

AGREEMENT FOR MAINTENANCE OF MULTI-USE NON-MOTORIZED TRAIL

THIS AGREEMENT is made and entered into effective this _____ day of _____, 2005, by and between the Department of Transportation, State of California, hereinafter referred to as "STATE", and the County of San Mateo, hereinafter referred to as "COUNTY".

W I T N E S S E T H:

A. RECITALS

1. A multi-use non-motorized trail, including shoulders, side slope, fencing, and appurtenances, hereinafter referred to as "TRAIL," will be constructed by COUNTY on the east side of State Route 35 near State Route 92.
2. The beginning portion of this TRAIL, located near State Route 92, lies within STATE's right of way from postmile 21.77 to postmile 21.83 (approximately 300 feet) hereinafter referred to as "TRAIL HEAD". TRAIL HEAD, together with the TRAIL drainage culvert discharge rip rap at TRAIL Station 11 + 35, will be constructed within STATE right of way under Encroachment Permit No. 0404-NMC-1245 issued by STATE and as shown in EXHIBIT A, attached to and made a part of this Agreement.
3. The parties hereto now desire to describe the TRAIL maintenance functions to be performed by COUNTY and to specify the terms and conditions under which such work will be performed on STATE right of way.

B. AGREEMENT

This Agreement shall supersede any previous Agreement relating to TRAIL maintenance by COUNTY. In consideration of the mutual covenants and promises herein contained, it is agreed:

1. COUNTY shall perform such maintenance work as is specifically delegated to COUNTY as hereinafter described under Section D, or as said section may be subsequently modified with the written consent of the parties hereto, acting by and through their authorized representatives.
2. COUNTY shall operate and maintain, at COUNTY expense, a safe facility for non-motorized travel along the entire length of the TRAIL HEAD.

3. Rights granted to COUNTY under this Agreement are restricted to maintenance duties and licensed passage over TRAIL HEAD by pedestrians, equestrians, joggers, and other non-motorized uses. No motor driven vehicles shall be permitted on TRAIL HEAD except those motor vehicles operated by STATE or those operated by COUNTY for these described maintenance purposes. Any other use by COUNTY will require that a separate encroachment permit be issued from STATE.
4. COUNTY shall not, at any time, use or permit the public to use TRAIL HEAD in any manner that will interfere with or impair the primary highway transportation use of STATE's right of way.
5. Should COUNTY desire to reconstruct or improve TRAIL HEAD within STATE's right of way, COUNTY shall first obtain a separate Encroachment Permit from STATE for that purpose.
6. COUNTY will maintain all areas as shown within this TRAIL HEAD limits depicted on Exhibit A, attached hereto and made a part hereof.
7. COUNTY shall regulate use of TRAIL HEAD including hours and days of operations.

C. MAINTENANCE DEFINED

Maintenance is defined, in part, in section 27 of the Streets and Highway Code.

D. MAINTENANCE FUNCTIONS

The various operations and maintenance functions that are delegated to COUNTY, at COUNTY's expense, are as follows:

1. COMPACTED GRAVEL PAVEMENT AND ROADSIDE MAINTENANCE

COUNTY shall provide compacted gravel pavement maintenance, sweeping, and debris removal for the surface of TRAIL HEAD, adjacent shoulders, and slopes when necessary to maintain a safe facility.

2. LITTER AND GRAFFITI

COUNTY shall perform cleanup and sweeping operations necessary to maintain the described width limits of TRAIL HEAD in a clean usable condition. COUNTY shall also perform clean up operations to maintain the

areas within the fenced boundaries either side of TRAIL HEAD free of litter, debris, and graffiti. Litter, debris, and graffiti includes, but is not limited to, all sand, paper, garbage, refuse, trimmings, and other items resulting from natural events and public access.

COUNTY shall be responsible for cleaning and painting to keep structure surfaces directly adjacent to TRAIL HEAD within fencing free of debris and graffiti.

3. VEGETATION CONTROL

COUNTY shall perform vegetation control of all vegetative material growing within the width limits of TRAIL HEAD. This includes, but is not limited to, treatment by chemical means, brush control, and tree trimming.

4. SIGNS

COUNTY shall provide for sign maintenance, which includes all work performed on signs placed or to be placed on TRAIL HEAD for the purpose of guiding, warning or regulating TRAIL HEAD traffic. The work will also consist of the replacement of existing signs and the repair, cleaning, and painting of signs.

5. SAFETY DEVICES

The maintenance, repair, replacement, and cleaning of safety devices (located within the TRAIL HEAD), including, but not limited to, bollards, guideposts, and markers, are COUNTY's responsibility.

6. DRAINAGE STRUCTURES

COUNTY will maintain all drainage facilities located within the width limits of TRAIL HEAD, and COUNTY will also maintain the rip rap for the drainage culvert discharge at the TRAIL location shown in Exhibit A.

7. FENCES and GATES

The maintenance, repair, replacement, and cleaning of all fences and gates constructed as part of TRAIL HEAD are COUNTY's responsibility.

8. OTHER MAINTENANCE

COUNTY will perform any and all other maintenance functions normally associated with maintenance of a multi-use non-motorized gravel trail. STATE, at its sole option, may assist COUNTY in performing emergency maintenance functions associated with large landslides, fires, or other unexpected damage and COUNTY will reimburse STATE's costs for these services.

E. LEGAL RESPONSIBILITIES

1. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties who are not parties to this contract or to affect the legal liability of either party to the contract by imposing any standard of care with respect to the maintenance of State highways or the TRAIL different from the standard of care imposed by law.
2. It is understood and agreed that neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work authority or jurisdiction delegated to COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code section 895.4, COUNTY shall defend, indemnify and save harmless STATE and all STATE officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement.
3. It is understood and agreed that neither COUNTY nor any COUNTY officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code section 895.4, STATE shall defend, indemnify and save harmless COUNTY and all COUNTY officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

- 4. It is understood and agreed that the COUNTY maintains the right to abandon TRAIL HEAD at any time under a separate encroachment permit from STATE. At which time, the COUNTY shall remove all fences, bollards and sign posts, and remove the paving to restore the site to its original grading in the STATE right of way to the satisfaction of STATE representative, and the maintenance agreements for the TRAIL HEAD portion of this agreement shall be terminated.

F. EFFECTIVE DATE

This Agreement shall be effective upon the date of its execution by STATE, and shall terminate only upon the mutual written agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

COUNTY OF SAN MATEO

STATE OF CALIFORNIA
DEPARTMENT OF
TRANSPORTATION

By: _____
Chairman, Board of Supervisors

WILL KEMPTON
Director of Transportation

Attest:

County Clerk

By _____
YADER A. BERMUDEZ Date
Deputy District Director
Maintenance

Approved as to form:

Approved as to form:

County Attorney

Attorney