies in the U.S. have shown that trails typically are safer and have less security issues than the surrounding community in general,[4] it is important and should be the intent of any developer to provide adequate security and public safety on trails. Most multi-use trails in the U.S. don't have a dedicated police patrol of the facility. It is more common for local police to patrol sections of the trail not visible from adjacent streets on an intermittent basis. The basic practices of posting hours of access and other safety signage, encouraging self-monitoring, and educating police and fire departments about the trails can go a long way in ensuring safety on the trail.

In San Jose, the trails do not have a dedicated security force, but they do have Park Rangers assigned to patrol trails if they are linked to a park. They also reserve $2,000 per mile of new trail for security so that when they complete their 100 miles of trail in 2022 as planned, they can hire four full-time park rangers. In the meantime, San Jose has a number of innovative programs. They are starting a "Trail Watch"

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[1] Robertson, Johnson D. "What are Recreational Use Statutes?" Posted to American Whitewater website December 13, 2000. Available online at http://www.americanwhitewater.org/archive/article/124/.

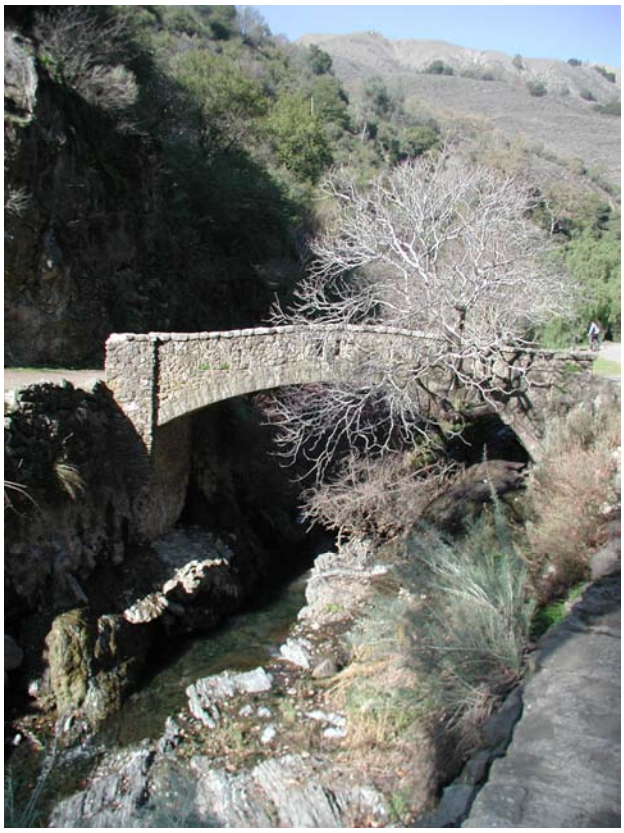
[2] California Recreational Use Statute (California Civil Code Section 846). Available online at http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=00084625028+0+0+0&WAISaction=retrieve.

[3] California Recreational Trails Act (California Public Resource Code 5075.4). Available online at http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=99904610904+0+0+0&WAISaction=retrieve.

[4] Rails-to-Trails Conservancy, *Rail-Trails and Safe Communities: The Experience of 372 Trails* (January 1998). Available online at http://www.railstotrails.org/resources/documents/resource_docs/tgc_safecomm.pdf.

program to encourage the public to monitor the trails for safety. In addition, they are in the process of deploying a mileage marker system that is linked to their 911 center with a detailed data set, so that trail-users can call in with the mileage marker number and the dispatchers know quickly how best to deploy responders.

East Bay Regional Parks District (EBRPD) also has a program that engages trail users in patrolling their over 1,200 miles of trails, among them the Contra Costa Canal Trail mentioned above. Members of the EBRPD's Volunteer Trail Safety Patrol program, "frequent and enthusiastic visitors to regional parklands,"[5] help keep the trails safe by educating users, reporting safety issues, incidents, and emergencies, and fostering positive relations among user groups. With the Mounted (on horse) Volunteer Patrol founded in 1975, the program now has five volunteer patrol groups that patrol on horse, bicycle, by foot, by boat, or accompanied by a dog. Volunteers are trained, dedicate at least 6-8 hours per month (though some volunteers log upward of 120 hours per month!) to patrolling their favorite trails at their convenience, and participate in monthly meetings and on-going trainings. The Volunteer Trail Safety Patrol program, under the auspices of EBRPD's police force, has 195 participants, with the hiking patrol maxed out with a waiting list at 85 volunteers. With over 110,000 acres of parkland and budget cuts, EBRPD's police force is short staffed and relies on these additional 195 sets of eyes and ears to report issues or incidents on the trails. Though the volunteers only perform the functions of observing, educating, and reporting, trail users report feeling safer just for seeing the volunteers out in uniform on the trails. A program of this size and complexity is not feasible for all trail-building entities, but provides an example of how enthusiastic trail users can be engaged to improve safety. For more information, please visit http://parkpatrol.org/.



Penitencia Creek Trail in San Jose, California.

One safety concern particular to trails along waterways is trail usage when waterways are very full or over-capacity. Where the waterways and trails dip beneath an overpass, high water can be particularly dangerous. Most trail managers deal with this by posting signs warning, for example, "Do not use under-crossing during high water events." Trail developers may consider placing gates across the trail that could be closed when the water is high, but this requires a plan in which the trail manager is committed to deploying to close gates when needed.

Here are a number of key security and safety recommendations to guide trail managers:[6] *(note that some of these recommendations are dependent on the type and amount of landscaping and supporting infrastructure that is developed along the trail.)*

- Clearly mark No Trespassing and other trail restrictions, including speed limit and motor vehicle restrictions.
- Clearly post the hours of trail operation.
- Locate mileposts every mile or one half mile; identify markers on maps.

[5] "Volunteer Trail Safety Patrol: East Bay Regional Park District" website. Available online at http://parkpatrol.org/
[6] Adapted from Alta Transportation Consulting, "California Aqueduct Feasibility Study," (May 2001), 66-67.

- Explore the need for and effectiveness of fencing. Aside from being costly, fencing may inhibit water/irrigation district machinery and would require maintenance.
- Provide lighting at intersections at a minimum; ideally provide lighting for the entire trail.
- Provide bicycle racks and lockers at key destinations that allow for both frame and wheels to be locked.
- Make all segments of the trail accessible within 500 feet to emergency vehicles.
- Provide fire and police departments with a map of system, along with access points and keys/combinations to gates/bollards.
- Try to commit to a minimum of five dedicated person-hours per day of security for every five miles, in addition to existing patrols on adjacent streets.
- Maintain adequate recording and response mechanisms for reported safety and maintenance problems. Thoroughly research the causes of each reported accident on the trail. Respond to accident investigations by appropriate design or operation improvements.
- Enforce rules of the road and other standard recreation guidelines.

Funding Innovations

The Town of Southwest Ranches made a key feature of its cooperative agreement with the South Florida Water Management District that the Water Management District submit grant applications on behalf of the town for funding for trails on the Water Management District's property, because some grants require the application be submitted by the land owner. This type of advance agreement removes barriers and allows cities to take advantage of funding opportunities as they arise.

Privacy

Where trails pass close to private property, trail developers should make every effort to avoid infringing on the privacy of the residents of those properties. This can be addressed in the design of the trail, ensuring that fences are an appropriate height, and that the trail is set back from fence lines.

Environmental Issues

By following all required permits and managing the trails according to state guidelines to minimize impact on the environment, water supply contamination should not occur. However, in the development of the San Francisco Bay Area Ridge Trail, the East Bay Municipal Utility District (EBMUD) raised some environmental concerns about public access. In particular, they voiced concerns about increased fire risk due to public presence on trails, as well as potential negative impacts to sensitive habitat. In regards to the same trail, the San Francisco Water District (SFWD) expressed similar concerns about preserving water quality, limiting fire risk, and protecting sensitive habitat within the watershed. The SFWD was particularly concerned about a portion of the Ridge Trail in the Peninsula Watershed that has a number of connecting trails that lead directly to a reservoir. Though not a perfect solution, trail developers reached an agreement with the SFWD to allow access 3 days per week with volunteer docents guiding trail-users along this portion of the Ridge Trail.

The Los Gatos Creek Trail runs from Los Gatos into downtown San Jose, California. The City of San Jose is working to connect this trail to the Guadalupe River Trail, an 11-mile long trail through San Jose.

San Jose's trail manager recommends obtaining a storm water permit that allows the trails to “run off” into the surrounding open spaces. Were it not for this permit, the development and construction of drainage for the trails would have been cost-prohibitive.

**6. Sample Agreements**

While there are certain unique challenges to developing trails along waterways, there are many successful examples around the country. And, in urban areas, waterways can provide a unique opportunity for developing continuous pathways in an otherwise fully built-out environment. The attached sample agreements may provide a head start to communities considering such a facility.

1. Cooperative Agreement – Southwest Ranches, Florida

Pages 1-9 show letters and resolutions of support for an application by the Town of Southwest Ranches in Florida for funding for a trail along a waterway. The coooperative agreement between the South Florida Water Management District and the Town of Southwest Ranches begins on page 10. The document details the responsibilities of each party and allows for Southwest Ranches to develop a trail on the Water Management District’s land. It also specifies that the Water Management District will apply for funding on behalf of the town in cases where funding opportunities require the land owner to apply.

2. 3-way Joint Use Agreement – San Jose, California

This document provides an example of a joint use agreement among three parties – the Santa Clara Valey Water District, County of Santa Clara, and the City of San Jose. This joint use agreement allows for the use of the property along the Upper Penitencia Creek and details the responsibilities of each party.

**Referenced Shared-use Pathways:**

- Lake Okeechobee Scenic Trail, Florida: http://www.dep.state.fl.us/gwt/guide/regions/south/trails/6_lake_okeechobee_scenictra.htm
- Chesapeake and Ohio Canal Trail, Washington, DC and Maryland: http://www.nps.gov/choh/index.htm and http://bikewashington.org/canal/
- Arroyo de los Chamisos Trail, New Mexico: http://www.santafenm.gov/index.aspx?NID=2280
- Rio Hondo bicycle path: http://www.labikepaths.com/bike-paths/rio-hondo/
- Trails on Sonoma County Water Agency land, California (those managed by Sonoma County Regional Parks): http://www.sonoma-county.org/parks/p_trails.htm
- Contra Costa Canal Trail, California: http://www.ebparks.org/parks/trails/contra_costa
- Upper Penitencia Creek Trail among others in San Jose, California: http://www.sjparks.org/trails/
- Santa Maria River Levee Trail, California: http://www.santamariatimes.com/news/local/article_60fae9c2-76e0-11e0-bc7c-001cc4c002e0.html
- Town of Southwest Raches planned trail, Florida: http://www.southwestranches.org/Parks_Recreation/parks.html
- San Francisco Bay Area Ridge Trail, California: http://www.ridgetrail.org/

**Acknowledgments:** Thank you to the following organizations for their contributions to this report: the City of San Jose, East Bay Regional Park District, San Francisco Bay Area Ridge Trail Council, Sonoma County Water Agency and the Town of Southwest Ranches.

**Photographs:** All photographs were taken by Rails-to-Trails Conservancy, except where noted. The cover photograph is of the San Gabriel River Trail in Los Angeles County.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

BROWARD COUNTY SERVICE CENTER 8211 West Broward Blvd.; PH3, Plantation, Florida 33324
(954) 713-3200 • FL WATS 1-877-350-3897 • Suncom 453-2600 • Fax (954) 475-4169 • www.sfwmd.gov/broward/

March 8, 2007

Christopher Russo, Town Administrator
Town of Southwest Ranches
6589 S.W. 160th Avenue
Southwest Ranches, FL. 33317

**RE: Support for the Town of Southwest Ranches Comprehensive Multi-Use Recreational Trail along Griffin Road Corridor/ Phase II**

Dear Mr. Russo,

It is my pleasure to write you in support of the Town of Southwest Ranches endeavors to obtain grant funding for Phase II of the Comprehensive Multi-Use Recreational Trail along Griffin Road Corridor to develop and maintain a mixed-use regional trail system within the Town's limits. The Town's greenway system is consistent with Broward County's greenways map and furthers its proposed objectives and policies.

The trail along Griffin Road is already being used daily by the equestrian community in both the Town of Davie and Southwest Ranches, as well as other neighboring communities. Enhancing the design of the trail will also create a safer greenway corridor to also serve bicyclists, joggers and nature hikers.

The development of a safe and attractive greenway corridor along Griffin Road is a wonderful project for the Town of Southwest Ranches. It truly demonstrates the Town's commitment to preserving its rural lifestyle in the urbanized region of South Florida. It will also greatly assist the County's efforts to develop a County-wide greenways system.

If you have any questions, or if I may be of any additional assistance, please feel free contact me.

Sincerely,

Miya Burt-Stewart, MBA
Governing Board Member

GOVERNING BOARD

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Carol Ann Wehle, *Executive Director*

DISTRICT HEADQUARTERS: 3301 Gun Club Road, P.O. Box 24680, West Palm Beach, FL 33416-4680 • (561) 686-8800 • FL WATS 1-800-432-2045

Office of the Mayor
and Town Council

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Police Department 693-8200
Public Works 797-1240
Utilities 433-4000
Planning & Zoning 797-1103

Town of Davie 6591 Orange Drive Davie, Florida 33314-3399 (954) 797-1000

February 16, 2006

Elbert L. Waters, J.D., Director
Broward Service Center
South Florida Water Management District
8211 West Broward Boulevard
Plantation, FL 33324

RECEIVED
FEB 20 2006
BROWARD SERVICE CENTER

Dear Mr. Waters,

On behalf of the Town of Davie, I submit this letter of support for the South Florida Water Management District's grant proposal to the State of Florida's Office of Greenways and Trails for Phase 2 Development of the Recreational Trail in Southwest Ranches and Davie. The proposed open space trail system, located between I-75 and Flamingo Road, will be an enhancement to the community, providing a safe and attractive greenway corridor that will benefit all of Broward County's residents and visitors.

Without hesitation we support this project and share the view that it will assist Broward County's efforts to develop a countywide greenway system.

Sincerely,

Michael Crowley
Councilmember

MTC/cr

BROWARD COUNTY
FLORIDA

**DEPARTMENT OF URBAN PLANNING AND REDEVELOPMENT**
115 S. Andrews Avenue, Room 329K • Fort Lauderdale, Florida 33301 • 954-357-6612 • FAX 954-357-8655

February 15, 2006

John Canada, Town Administrator
Town of Southwest Ranches
6589 SW 160th Avenue
Southwest Ranches, Florida 33331

**Re: Support for the Town of Southwest Ranches Comprehensive Multi-Use Recreational Trail along Griffin Road Corridor**

Dear John:

Please accept this letter as the endorsement of the Broward County Department of Urban Planning and Redevelopment for the Town of Southwest Ranches' proposal to develop and maintain a comprehensive mixed-use regional recreational trail system within the Town's limits. The Town's greenways system is consistent with Broward County's greenways map and furthers its proposed objective and policies.

The trail along Griffin Road is already being used daily by the equestrian community in both the Town of Davie and Southwest Ranches, as well as other neighboring communities. Enhancing the design of the trail will also create a safer greenway corridor to also serve bicyclists, joggers and nature hikers.

The development of a safe and attractive greenway corridor along Griffin Road is a wonderful project for the Town of Southwest Ranches. It truly demonstrates the Town's commitment to preserving its rural lifestyle in the urbanized region of South Florida. It will also greatly assist the County's efforts to develope a County-wide greenways system.

If you have any questions or if I may be of any additional assistance, please contact me.

Sincerely,

Peter Ross

Peter Ross, Deputy Director
Department of Urban Planning and Redevelopment

Enclosures

PR/jc

Broward County Board of County Commissioners
Josephus Eggelletion, Jr. • Ben Graber • Sue Gunzburger • Kristin D. Jacobs • Ilene Lieberman • John E. Rodstrom, Jr. • Jim Scott • Diana Wasserman-Rubin • Lois Wexler
www.broward.org/urbanplanning

BROWARD COUNTY
FLORIDA

PARKS AND RECREATION DIVISION
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February 3, 2006

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BROWARD SERVICE CENTER

Bert Waters
BSC Director
8211 W Broward Blvd.
Plantation, FL 33324

RE: C-11 Recreational Trail- Phase 2

Dear Mr. Waters,

Please accept this letter as the endorsement of the Broward County Parks and Recreation Division for the C-11 Recreational Trail (phase 2) project. The proposed comprehensive mixed-use regional recreational and open space trail system, located between I-75 and Flamingo Road, will be an enhancement to the community. This trail will help connect Vista View Regional Park and the Long Key Natural Area and Nature Center for equestrians, bicyclists, joggers, and day nature hikers.

The development of a safe and attractive greenway corridor along Griffin Road is a commendable project which will benefit all of Broward County's citizens and Broward County Parks and Recreation supports the effort. The project will assist the County's efforts in developing a County-wide greenway system.

If you have any questions or if I may be of any additional assistance, please feel free to call me at your convenience.

Sincerely,

Bob Harbin
Director, Broward County Parks and Recreation

BH:GM

cc: Mark Horowitz, Bicycle Coordinator, Broward County Transportation Planning

Broward County Board of County Commissioners
Josephus Eggelletion, Jr. • Ben Graber • Sue Gunzburger • Kristin D. Jacobs • Ilene Lieberman • Lori Nance Parrish • John E. Rodstrom, Jr. • James A. Scott • Diana Wasserman-Rubin
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BROWARD URBAN RIVER TRAILS

C: L. Corey 3F41
J. Lopez 3

Mr. Bert Waters, BSC Director
South Florida Water Management District
8211 West Broward Boulevard
Plantation, FL 33324

January 31st, 2006

Dear ~~Mr.~~ Bert Waters,

Broward Urban River Trails is pleased to support the Town of Southwest Ranches in their efforts to obtain Florida Office of Greenways & Trails Grant for the C-11 Recreational Trail – Phase 2 between I-75 and Flamingo Road.

Southwest Ranches has proposed this linear park to offer greenspaces and environmental restorations in an increasingly populated area. This site if not used for a linear park would be a lost opportunity to help educate the public to the necessity of South Florida's dependency on water and its natural beauty.

To Southwest Ranches credit, they have tied their proposed parks into the evolving Greenways and Trails system that Broward County and Broward Urban River Trails have been working on of late.

Please add our organization's support to the long list of supporters who recognize the regional importance of Southwest Ranches efforts to preserve, protect and enhance the environment.

Sincerely,

John A. Rude, Executive Director
Broward Urban River Trails, Inc.

**(954) 462-7766**
**115 South Andrews Avenue, Annex A240 Ft. Lauderdale, Florida 33301**

# Town of Southwest Ranches

**Council Member Don Maines**
6589 SW 160th Avenue
Southwest Ranches, FL 33331
Phone: (954) 434-0008
Fax: (954) 434-1490
Website: www.southwestranches.org

February 2, 2006

RECEIVED
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BROWARD SERVICE CENTER

Elbert Waters, J.D.
Director
Broward Service Center
South Florida Water Management District
8211 W. Broward Blvd.
Plantation, FL 33324

**RE: Support for OGT Grant for Recreational Trail in Southwest Ranches**

Dear Mr. Waters,

Please accept this letter as my support for the Office of Greenway Trails grant for Phase 2 of the recreational trail in Southwest Ranches. The proposed trail is along Griffin Road, parallel to the C-11 Canal, from Interstate 75 to Flamingo Road and is currently being used daily by the equestrian community.

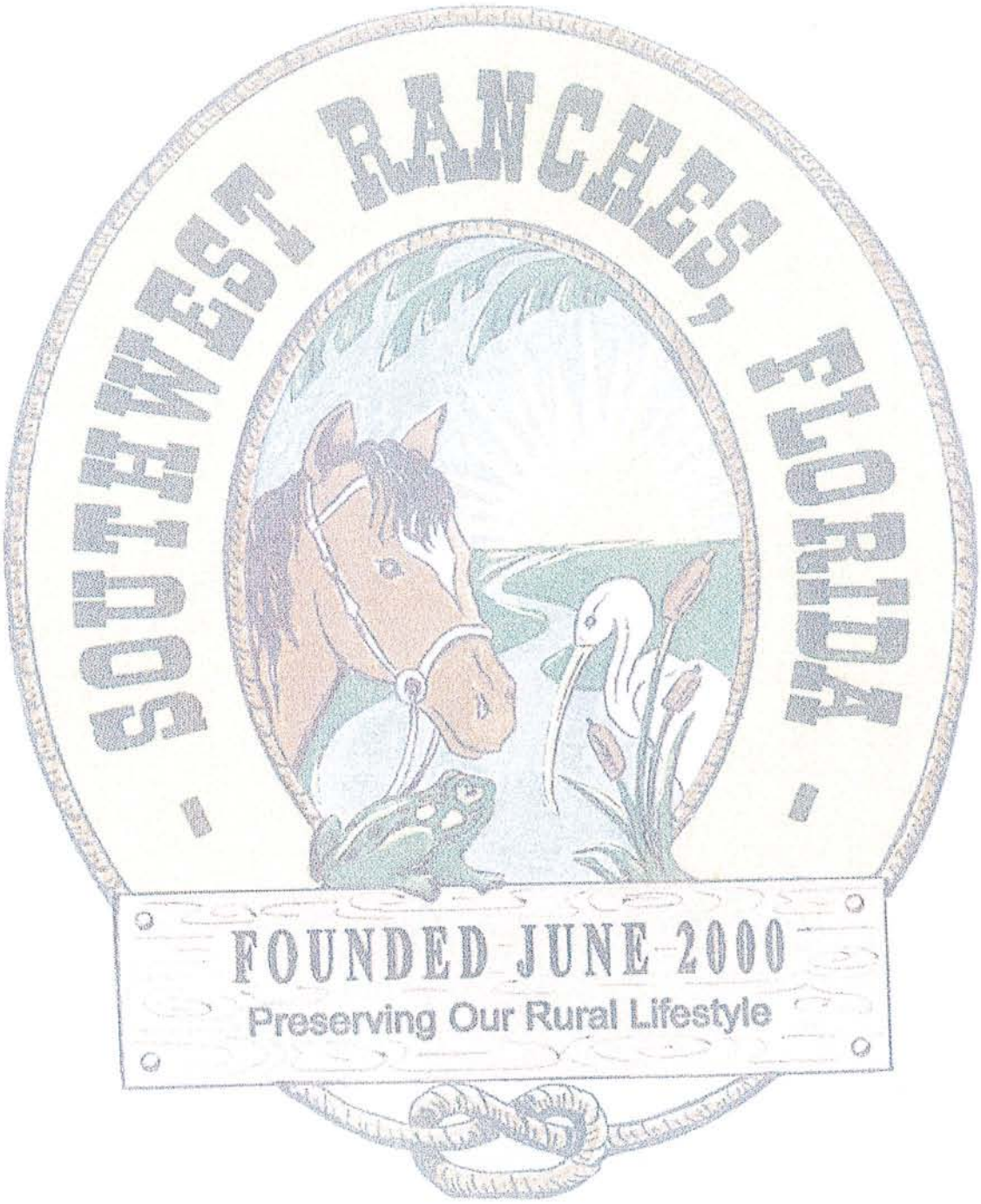
The trail serves both the Town of Davie and the Town of Southwest Ranches. Enhancing this trail will also create a safer greenway corridor to serve bicyclists, joggers, and walkers.

Please feel free to call me if I can be of any assistance to you in supporting this grant for a worthwhile project.

Thank you,

Don Maines

Council Member Don Maines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# A-1

**RESOLUTION NO. 2006 - 038**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA APPROVING THE SUBMISSION OF A TRAILWAYS GRANT APPLICATION TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, OFFICE OF GREENWAY TRAILS (OGT), IN THE REQUESTED AMOUNT OF $56,693.44; AND AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO EXECUTE SAID APPLICATION; AND PROVIDING AN EFFECTIVE DATE THEREFOR.**

**WHEREAS,** the Town Council has approved Resolution 2001-28 for the inclusion of a comprehensive equestrian trail system within the County wide greenway system map; and

**WHEREAS,** the Town Council has received a grant from the Florida Department of Environmental Protection, through an Interlocal Agreement with the South Florida Water Management District, to construct a 12' wide multi-purpose, non-vehicular trail along the south bank of the C-11 Canal, from I-75 west to the levee 33 adjacent to the Everglades Conservation area; and

**WHEREAS,** the Department of Environmental Protection has provided information that would lead us to believe that the Town should submit a grant request for constructing a similar equestrian trail along the south bank of the C-11 canal from I-75 east to Flamingo Road; and

**WHEREAS,** the Town's internal grant policy has been revised to require the Town Council's authorization prior to the submission of any grant application; and

**WHEREAS,** this Resolution seeks to comply with the Town's internal grant policy.

**NOW, THEREFORE, BE IT RESOLVED,** by the Town Council of the Town of Southwest Ranches, Florida:

**Section 1:** The above referenced recitals are true and correct and are incorporated herein by reference.

**Section 2:** The Mayor, Town Administrator and Town Attorney are hereby authorized to submit a grant application for a Trailways Grant to the Department of Environmental Protection, Office of Greenway Trails for $56,693.44, with a 20% match from the Town's 2007 budget, before its March 13, 2006 grant deadline.

**Section 3:** That this Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 9th day of February 2006, on a motion by Council Member Aster Knight and seconded by Council Member Don Maines.

| | | | |
|---|---|---|---|
| Fink | ABSENT | Ayes | 4 |
| Blanton | Y | Nays | 0 |
| Knight | Y | Absent | 1 |
| Maines | Y | Abstaining | 0 |
| Nelson | Y | | |

Mecca Fink, Mayor

ATTEST:

Susan A. Owens, Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D., Town Attorney

956645_1.DOC

5/1/03 REVISIONS
C-13205

EXHIBIT A

# COOPERATIVE AGREEMENT

# AMONG THE

# SOUTH FLORIDA WATER MANAGEMENT DISTRICT

# AND THE

# TOWN OF SOUTHWEST RANCHES

This Cooperative Agreement **("AGREEMENT")** is entered into on, September 3, 2003, among the "Parties," the South Florida Water Management District, a public corporation of the State of Florida, **(the DISTRICT)** and the Town of Southwest Ranches, a municipal corporation of the State of Florida, **(the TOWN ).**

## WITNESSETH THAT:

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes to include entering into contracts and agreements with public agencies, private corporations or other persons; and

WHEREAS, this **AGREEMENT** is expressly made subject to the **DISTRICT'S** statutory authority and responsibility to manage water resources on a regional and localized basis, either through regulation or through management and control of dikes, dams, canals and other facilities or lands of the **DISTRICT**; and

WHEREAS, the **DISTRICT** acknowledges the desire by the public to pursue various recreational activities and offers no objection to the lands being used for passive recreational activities including walking, jogging, hiking, bicycling, fishing, nature appreciation and equestrian use; and

WHEREAS, pursuant to District Rule 40E-6.051(1)(f) the previously listed passive recreational uses are exempt from District permitting requirements; and

WHEREAS, the **DISTRICT** allows such passive recreational activities provided the activities are compatible with the resource preservation and other goals of the **DISTRICT**, including environmental suitability but does not warrant that these lands or any lands or rights of way are suitable for the uses proposed by the **TOWN**; and

WHEREAS, the **TOWN** desires to develop and maintain a comprehensive mixed-use regional recreational and open space recreational Trail "Loop" system to serve the surrounding equestrian community, bicyclists, joggers and neighborhood residents; and

WHEREAS, the **TOWN** desires that a portion of its proposed trail system be located within the DISTRICT'S Canal 11 (C-11) right of way; and

WHEREAS, in order to obtain grants from the state to develop such facilities the **TOWN** desires that the **DISTRICT** file the grant application on behalf of the TOWN to fulfill the state grant requirements; and

WHEREAS, the Governing Board of the **DISTRICT**, at its SEPTEMBER **2003** meeting, has authorized entering into this **AGREEMENT** with the **TOWN**; and

NOW, THEREFORE, the **DISTRICT** and the **TOWN**, for and in consideration of the mutual covenants, obligations, and responsibilities cited herein, do covenant and agree as follows:

## ARTICLE 1 – RIGHTS AND RESPONSIBILITIES OF THE PARTIES

1.1 It is understood and acknowledged that the **TOWN'S** ability to participate in this **AGREEMENT** is limited to the development and maintenance of a comprehensive mixed-use regional recreational and open space recreational Trail "Loop" system to serve the surrounding equestrian community, bicyclists, joggers and neighborhood residents and to reimburse the District for any financial or other obligations related to the terms of any grants as prescribed in Chapter 62S-2, FAC).

1.2 The legal description of the land to be developed is stated in "Exhibit A", attached hereto
and made an integral part of this **AGREEMENT.** The **DISTRICT** is the owner of, or holds a lesser real property interest in, the lands situated within Broward County, Florida more specifically described in Exhibit "A" hereto. These lands were obtained by the **DISTRICT** to serve the purposes of flood protection, water supply, protection of C-11 basin and other water resources, and wildlife habitat. The **DISTRICT** makes no warranties or representations as to its interest in the real property described in Exhibit 'A', or that the said property is safe or suitable for use by the TOWN as a Linear Park. The **TOWN** acknowledges that it accepts the use of the property as specified in Exhibit 'A' in its "AS IS", "WHERE IS" and "WITH ALL FAULTS" condition.

1.3 The **DISTRICT** agrees that it will file a grant application with the state on behalf of the **TOWN** for trail funding for that portion of the trail that the **TOWN** desires to be located within the C-11 right of way and will use its best efforts to support the **TOWN'S** proposal. The **DISTRICT** does not warrant or represent that efforts to obtain grant funding from the State will be successful. However, these efforts SHALL NOT include researching, insuring, improving, perfecting or obtaining fee title to the canal right of way. Any state funding resulting from the grant application will be disbursed to the **TOWN** for its use (subject to the terms of the grant) in the construction of trail facilities.

1.4 The **DISTRICT** grants the **TOWN** the consent and approval to utilize **DISTRICT** canal rights of way and lands for recreational purposes but such consent is limited to only those rights and privileges specified herein. This **AGREEMENT** does not confer to the **TOWN** the authority to contract, subcontract, or assign with third parties any aspect of the responsibilities assumed by the **TOWN** under this **AGREEMENT** without prior approval of the **DISTRICT**. More specifically, the **TOWN** does not obtain authority to lease, license or otherwise grant or convey the Property; any portion thereof, access thereto, or rights thereunder to third parties.

1.5 Responsibilities of the **DISTRICT** are as follows:

a. Review the preliminary and final design of the proposed new trails and approve the design in writing prior to trail construction. Said review will follow the standards for linear parks contained in the **DISTRICT'S** Right of Way Occupancy Permitting rules (Rule 40E-6, FAC); however, this **AGREEM**ENT will replace the need for an individual Standard Right of Way Occupancy Permit.
b. In the event the **DISTRICT** discovers any damage to trails, it will advise the **TOWN** of such damage including applicable direction regarding trail repair, restoration, realignment, or closure. All repairs shall be the responsibility of the **TOWN**.
c. Publicize and approve any emergency closure and re-opening of trails as soon as reasonably possible.
d. Advise the **TOWN** of any land management activities or restrictions over and above routine maintenance activities that may affect the trails.
e. Should the **TOWN** be interested in obtaining additional grant funding from the State of Florida in the future, the **DISTRICT** must review and determine whether the grant compliance requirements are acceptable prior to the **TOWN** seeking such additional grant funding.

1.6 Responsibilities of the **TOWN** (as administered by the Town of Southwest Ranches Parks and Recreation Department) are as follows:

a. Should a grant from the state for the **TOWN's** Recreational Trails Program be obtained, the **TOWN** agrees to assume all obligations contained in Exhibit "B" (Chapter 62S-2, FAC), attached hereto and made a part of this **AGREEMENT**. In addition in the event any of the Grant funds need to be returned to the state, the **TOWN** will in fact reimburse the state for the full amount of the grant. Further, the **TOWN** shall obtain any additional real property rights or interest which may be necessary to satisfy the provisions of Chapter 62S-2 F.A.C. With regard to the Site Dedication requirement (62S-2.076, FAC), said dedication shall not in any way limit or restrict the District's ability to carry out its flood control, water supply, water quality or environmental missions associated with the present and future operational needs of its canal rights of way and lands.

b. For that portion of the trail to be constructed within the C-11 right of way the **TOWN** shall provide, at no cost to the **DISTRICT**, a complete application package including any and all fees, forms, exhibits, surveys, descriptions, studies or any other documentation necessary to constitute an complete application to the state for grant purposes. Said application package shall be timely filed for **DISTRICT** review, and execution as appropriate, a minimum of three (3) weeks prior to any state imposed deadlines. The timely correction of any deficiencies in the application package will be solely the responsibility of the **TOWN**.
c. Subject to **DISTRICT** review and approval, develop policies for managing that portion of the twenty five (25) mile comprehensive mixed-use recreational trail system, seven (7) miles of which is to be located within the rights of way listed on Exhibit "A".
d. Provide law enforcement and policing to enforce the **TOWN'S** trail policies.

e. Develop and maintain project area identified in Exhibit "A" for public safety and enjoyment while protecting natural resources. Maintenance shall include mowing of the flat berm surface, litter a debris pick up ad removal; **DISTRICT** shall retain mowing responsibility for the canal side slope.
f. Identify and flag the proposed trail with surveying tape; Request reviews by the **DISTRICT** and obtain written consent from the **DISTRICT** prior to trail development.
g. Provide trail markers along the trails and informational signage at trailheads and other access points. Said markers and signage shall be located outside of **DISTRICT** access, maintenance and staging areas.
h. The **TOWN** shall not erect, install or plant any above ground encroachment without prior **DISTRICT** approval. In determining the acceptability of a proposed encroachment, the **DISTRICT'S** decision shall be final. The **TOWN** shall retain ownership of any of the authorized encroachments except as addressed elsewhere in this agreement.
i. Realign existing guardrailing and fencing to improve suitability for use, with prior **DISTRICT** approval.
j. Close and mark accordingly those portions of the trail that may become inappropriate for public use.
k. Enforce FDEP policies and rules within the project area.
l. Seek, obtain or otherwise commit funding for development and maintenance of facilities of the project area.
m. Should additional funding be sought by the **TOWN** through state grant sources, the **TOWN** shall coordinate the application process with the **DISTRICT** for prior approval.
n. Not charge a use fee or other fee for any portion of the trail located on **DISTRICT** lands, canal or levee rights of way listed on Exhibit "A".
o. Acknowledge that the **DISTRICT** has priority use of the canal rights of way and shall not interfere with **DISTRICT** access, construction, repair, replacement or maintenance activities.

1.7 Responsibilities of both the **TOWN** and the **DISTRICT** are as follows:

a. The parties agree that the specific operating policies relating to the proposed new outdoor recreation facilities (for example: times of use, physical areas of use, enforcement of use regulations) are not addressed in this **AGREEMENT**. The parties shall enter into future agreements, or amend this **AGREEMENT** or other existing agreements, as may be necessary, to implement specific operating policies or to add additional canal or levee rights of way to the trail area.
b. To work together to cooperatively develop trail marking system that is effective in keeping the equestrian community, bicyclists, joggers and neighborhood residents on designated trails, conveys important trail and location information, minimizes impact to natural resources, and is aesthetically harmonious.
c. Both parties will operate according to the roles and responsibilities defined herein and will cooperatively and mutually support and assist each other in carrying out these duties.
d. Any amendments or supplements to this **AGREEMENT** will not be effective unless they are in writing and signed by both parties.

1.8 The **TOWN** acknowledges that in furtherance of the **DISTRICT'S** missions that it may be necessary for the **DISTRICT** to recover all or a portion of the right of way to be utilized by the **TOWN** for park purposes. In the event that the **DISTRICT** must recover the right of way the **DISTRICT** will provide the **TOWN** with 90 days notice, in

a manner as prescribed elsewhere in this agreement, to allow the **TOWN** to remove and salvage any park related improvements that the **TOWN** has installed, constructed or placed within the right of way. Within the specified 90 days the **TOWN** will surrender the right of way to the **DISTRICT** free of any improvements. Any improvements left in place shall, at the **DISTRICT'S** option, become the property of the **DISTRICT** for disposal as it sees fit.

## ARTICLE 2 – LIABILITY AND FUNDING

2.1 The **TOWN** assumes any all risks of personal injury, bodily injury and property damage attributed to the negligent acts or omissions of the **TOWN** and the officers, employees, servants, and agents thereof. Furthermore, the **DISTRICT** shall not be held liable for any personal injury or property damage incurred as a result of trail use. The **TOWN** assumes any and all risks of personal injury, bodily injury and property damage attributed to the use of the Trail by the public.

The **TOWN** warrants and represents that is self-funded for Worker's compensation and liability insurance, covering at a minimum bodily injury and property damage with protection being applicable to the **TOWN'S** officers, employees, servants and agents while acting within the scope of their employment during performance under this **AGREEMENT**. The **TOWN** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to the either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

In the event the **TOWN** subcontracts any part or all of the work hereunder to any third party, the **TOWN** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **TOWN**. Any contract awarded by the **TOWN** for work under this **AGREEMENT** shall include a provision whereby the **TOWN's** subcontractor agrees to defend, indemnify, and pay on behalf, save and hold the **DISTRICT** harmless from all damages arising in connection with the **TOWN's** subcontract.

2.2 The **DISTRICT** shall disburse funding received under the State grant on a completion of deliverable basis in accordance with the Statement of Work and deliverable schedule shown in Exhibit "C", attached hereto and made a part of this **AGREEMENT**. Such payments shall be made by the **DISTRICT** following receipt of invoices from the **TOWN** which shall include appropriate documentation to substantiate work completed. Payment is subject to appropriate **DISTRICT** verification of satisfactory deliverable completion.

2.3 With the exception of the disbursement of grant funding as described in 2.2 above, each party shall be responsible for its respective costs associated with carrying out the responsibilities delineated herein.

## ARTICLE 3 - PROJECT MANAGEMENT

3.1 The Project Manager for the **DISTRICT** is Margaret McPherson, at 201 S. Andrews Avenue, Fort Lauderdale, Florida 33301, telephone (941) 713-3200, Ext. 4984. The Project Manager for the **TOWN** is John Canada, at 6589 SW 160 Avenue, Southwest Ranches, Florida 33331, telephone

(951) 434-0008.

## ARTICLE 4 – TERM OF THE AGREEMENT

4.1 The **AGREEMENT** shall commence on the effective date specified on page 1 of this **AGREEMENT** and shall remain in effect for a period of twenty-five (25) years unless earlier terminated by either party as provided for in Article 5 below.

## ARTICLE 5 - TERMINATION AND NOTICE

5.1 Should either party fail to fulfill its obligations under this **AGREEMENT**, the other party shall have the right to terminate this **AGREEMENT** by giving written notice of any deficiency. The party in default shall then have thirty (30) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, the non-defaulting party shall have the option to terminate this **AGREEMENT** at the expiration of the thirty (30) day time period. If this **AGREEMENT** is terminated, the **TOWN** shall restore the **DISTRICT'S** lands and rights of way to the condition that existed prior to its use as a trail. Any reimbursement or grant moneys or locating of other suitable trail site(s) pursuant to 62S-2 F.A.C. shall be the responsibility of the **TOWN**.

5.2 Either party shall have the right to terminate this **AGREEMENT**, with or without cause at any time for convenience upon sixty (60) calendar days prior written notice to the other party prior to the receipt of any grant funds from the State. In the event the **DISTRICT** is unsuccessful in its efforts to obtain grant funding from the State, this **AGREEMENT** shall be automatically terminated on the effective date of notice of such occurrence from the **DISTRICT** to the **TOWN**. The performance of work under this **AGREEMENT** may be terminated by the **DISTRICT** in accordance with this clause in whole, or from time to time in part, whenever the **DISTRICT** shall determine that such termination is in the best interest of the **DISTRICT**. Any such termination shall be effected by delivery to the other party of a Notice of Termination specifying the extent to which performance of work under the **AGREEMENT** is terminated, and the date upon which such termination becomes effective.

5.3 This **AGREEMENT** automatically terminates when all the terms and conditions of Chapter 62S-2, F.A.C. have been met, including maintenance of the facility/project for the required period under the grant.

5.4 Termination notice or any other notice related to this **AGREEMENT** will be satisfied by sending notice by certified U.S. mail to the following addresses of the parties:

As to the District:
c/o Procurement Department
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33416

As to the Town of Southwest Ranches:
c/o John Canada, Town Administrator
6589 SW 160 Avenue
Southwest Ranches, Florida 33331

All correspondence to the **DISTRICT** under this **AGREEMENT** shall reference the **DISTRICT'S** Contract Number **C-13205**.

## ARTICLE 6 – STANDARDS OF COMPLIANCE

6.1 The parties to this **AGREEMENT** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **AGREEMENT**.

6.2 The **TOWN**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **TOWN**, upon request, as to any such laws of which it has present knowledge.

## ARTICLE 7 – RELATIONSHIP BETWEEN THE PARTIES

7.1 The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT** and **TOWN**, their employees, agents, subcontractors, or assigns, during or after the term of this **AGREEMENT**.

## ARTICLE 8 – MAINTENANCE OF RECORDS

8.1 The parties to this **AGREEMENT** shall maintain records and the other party shall have inspection and audit rights as follows:

A. Maintenance of Records: Each party shall maintain all financial and non-financial records and reports directly or indirectly related to this **AGREEMENT.** Such records shall be maintained and made available for inspection for a period of five years from the expiration or termination date of this **AGREEMENT**.

B. Examination of Records: Each party or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five years from the expiration or termination date of this **AGREEMENT** and upon reasonable notice, time and place.

Records which relate to any litigation, appeals or settlements of claims arising from performance under this **AGREEMENT** shall be made available until a final disposition has been made of such litigation, appeals or claims.

## ARTICLE 9 – GENERAL PROVISIONS

9.1 In the event any provisions of this **AGREEMENT** shall conflict, or appear to conflict, the **AGREEMENT**, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

9.2 Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

9.3 Notwithstanding any provisions of this **AGREEMENT** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **AGREEMENT** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **AGREEMENT** shall otherwise remain in effect.

9.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

9.5 This **AGREEMENT** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **AGREEMENT**.

9.6 This **AGREEMENT** may be amended only with the written approval of the parties hereto through a duly executed amendment.

9.7 The **TOWN** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

9.8 Any dispute arising under this **AGREEMENT** which cannot be readily resolved shall be submitted jointly to the signatories of this **AGREEMENT** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.

9.9 The **TOWN** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statues. Should the **TOWN** assert any exemptions to the requirement of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **TOWN.**

## ARTICLE 10 – APPLICABLE LAW

10.1 This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** will bind any of the parties to perform beyond their respective authority, nor does this **AGREEMENT** alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.

[ The Rest of this Page Intentionally Left Blank ]

IN WITNESS WHEREOF, the parties or their duly authorized representative hereby execute this AGREEMENT on the date first written above.

Legal Form Approved
SFWMD Office of Counsel

By: _____

Date: 9/03/03

SFWMD Procurement Approval

By: _____

Date 9/3/03

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**
**BY ITS GOVERNING BOARD**

By: _____

Frank Hayden, Director of Procurement

**THE TOWN OF SOUTHWEST RANCHES**

By: Mecca Fink
Mecca Fink, Mayor

Attest:

_____
Arielle Haze Tyner, Town Clerk

Approved as to Form and Correctness:

_____
Gary A. Poliakoff, J.D., Town Attorney

## EXHIBIT "A"

## DESCRIPTION OF SOUTHWEST RANCHES TRAIL ROUTE INCLUDING DISTRICT LAND WITHIN THE C-11 CANAL AND L-33 RIGHTS OF WAYS

The Town of Southwest Ranches twenty five (25) mile Multi-Use Out-Door Recreational Greenway Trail System "Loop" shall provide access to the following recreational Parks and amenities serving the residents in Southwest Broward County, Florida. The region is described as follows:

- 2.5 miles along the top of South Florida Water Management District's Levee #33 (L-33) overlooking the Water Conservation Area 3, entering [location?] and exiting [location?];
- 7 miles of trails located along the South Florida Water Management District's Canal 11 (C-11) between the south bank of C-11 and Griffin Road entering [location?] and exiting [location?];
- 2 miles of off-road public trails in Town's 20 acre Trail-end equestrian park located on Volunteer Road;
- ½ mile of off-road trails in Town's proposed new 10 acre equestrian park located west of I-75 corridor;
- County open space located at NE intersection of Griffin Road and I-75 and;
- 500 acre wetlands restoration project located on the south side of Sheridan Street, east of U.S. 27

| | |
|---|---|
| Overnight or Long Distance Backpacking: | 3 points |
| Aquatic Activity: | 3 points |
| Other Nonmotorized Recreational Trail Use: | 3 points |
| (5) Specific Criteria for Motorized and Nonmotorized Mixed-Use Project. | |
| (a) The motorized/nonmotorized mixed-use project will: (select only one) | |
| Develop new mixed-use trails: | 10 points |
| Repair or restore designated mixed-use trails impacted by normal use: | |
| Develop mixed-use trail facilities on existing motorized recreational trail corridors: | 6 points |
| (b) The project will support compatible recreational trail use for the greatest number of the following: | |
| Off-Road Motorcycles: | 3 points |
| All-Terrain Vehicles: | 3 points |
| Off-Highway Vehicles (high clearance vehicles): | 3 points |
| Other Motorized Recreational Trail Use: | 3 points |
| Bicycling: | 3 points |
| Skating: | 3 points |
| Day Hiking: | 3 points |
| Equestrian Activities: | 3 points |
| Fitness Activities: | 3 points |
| Overnight or Long Distance Backpacking: | 3 points |
| Aquatic Activity: | 3 points |
| Other Nonmotorized Recreational Trail Use: | 3 points |
| (6) Specific Criteria for Educational Project. | |
| (a) The educational project will: | |
| Improve trail user safety: | 3 points |
| Reduce trail user impacts upon the resources: | 3 points |
| Reduce trail user conflicts: | 3 points |
| Increase public awareness of trail opportunities: | 3 points |
| (b) The program has well defined goals and objectives: | 6 points |
| (c) The program is sponsored by a coalition of at least two trail interest groups: | 8 points |
| (d) The program is targeted towards a variety of recreational trail users and potential trail users, both motorized and nonmotorized: | 8 points |
| (e) The program has a well developed evaluation method: | 6 points |

*Specific Authority 260.016(1)(h) FS. Law Implemented –260.016(1)(d), (f), (h), (2)(a)2. FS. History–New 5-1-01.*

**62S-2.074 Federal Approval.**

(1) Compliance and Assurances. Projects receiving federal funding must comply with the NEPA and Guidance standards for preconstruction, construction and post-completion compliance. The Grantee's compliance with the FDOT's PD&E constitutes compliance. The Department shall ensure the Grantee's compliance with all requirements of FHWA.

(2) Application. The Department shall submit state approved Recreational Trails Program applications to FHWA for federal approval.

(3) Transportation Planning. The Department shall submit a list of all projects to be funded to the FDOT for inclusion in the appropriate Statewide Transportation Improvement Program (STIP) or Metropolitan Planning Organization's Transportation Improvement Program (TIP).

(4) Approval. FHWA shall review all such applications. Once all projects are included in the approved STIP or TIP, FHWA and the Department shall enter into a project agreement to implement approved grant projects.

*Specific Authority 260.016(1)(h) FS. Law Implemented 260.016(1)(d), (f), (h), (2)(a)2. FS. History–New 5-1-01.*

**62S-2.075 Grant Administration.**

The following constitutes procedures for administration of program grants:

(1) Project Agreement. Following FHWA approval of Department submitted applications, the Department and grantee shall enter into a project agreement which sets forth the responsibilities and duties of each regarding administration of the approved project. The project agreement shall contain terms and conditions particular to each project.

(2) PD&E Process. All approved projects are required by FHWA to complete the PD&E Process. This is accomplished by the applicant's submittal of the PD&E Data Survey, OGT-15, effective date May 1, 2001, hereby incorporated by reference and available from the Department's Office of Greenways and Trails, 3900 Commonwealth Boulevard, Mail Station 795, Tallahassee,

Florida 32399-3000, (850)488-3701. Upon final Class of Action Determination and Department approval of the commencement documentation, the Department shall notify the grantee to proceed with project construction. Grantee may not proceed without such notification.

(3) Payment Basis. Grantees shall be paid program funds by the Department subject to the following conditions:

(a) Project Costs. Payment of project costs shall be reimbursed as provided for in this rule and in the project agreement. Costs must be incurred between the effective date of, and the project completion date identified in, the project agreement except for pre-agreement costs. Costs for surveys (boundary and topographic), title searches, and project signs are eligible project expenses. If the total cost of the project exceeds the grant amount and the required match, the grantee shall pay the excess cost.

(b) Cost Limits. Project planning expenses, such as application preparation, architectural and engineering fees, permitting fees, project inspection, and other similar fees are eligible project costs provided that such costs do not exceed fifteen percent of the total project cost.

(c) Retention. The Department shall retain ten percent of the grant until the grantee completes the project and the Department approves the completion documentation as set forth in subsection 62S-2.075(5), F.A.C.

(4) Accountability. Each grantee shall maintain an accounting system which meets generally accepted accounting principles and shall maintain financial records to properly account for all program and matching funds.

(5) Project Completion Certification. When the Project is completed, the grantee shall submit to the Department a Project Completion Certificate, OGT-14, effective date May 1, 2001, hereby incorporated by reference and available from the Department's Office of Greenways and Trails, 3900 Commonwealth Boulevard, Mail Station 795, Tallahassee, Florida 32399-3000, (850)488-3701.

(6) Reverted Project Funds. RTP funds remaining after termination of a grant award or completion of project shall revert to the State's program funds under the provisions of TEA-21. If any funds awarded during a funding cycle are not accepted by the grantee or become available before termination of the fiscal year for which the funds were appropriated, the Department shall offer the funds to unfunded applicants in order of priority.

(7) Development Projects. The following constitute the specific procedures for administration of development projects.

(a) Grant Period. The grantee will have two years from the effective date of the project agreement to complete the project. At the written request of the grantee, Department staff will extend this period for good cause such as financial hardship, public controversy, material shortage, unexpected weather conditions, or other major factors beyond grantee's control. Only two one-year extensions shall be allowed. After four years all funds not paid revert to FHWA.

(b) Procurement of Goods and Services. The grantee shall secure all goods and services for accomplishment of the project according to its adopted procurement procedures and applicable federal requirements identified in the FHWA Recreational Trails Guidance manual.

(c) Project Development & Environment Process. The grantee shall provide all information and appropriate documentation as required by OGT-15, referenced in subsection (2) of this section. The Department shall complete the process on the grantee's behalf.

(d) Commencement Documentation. Prior to commencement of project construction, the grantee shall submit for approval the documentation described in the Recreational Trails Program Project Commencement Documentation Form, OGT-11, effective date May 1, 2001, hereby incorporated by reference and available from the Department's Office of Greenways and Trails, 3900 Commonwealth Boulevard, Mail Station 795, Tallahassee, Florida 32399-3000, (850)488-3701.

1. Project Preconstruction Certification. The grantee shall submit to the Department a Project Preconstruction Certificate, OGT-12, effective date May 1, 2001, hereby incorporated by reference and available from the Department's Office of Greenways and Trails, 3900 Commonwealth Boulevard, Mail Station 795, Tallahassee, Florida 32399-3000, (850)488-3701.

2. Survey. For all projects, the grantee shall submit to the Department a survey and legal description of the project site. The survey must provide a legal description, and show the site's boundaries, all known easements, and all encroachments, if any.

3. Commencement Documentation Time Period. The Department shall terminate the project agreement if the Commencement Documentation is not received and approved by the Department within twelve months of the project agreement's execution. This time period may be extended by the Department for good cause, such as natural disaster.

(e) Completion Documentation. Upon completion of the project and prior to release of the final payment, the grantee shall submit all documentation described in the Recreational Trails Program Project Completion Documentation Form, OGT-13, effective date May 1, 2001, incorporated by reference and available from Office of Greenways and Trails, 3900 Commonwealth Boulevard, Mail Station 795, Tallahassee, Florida 32399-3000, (850)488-3701.

(f) Inspections. The Department shall perform an on-site inspection of the project site to ensure compliance with the project agreement prior to release of the final grant payment. Any deficiencies must be corrected by Grantee prior to disbursement of final payment.

*Specific Authority 260.016(1)(h) FS. Law Implemented 260.016(1)(d), (f), (h), (2)(a)2. FS. History–New 5-1-01.*

**62S-2.076 Compliance Responsibilities.**

The following constitute the general requirements for program compliance:

(1) Site Dedication. Land owned by the grantee, or, in the case of a nonprofit grantee a governmental entity, which is developed or acquired with RTP funds, shall be dedicated for ninety-nine (99) years as an outdoor recreational site for the use and benefit of the general public. Land under control other than by ownership of the grantee such as by lease, shall be dedicated as an outdoor recreation area for the use and benefit of the general public for a minimum of twenty-five (25) years from the completion date set forth in the project completion certificate. The lease must not be revocable at will; must extend for twenty-five (25) years after project completion date; and must contain a clause which enables the grantee to dedicate the land for the twenty-five (25) year period. The dedication must be recorded in the public property records by the grantee, or in the case of a nonprofit grantee, by the land owner.

(a) Continuing Recreational Use. At the option of the Grantee, the project site may be afforded Section 6(f)(3) protection of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460*l*-8(f)(3)]. The Grantee must have sufficient control and tenure of the project site as specified in the LWCF Manual in order to provide reasonable assurance that a conversion will not occur without approval of the National Park Service. The Grantee shall notify the Department that it requests Section 6(f)(3) protection prior to the FHWA authorizing the project.

(b) Equipment. All equipment purchased with RTP funds is to be used for trail maintenance and construction purposes on those trails indicated in the project application. The equipment shall be stored and maintained per the manufacturer's recommendations. The equipment shall be available for inspection by Department staff.

1. On July 1 of each year, the Grantee will submit proof of insurance for the current fiscal year, and an annual report indicating the previous year's operating and maintenance schedule.

2. All equipment whose value is in excess of $5,000 remains property of FHWA and shall be surplused in accordance with their Guidance. All equipment whose value has depreciated to less than $5,000 but greater than zero will be surplused in accordance with DEP Directive 320. A copy of the directive may be obtained from the Division of Administration, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. Should the equipment be lost or stolen, it is the Grantee's responsibility to replace the equipment at its current value, as determined by the Department.

(2) Management of Project Sites. Grantees shall ensure by site inspections that facilities on project sites developed with RTP funds are being operated and maintained for public outdoor recreational purposes for a period of twenty-five (25) years from the completion date set forth in the project completion certificate. All project sites shall be open at reasonable times and shall be managed in a safe and attractive manner.

(3) Conversion. Should a grantee, within the periods set forth in subsections 62S-2.076 (1) and (2), F.A.C., convert all or part of the project site to other than public outdoor recreational uses, the grantee shall replace the area, facilities, resource, or site at its own expense with a project of comparable scope and quality.

(4) Non-Compliance. The Department shall terminate a project agreement and demand return of the program funds (including interest) for non-compliance by a grantee with the terms stated in the project agreement or this rule. If grantee fails to comply with the provisions of this part or the project agreement, the Department shall declare the grantee ineligible for further participation in RTP until such time as compliance has been obtained.

(5) Public Accessibility. All facilities shall be accessible to the public on a non-exclusive basis without regard to age, gender, race, religion, residence, or ability level.

(6) Entrance Fees. Grantees may charge user fees for the project area, as described in the Guidance. Reasonable differences in entrance fees for program projects may be maintained on the basis of residence, but only if the grantee can clearly show that the difference in entrance fees reflects, and is substantially related to, all economic factors related to park management, and is not simply related to the amount of tax dollars spent by the residents for the park; and that a definite burden on the grantee in park maintenance costs clearly justifies a higher fee for nonresidents.

(7) Native Plantings. In developing a project area with program funds, a grantee shall primarily use vegetation native to the area, except for lawn grasses.

(8) Post Completion Inspections. Department staff shall periodically inspect completed program sites to ensure compliance with program requirements as stated in subsections (4)-(7) of this section.

*Specific Authority 260.016(1)(h) FS. Law Implemented 260.016(1)(d), (f), (h), (2)(a)2. FS. History–New 5-1-01.*

# EXHIBIT "C"
# SCOPE OF WORK
# Develop Greenway Trail on South Side of the C-11 Canal

## 1.0 General Scope of Work.

- Draft Responses to the Ranking Criteria in 62S-2, F.A.C.
- Updated letters from Federal, State and local elected officials, environmental and social groups supporting the Town's desire to protect its rural lifestyle by developing a 7.25 mile Greenway Trail along the District's C-11 Canal. This trail is the major spine of the Town's 25 miles of proposed Greenway Trails that links the Town's proposed parks and open spaces together.
- The Town will prepare a grant application to the State for the District to file on its behalf
- If the grant application is approved by the State, the Town will proceed with the development of the Greenway Trail on South Side of the C-11 Canal in accordance with the Work Breakdown Structure outlined below. A more detailed work plan will be provided to the District following receipt of State funding approval.

## 2.0 Work Breakdown Structure

| ITEM | DESCRIPTION |
|---|---|
| PURPOSE: | Multi-purpose Trail Linking Broward County's North/South Greenery Corridors planned for Flamingo Road and Levee (L-33)<br>Project supports: Bicycles – Off-Road/Mountain Bicycles<br>Day Hiking – By Many<br>Equestrian – SF Trail Riders<br>Fitness Activities – Jogging<br>Aquatic Activities – Fishing<br>Others – Naturalists |
| LENGTH OF CORRIDOR | 7.25 mile |
| LOCATION | South side of SFWMD's C-11 Canal<br>Note: No trail placed in I-75 ROW |
| WESTERN TERMINUS | Top of Levee 33 (L-33) |
| EASTERN TERMINUS | West side of Flamingo Road ROW |

| | |
|---|---|
| USERS | Non-motorized users, only |
| MATERIAL OF TRAIL | Grass and dirt |
| WIDTH OF TRAIL | 12' |
| SETBACKS: | 4' minimum from top of bank<br>12' minimum from back of curbing along Griffin Road |
| PHYSICAL FEATURES | 3'-0" wide trail identification signage placed every mile<br>3- at grade bridges spanning secondary drainage outfalls<br>low landscaping per SFWMD's Regulations<br>openings in guard rails for users |
| FUNDING FOR DESIGN, ADMINISTRATION & CONSTRUCTION | OGT = $ 80,000<br>Town = $ 20,000<br>Total = $ 100,000 |

## 3.0 Payment/Deliverable Schedule

The Town shall invoice the District no more frequently than monthly. Each invoice shall be accompanied by a description of construction progress completed to date as well as documentation of actual costs incurred within the $80,000.00 not-to-exceed amount of funding authorized by the State. Payment shall also be subject to District verification of satisfactory completion by the Town.

FULLY-EXECUTED

DEPT. FILE COPY

2/27/07
2.14
73660

# AGREEMENT FOR THE JOINT USE OF LANDS OF THE UPPER PENITENCIA CREEK PARK CHAIN BY AND AMONG SANTA CLARA VALLEY WATER DISTRICT COUNTY OF SANTA CLARA AND CITY OF SAN JOSE

This Agreement ("Agreement") is made and entered into on this 20th day of March, 2007 ("Effective Date") by and between the COUNTY OF SANTA CLARA, a political subdivision of the State of California (hereinafter designated "County"), the CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter designated "City"), and the SANTA CLARA VALLEY WATER DISTRICT, a public entity of the State of California (hereinafter designated "District"), concerning the joint use of certain designated properties along Upper Penitencia Creek for public park, recreational and flood control purposes from Alum Rock Park to Coyote Creek.

RECITALS

1. WHEREAS, the County prepared a Master Plan for Penitencia Creek Park, from Alum Rock Park to Coyote Creek, dated July 18, 1977, hereinafter called "1977 Master Plan", which contemplates the joint use of County, District, and City-owned land on and adjacent to Upper Penitencia Creek, said land being that shown on the attached "Exhibit 1", which by this reference is made a part of this agreement. This Master Plan was reviewed and approved by the County Board of Supervisors, and formally endorsed by the District Board of Directors, and the City Council; and

2. WHEREAS, consistent with approval of the 1977 Master Plan, the County, City, and District entered into an "Agreement for Joint Use of Lands for the Upper Penitencia Creek Park Chain By and Among Santa Clara Valley Water District, County of Santa Clara and City of San Jose" dated July 6, 1981 that expired on July 6, 2006( "the Agreement"); and



DUPLICATE ORIGINAL

JAN 23 2007

3. WHEREAS, the County, City, and District entered into a 1987 agreement entitled "Specific Plan Agreement for Joint Use and Development of a Portion of the Penitencia Creek Park Chain", which provided for the development of a portion of the park; and

4. WHEREAS, the City Council adopted a master plan in June 2002 for the Penitencia Creek Trail Reach 2 and construction is underway for a trail between Noble Avenue to Piedmont Road; and

5. WHEREAS, the County adopted the 1995 Countywide Trails Master Plan as part of its General Plan and a portion designates the Penitencia Creek Trail as a Multi-Use Bay Area Ridge Trail alignment; and

6. WHEREAS, the County and City have invested considerable public funds into recreational improvements consistent with the Agreement and have performed operation and maintenance of these improvements for the benefit of the public; and

7. WHEREAS, the District is working on a joint study with the U.S. Army Corps of Engineers (Corps), hereinafter called "Flood Protection Project", to evaluate existing Upper Penitencia Creek conditions and develop flood protection alternatives that meet the Flood Protection Project objectives, which include providing 100-year flood protection, enhancing riparian and fisheries habitat, improving creek water quality and maintenance, and providing recreational access to the public in cooperation with the City and County.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree as follows:

1. Conveyance of Property

County, City and District agree to cooperate in providing such exchanges or conveyances of real property or easements on Upper Penitencia Creek as will permit the joint use of public-owned lands for parks, recreation, open space, flood management, and water

conservation purposes. Each such exchange or conveyance of real property or interests therein shall be formally approved and consummated by the governing boards of the parties affected.

2. Term and Option to Renew

This agreement shall be for a period of twenty-five (25) years beginning on the Effective Date. County, City, and District may renew this agreement for another twenty-five (25) years either upon the same terms or conditions, or upon any other written terms or conditions mutually acceptable to the parties.

3. Joint Responsibility for Implementation and Operation and Maintenance

a. County and City agree to jointly implement the 1977 Master Plan, and subject to availability and appropriation of funds, will design and construct recreational elements consistent with the Master Plan.

b. County, City and District will maintain their respectively owned lands unless and until another party expressly assumes such maintenance by separate agreement and will maintain to the extent stated in that agreement.

c. County and District are evaluating the use and compatibility of County lands for the District's flood control easements, specifically where the 1977 Master Plan calls for a continuous paved trail from Coyote Creek to Alum Rock Park to be designed and constructed to Countywide Trails Master Plan guidelines.

4. County-Specific Responsibilities

a. County agrees to cooperate in the use of County-owned land along Upper Penitencia Creek for flood protection purposes.

b. County will develop lands adjacent to Upper Penitencia Creek as a linear regional park consistent with the 1977 Master Plan, as feasible in the opinion of the County and subject to appropriation of funds by County's governing body.

c. County shall maintain and operate all park facilities that County constructs unless otherwise provided by written agreement with another party.

d. County shall submit proposed recreational improvement plans on City or District-owned land to the respective property owner for review and approval.

5. District-Specific Responsibilities

a. District agrees to cooperate in the use of District owned land along Upper Penitencia Creek for recreational purposes.

b. District shall maintain the natural and constructed channel between the tops of banks of Upper Penitencia Creek and the recharge facilities for flood control and water conservation purposes in accordance with the applicable property interests.

c. Subject to the future needs of the District and as is permitted by separate agreement of the parties, the District will construct and maintain recharge ponds on County or City owned lands where feasible in the opinion of District, in accordance with the 1977 Master Plan. Such construction shall be subject to the availability of existing or future water supplies. The District has constructed a portion of a recharge pond on City property in accordance with the 1977 Master Plan.

d. District shall be guided by the plans and principles of the 1977 Master Plan in constructing aesthetically pleasing flood control improvements on District property and minimizing disturbance of the natural stream.

e. District will implement the Flood Protection Project consistent with the joint District and Corps planning study or agreements made pursuant to the study.

f. District shall submit proposed flood improvement plans located on City or County-owned land to the respective owner for review and approval.

6. City-Specific Responsibilities

a. City agrees to cooperate in the use of City-owned land along Upper Penitencia Creek for flood protection purposes.

b. City will develop lands adjacent to Upper Penitencia Creek as a linear regional park consistent with the 1977 Master Plan, as feasible in the opinion of the City and subject to appropriation of funds by City's governing body.

c. City shall maintain and operate all park facilities City constructs unless otherwise provided by written agreement with another party.

d. City shall submit proposed recreational improvement plans on County or District-owned land to the respective property owner for review and approval.

7. Permits

For any flood control or recreational elements constructed in the area depicted in the 1977 Master Plan, the County, City, and District shall assist each other and cooperate in identifying applicable permits, coordinate permit applications to the extent feasible, and streamline permitting processes. Each party is responsible for obtaining regulatory permits for their respective projects, as necessary.

8. Indemnification and Hold Harmless

a. County shall assume the defense of, indemnify, and hold harmless District, City, and their officers, agents and employees from all claims, liability, loss, damage and injury of any kind, nature or description directly or indirectly arising during the initial term of this agreement, or any renewal thereof, and resulting from the public use of premises under control of the County pursuant hereto or from acts, omissions, or activities of County's officers, agents, employees, or independent contractors employed by County. This agreement, to defend, indemnify, and hold harmless, shall operate irrespective of whether negligence is the basis of the claim, liability, loss, damage or injury, and irrespective of whether the act, omission or activity is merely a condition rather than a cause.

b. District shall assume the defense of, indemnify and hold harmless County, City and their officers, agents and employees from all claims, liability, loss, damage and injury of any kind, nature or description directly or indirectly arising during the initial term of this agreement or any renewal thereof and resulting from District's exercise of flood management or water conservation purposes on the premises pursuant hereto or from acts, omissions, or activities of District's officers, agents, employees or independent contractors employed by District. This agreement to defend, indemnify and hold harmless shall operate irrespective of whether negligence is the basis of the claim, liability, loss, damage or injury, and irrespective of where the act, omission or activity is merely a condition rather than a cause.

c. City shall assume the defense of, indemnify, and hold harmless County, District and their officers, agents, and employees from all claims, liability, loss, damage or injury of any kind, nature, or description directly or indirectly arising during the initial term

of this agreement, or any renewal thereof and resulting from the public use of premises under control of the City pursuant hereto or from acts, omissions, or activities of City's officers, agents, employees, or independent contractors employed by City. This agreement to defend, indemnify and hold harmless shall operate irrespective of whether the act, omission or activity is merely a condition rather that a cause.

9. Notices

Any and all notices required to be given hereunder shall be in writing and may be delivered personally or shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing.

| | |
|---|---|
| County: | Clerk of the Board of Supervisors<br>County of Santa Clara<br>70 West Hedding Street, East Wing<br>San Jose, California 95110 |
| City: | City Clerk<br>City of San Jose<br>200 East Santa Clara Street<br>San Jose, California 95113 |
| District: | Clerk of the Board of Directors<br>Santa Clara Valley water District<br>5750 Almaden Expressway<br>San Jose, California 95118 |

10. Amendments

This Agreement may only be amended by the written agreement of the parties.

11. Exhibits

Exhibit A – Property Ownership Map

12. Successors and Assigns

This agreement, and all the terms, covenants, and conditions hereof, shall apply to and bind the successors and assigns of the respective parties hereto.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

"County"
COUNTY OF SANTA CLARA

By: _____
Donald F. Gage, Chairperson
Board of Supervisors

"City"
CITY OF SAN JOSE

By: _____
Deanna Santana
Deputy City Manager

"District"
SANTA CLARA VALLEY
WATER DISTRICT

By: _____ for
Stanley M. Williams
Chief Executive Officer

ATTEST:

_____
Phyllis Perez
Clerk, Board of Supervisors

ATTEST:

_____ for
Lauren Keller
Clerk/Board of Directors

APPROVED AS TO FORM:

_____
Katherine Harasz
Deputy County Counsel

APPROVED AS TO FORM:

_____
Barbara Jordan
Deputy City Attorney

APPROVED AS TO FORM:

_____ 12-22-06
Debra L. Cauble
District Counsel

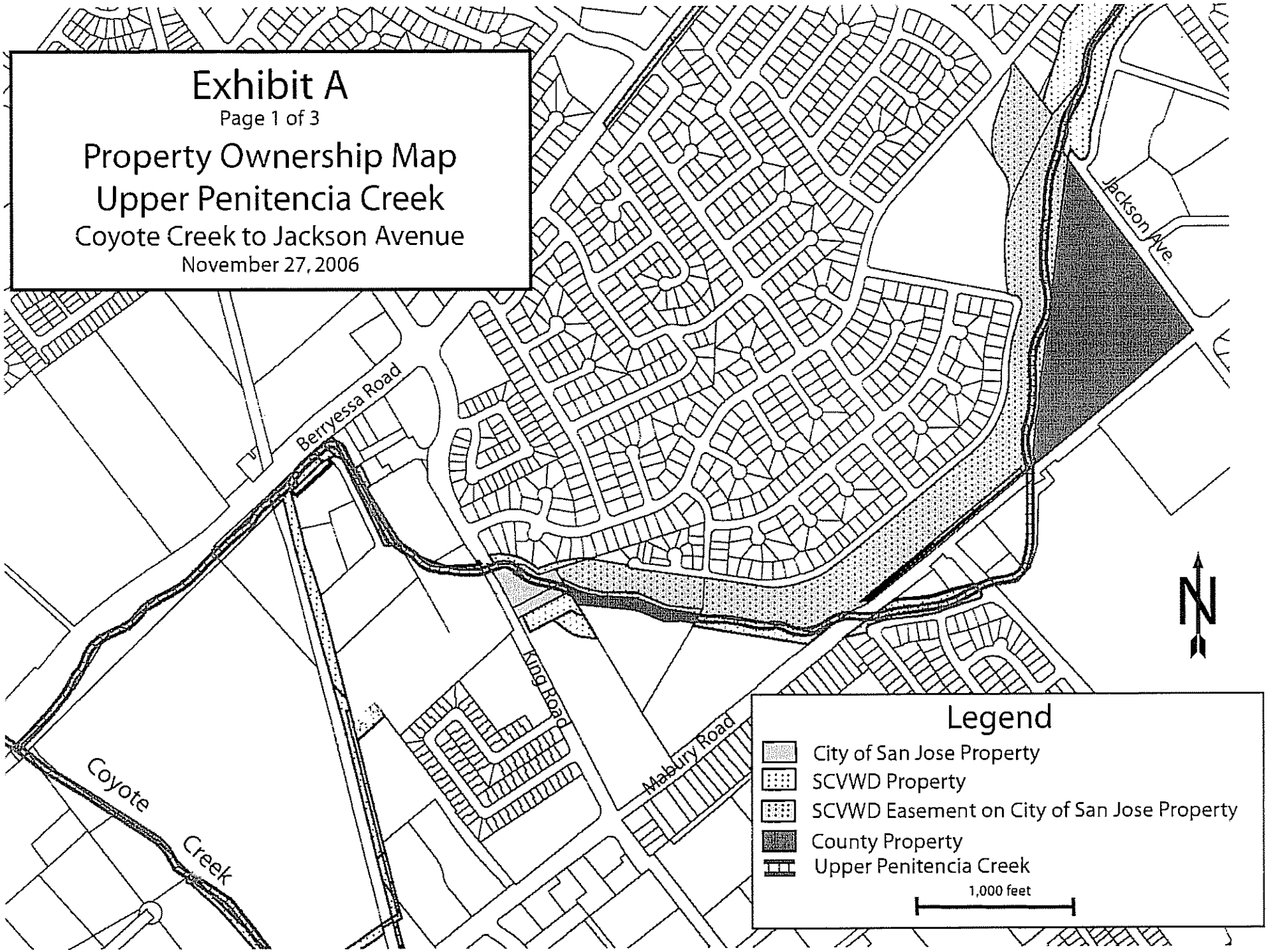
# Exhibit A

Page 1 of 3

## Property Ownership Map
## Upper Penitencia Creek

Coyote Creek to Jackson Avenue

November 27, 2006



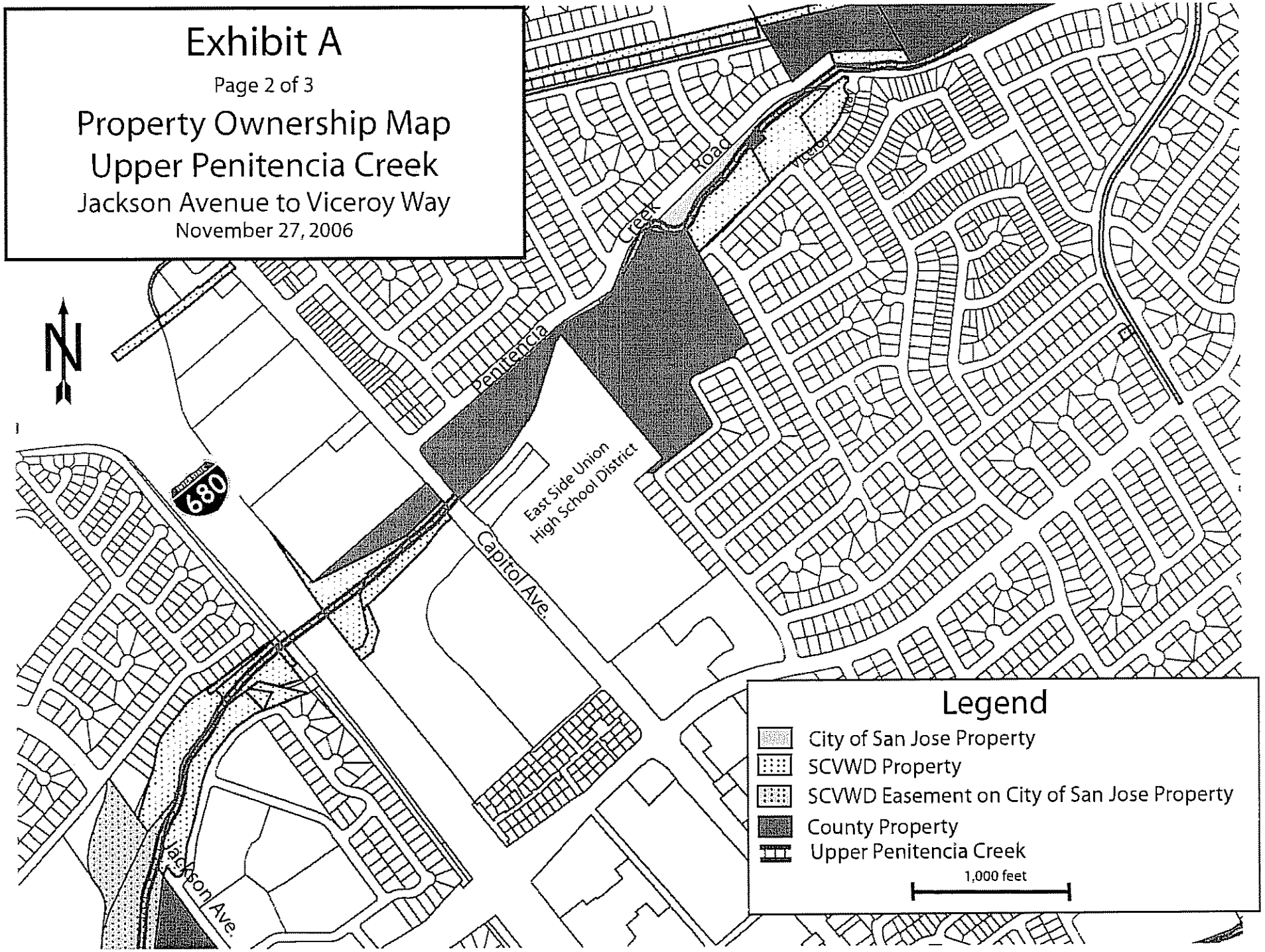
# Exhibit A

Page 2 of 3

## Property Ownership Map
## Upper Penitencia Creek

Jackson Avenue to Viceroy Way

November 27, 2006



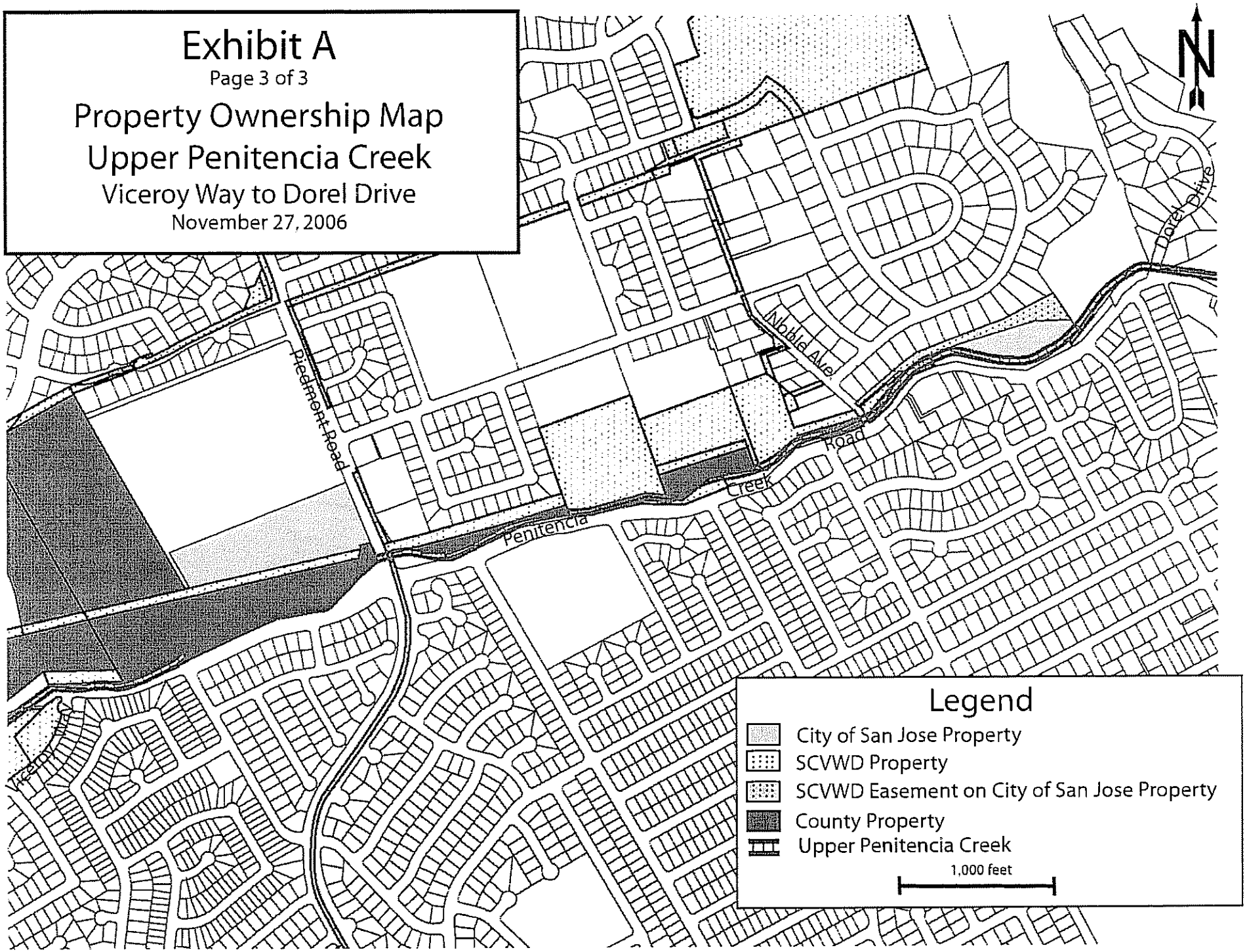
# Exhibit A

Page 3 of 3

## Property Ownership Map
## Upper Penitencia Creek

Viceroy Way to Dorel Drive

November 27, 2006



L 3-15-07
S 3-20-07
C 3-20-07

# CONTRACT TRANSMITTAL TO CITY MANAGER

**CONTRACTOR:** N/A Business Tax Certificate (License#) N/A
**CONTRACTOR CONTACT:** N/A Santa Clara Valley Water District
**CONTRACTOR ADDRESS:** N/A

**TERM:** 01/23/07 to 1/23/32 **AMOUNT OF CONTRACT:** $0 Reso#73660

**COUNCIL DATE:** 02/27/07 **COUNCIL AGENDA ITEM NUMBER:** 2.14

**BUDGET REFERENCE:** N/A
**BUDGET:** N/A **APPROPRIATION:** N/A no cost agreement

**DEPT.:** PRNS **CONTACT:** Yves Zsutty **PHONE:** 793-5561

**TYPE OF CONTRACT:** Inter-Agency Agreement **CEQA STATUS: NOT A PROJECT**

**DESCRIPTION OF CONTRACT:** *(What work will the contractor accomplish?)*

Joint use agreement between County, SCVWD and City for development of flood control, open space and recreational improvements along Penitencia Creek.

**CONTRACTOR SELECTION PROCESS:** (Please describe how the contractor was selected.)

N/A

**INFLUENCE OF LOCAL PREFERENCE:**

N/A (y/n) Local Business – At least one employee in Santa Clara County
N/A (y/n) Small Business – 35 or fewer employees companywide
N/A (y/n) Award influence by Local Preference Policy
N/A ($ value) Closest non-Local bid

**ISSUES:** *(Please list any issues of importance.)*

None

**COORDINATION:**

PW, DOT, PBCE, Budget Office, Attorney, County and SCVWD

Department Head Signature _____ Date 3-9-07

Asst. to the City Mgr. Signature _____ Date 3/20/07