

**File: City of Sunnyvale  
Sunnyvale West Channel  
Sunnyvale East Channel**

**JOINT USE AGREEMENT  
between  
City of Sunnyvale  
and  
Santa Clara Valley Water District  
Sunnyvale West Channel and Sunnyvale East Channel**

SANTA CLARA VALLEY WATER DISTRICT, a California Special District created by the California Legislature, hereinafter referred to as "District;" and CITY OF SUNNYVALE, a municipal corporation of the County of Santa Clara, hereinafter referred to as "City"; AGREE as follows:

**RECITALS:**

- A. Whereas, District is the owner of certain real property (hereinafter "the Premises"), shown on "Exhibits A and Exhibit B" attached hereto, so marked and by this reference made a part hereof. The Premises are located along the Sunnyvale West Channel and the Sunnyvale East Channel within the City of Sunnyvale;
- B. Whereas, City has an interest in using Premises to enable City to provide certain recreational opportunities to the public that do not unreasonably interfere with the District's mission of flood protection, water resource management, and stream stewardship;
- C. Whereas, City has requested District incorporate public trail improvements into District's Sunnyvale West Channel and Sunnyvale East Channel Flood Protection Project (Project), subject to City approving and funding in full these trail improvements. City has requested trail improvements at the following locations:
  - 1. Sunnyvale West Channel – The proposed trail is to be located along the District's west maintenance road extending from Caribbean Drive upstream to Mathilda Avenue;
  - 2. Sunnyvale East Channel – The proposed trail is to be located along the District's east maintenance road extending from Caribbean Drive upstream to Moffett Park Drive and from Persian Drive upstream to John W. Christian Greenbelt.
- D. Whereas, the parties find it to be in the public interest to provide for joint use of the Premises by means of an Agreement under the following terms and conditions;

**Now, therefore, the parties agree as follows:**

**1) Scope of the License Grant to City.** Subject to the terms and conditions of this Agreement, District hereby grants to City a non-exclusive license to access and do any or all of the following on the Premises:

a. To construct, operate, maintain, repair, replace, and remove City Improvements for recreational purposes on the Premises including, but not limited to, asphalt concrete surfaced pedestrian and bicycle trails, pedestrian bridges, fencing, fixture (trash receptacles, benches etc.) and signage. The construction of such City Improvements shall require prior review and approval by District as signified by issuance of a Water Resources Protection Ordinance Encroachment Permit ("District Permit"), and shall be compliant with all applicable legal and permitting requirements. It is fully understood and agreed that District in its reasonable discretion may approve or disapprove a request for any permit to construct any City Improvement on the Premises.

b. To provide non-motorized bicycling, walking, jogging and hiking activities in accordance with all applicable legal and permitting requirements to the extent such activities do not interfere with the District's mission of flood protection, water resource management, and stream stewardship.

c. To host special recreational events (e.g., races) that may include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as City first receives a District Permit to host that event.

**2) Prohibited Uses of Trail.** City shall post notices at all trail entrances that notify users of the trail that the following activities are prohibited:

- Entry of motor vehicles (except for maintenance, emergency, and enforcement vehicles and mobility devices otherwise allowed by law)
- Unleashed dogs

Subject to the foregoing prohibitions and any other restrictions set forth in this Agreement, City shall have the sole authority to adopt any trail rules and regulations pursuant to City of Sunnyvale Municipal Code for any City Improvements on the Premises that will not interfere with District's mission of flood protection, water resource management, and stream stewardship.

**3) Trash and Litter Removal.** City will provide for trash removal on the Premises that is reasonably likely to have been generated from the public's use of the Trail. City will be responsible for maintaining, servicing, emptying trash receptacles, and rubbish removal as reasonably necessary. District will manage the Adopt-A-Creek program.

- 4) Vegetation Management.** If existing vegetation impacts the trail use, then City is responsible for removal, as City deems necessary.
- 5) Graffiti Removal.** City will provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from floodwalls, signs, etc. installed in conjunction with and/or accessory to the establishment of a public pathway consistent with its implementation of the same program at comparable City facilities. City will have the primary responsibility for removal of graffiti, on the Premises, reasonably attributed to trail use. No permit from District, nor any advance notice, will be required for City to provide the routine removal of graffiti from any City or District facility within the length of the East Channel or West Channel included within this agreement. Any and all materials used by City in the removal of graffiti within the limits of this agreement shall be approved for use in the State of California, environmentally safe products, which will not impact the storm drain channel environment in any way.
- 6) Security.** The premises will be reasonably patrolled by City personnel and/or volunteers supervised by City, at the level of Public Safety that is afforded to all areas of the City. District has no obligations whatsoever to provide or pay for any such patrol services.
- 7) Public Complaints.** City is responsible for responding to all public complaints and inquiries regarding City's improvements on the Premises, including the public trail, and to all inquiries regarding the public's use of the Premises.
- 8) Removal or Relocation of City Improvements.** If District requires that any City improvement on Premises be removed or relocated for any District purpose, City will do so at its own expense within 90 days of receiving notice from District. If removal or relocation of City improvements, including vegetation installed by City, requires mitigation under the California Environmental Quality Act, City will be responsible for all costs required to fulfill any required mitigation responsibilities. District will inform City during preconstruction planning in the event a District project is performed on the Premises, in order to reasonably minimize District's project impact on City's improvements located on the Premises. In the event a District project is constructed, any replacement of City's trail and amenities will be the responsibility of City, subject to District approval.
- 9) Water Level Fluctuations.** It is expressly understood by City that the level of water upon the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same. City is responsible for the control of or limiting the public's use of Premises because of such water levels, flood flows, or for any other reason. City is responsible for determining the conditions under which to exercise said control or to limit the use of the Premises to ensure the health and safety of the public using the Premises.

- 10) Signage.** The parties will cooperate to create and install signage that benefits the programs of each party such as warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Deputy Operating Officer of District and the Public Works Director of City or their respective designees will meet and confer on a periodic basis to plan the installation of appropriate signage which serves the needs of both parties. All signs placed on the Premises by City (except existing signs that identify the facility (e.g. Trail) by name) must include District's logo in equal size and symmetrical relationship to any other logos contained on such signs. In addition, all City signs or City publications placed on the Premises that describe water resources must be developed in conjunction with District's Watershed customer relations staff. Each party is responsible for the maintenance and upkeep of its signage installed on the Premises.
- 11) Bird Nesting Season.** Construction and maintenance work during nesting season (generally between February 1<sup>st</sup> and August 31<sup>st</sup>) will be avoided whenever possible. If construction or maintenance work must be done during the nesting season, a pre-construction survey by a qualified biologist must be undertaken to determine the presence of nesting. If nesting activity is reported, the biologist is expected to recommend the City to implement adequate mitigation measures to protect the nesting area. Environmental impacts will be considered prior to all work by the responsible party, (City or District, and/or their agents) performing said work. Any and all work related to this clause will be completed by the responsible party in accordance with applicable federal, state, and local environmental health and safety regulations including but not limited to the federal Migratory Bird Treaty Act of 1918, Clean Water Act, Endangered Species Act, the California Fish and Wildlife Code and the Porter-Cologne Act and any amendments thereto.
- 12) Maintenance and Repair.** District is responsible for performing routine maintenance on the Premises for flood protection and water resource management purposes in a manner consistent with its maintenance of comparable facilities or creeks. City is responsible for the maintenance and repair of recreational improvements on the Premises. City will bear the cost and expense of any security, police or other expenditure necessary to temporarily prohibit or control public access to the Premises that District would not ordinarily incur to complete scheduled routine maintenance pursuant to this provision. In an emergency situation, District will respond without notice to City. In non-emergency situations, City and District staff will meet, whenever necessary, for the purpose of scheduling routine maintenance, including, but not limited to:
- (a) Maintenance issues related to improvements;
  - (b) Method and timing of issues related to affected wildlife;
  - (c) Non-emergency work requiring the use of heavy equipment, barricading, and/or restricting access to the Premises. District and City further agree to notify one another's designated representative at least ten (10) work days prior to commencement of such work, in order to minimize public impacts.

- 13) Damage to City's Improvements on Premises.** District is not responsible for any damage occurring to City's improvements or structures located on the Premises that results from District's maintenance, construction or reconstruction activities, or from its water management and/or flood protection facilities located on or near the Premises, including (without limitation) any flood flows, or inundation of the Sunnyvale West Channel and Sunnyvale East Channel onto the Premises. Further, City is responsible for any damage occurring to either District's or City's improvements or structures located on the Premises that result from the public's use of the Premises. All such costs for repairing such damage to District's or City's improvements will be borne by City.
- 14) Term of Agreement and Renewal Option.** This Agreement will become effective upon full completion of the Project as evidenced by the date of execution by the District's Clerk of the Board of a "Notice of Completion of Contract and Acceptance of Work" for the Project (Agreement Effective Date). The term of this Agreement (including the rights and obligations contained therein) is twenty-five (25) years commencing on the Agreement Effective Date. This City, upon providing District with no less than ninety (90) days written notice, but no more than 180 days notice prior to the expiration of the initial 25-year term, may renew this Agreement for an additional 25-year period.
- 15) Termination of Agreement.** A party may terminate this Agreement after providing the other party with at least 180 days prior written notice and its intent to terminate this Agreement. Upon the termination or expiration of this Agreement, City must remove all City Improvements from the Premises, and leave the Premises in a condition as near as reasonably practical to its condition prior to the installation and/or development of such improvements. If the District requires the trail to be removed from the Premises due to a flood protection project or other District project, this Agreement will terminate upon District providing the City with written notice of at least 180 days. Notice of intent to renew or to terminate may be given by City's Director of Public Works. Notice of intent to terminate may be given by District's Chief Executive Officer.
- 16) City's Responsibility for Public Use.** Subject to the conditions and restrictions contained in this Agreement, City has the full control and authority, for public and recreation purposes over the use of the Premises, and City may restrict, or control, regulate and/or supervise the public use thereof. City may, at its discretion, consistent with the right of District hereinafter described, and without diminution of the flood protection or water resources management function or hazard thereto of the Premises as now existing or as may hereafter be altered, take any measures of every kind as may in the opinion of City be necessary for the health and safety of the users of the Premises for any purpose under this Agreement. City has the sole responsibility for the maintenance in usable and safe condition of every facility provided upon the Premises by City.
- 17) District's Superior Rights.** It is expressly understood that District is engaged in flood protection, the protection of water resources, and stream stewardship and that the terms

and conditions of this Agreement will not in any way interfere with the absolute, free and unrestricted right of District to operate and maintain for flood protection, water resource management, and stream stewardship purposes the stream bed and banks or any appurtenant works thereto, or to repair or construct any of its works, or to allow the raising or lowering of the height of the water present upon the Premises.

**18) City's Subordinate Rights.** City will have the right to build improvements on the Premises necessary, or convenient to the enjoyment of this Agreement, provided the location of the any such improvement is, in each case during the term of this Agreement, first approved by District and signified by issuance of a District permit. It is fully understood and agreed that District has the sole, unfettered discretion to approve or disapprove of such improvements

**19) Indemnification by City.** Notwithstanding any other provision of this Agreement, City agrees to indemnify, defend and hold harmless District, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the: (i) public use of the Premises, (ii) public's use of real property adjacent to the Premises, or (iii) negligence or willful misconduct of City's officers, agents, employees, or independent contractors. This Agreement to defend, indemnify, and hold harmless District will operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of Premises or any other cause of any kind or nature.

**20) Notices.** Any and all notices required to be given hereunder will 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:

**City:**

City of Sunnyvale  
Attention: Public Works Director  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707

**District:**

Santa Clara Valley Water District  
Attention: Clerk of the Board  
5750 Almaden Expressway  
San Jose, CA 95118  
w/copy to Community Projects Review Unit

**21) Successors and Assigns.** This Agreement, and all terms, covenants, and conditions hereof, will apply to and bind the successors and assigns of the respective parties hereto. City will neither assign nor sublet this Agreement without the prior written consent of District.

**22) Choice of Law.** This Agreement is governed by California law.

**23) Amendments.** This Agreement may not be modified or amended except in writing signed by both parties.

**24) Compliance with Laws.** Each party must, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all federal, state, and local laws, statues, orders, ordinances, rules, and regulations.

**25) Not Real Property Interest.** It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, fee or other interest in a party's real property to the other party.

**26) Attorney's Fees.** In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party is entitled to collect from the other its reasonable attorney's fees as established by the judge or arbitrator presiding over such dispute.

**27) Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties concerning the public's recreational use of the Premises and supersedes all prior written and oral understandings concerning the public's recreational use of the Premises.

(Remainder of page intentionally left blank; signatures follow on next page)

WITNESS THE EXECUTION HEREOF,

**"City"**

CITY OF SUNNYVALE  
A Municipal corporation of the County of Santa Clara

By: \_\_\_\_\_  
Deanna J. Santana  
City Manager

ATTEST:

\_\_\_\_\_  
Kathleen Franco-Simmons  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Joan A. Borger  
City Attorney

**"District"**

SANTA CLARA VALLEY WATER DISTRICT,  
a Special District, created by the California Legislature

By: \_\_\_\_\_  
Beau Goldie  
Chief Executive Officer

ATTEST:

\_\_\_\_\_  
Michele L. King  
Clerk of the Board of Directors

APPROVED AS TO FORM:

\_\_\_\_\_  
Brian Hopper  
Senior Assistant District Counsel