

Memorandum of Understanding MOU

THIS MOU is made and entered into as of this ____ day of January 2014, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and AMERICAN RIVER PARKWAY FOUNDATION, a California 501 c 3 corporation serving the American River Parkway hereinafter referred to as "PARTNER."

RECITALS

WHEREAS, COUNTY Department of Regional Parks desires to upgrade the facilities of Discovery Park; and

WHEREAS, PARTNER provides special services including volunteer coordination and fundraising; and

WHEREAS, PARTNER desires to assist the Department of Regional Parks in improving Discovery Park; and

WHEREAS, COUNTY finds PARTNER'S participation will enhance the ability to improve the park facilities; and

WHEREAS, COUNTY and PARTNER desire to enter into this MOU on the terms and conditions set forth, herein.

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

I. SCOPE OF Work

PARTNER shall provide special services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein. COUNTY shall undertake the Discovery Park work items specified in Section II(A) of Exhibit A to this MOU. PARTNER shall undertake the Discovery Park work items specified in Section II (B) of Exhibit A to the MOU. COUNTY and PARTNER shall use "best efforts" to have their respective work items completed within the term of this MOU. The foregoing notwithstanding, a party's obligation to undertake and complete any enumerated work item shall be subject to the availability of funding and, in the case of PARTNER, a sufficient number of volunteers to commence and complete the work. All work shall comply with the American River Parkway Plan as in effect at the time of the work, as well as all other applicable federal, state and local laws and regulations. All work undertaken by PARTNER shall be subject to Director's prior review and approval.

II. TERM

This MOU shall be effective and commence as of the date first written above and shall end on January 15, 2016 with the option for COUNTY to extend the MOU for two additional one-year terms.

III. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this MOU shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY

Jeff Leatherman
DIRECTOR
Department of Regional Parks
4040 Bradshaw Rd,
Sacramento CA 95827

TO PARTNER

Dianna Poggetto
American River Parkway Foundation
5700 Arden Way Carmichael CA
95608

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

IV. COMPLIANCE WITH LAWS

COUNTY and PARTNER shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

V. GOVERNING LAWS AND JURISDICTION

This MOU shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this MOU shall be brought in Sacramento County, California.

VI. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING

A. PARTNER shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be

deemed a breach of this MOU and constitutes grounds for the termination of this MOU by COUNTY.

- B. PARTNER further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts.

VII. STATUS OF PARTNER

- A. It is understood and agreed that PARTNER (including partner's employees) is a volunteer partner and that no relationship of employer-employee exists between the parties hereto. PARTNER assigned personnel shall not be entitled to any benefits payable to employees of County. PARTNER hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this MOU.
- B. If any third persons are employed by PARTNER, such person shall be entirely and exclusively under the direction, supervision, and control of Partner. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Partner, and the County shall have no right or authority over such persons or the terms of such employment.
- C. It is further understood and agreed that as an volunteer partner and not an employee of County, neither the PARTNER nor PARTNER'S assigned personnel shall have any entitlement as a County employee, right to act on behalf of County in any capacity whatsoever as agent, nor to bind County to any obligation whatsoever. Partner shall not be covered by worker's compensation; nor shall Partner be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the County to employees of the County.
- D. It is further understood and agreed that PARTNER must issue W-2 and 941 Forms for income and employment tax purposes, for all partner assigned employees under the terms and conditions of this MOU.

VIII. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

- A. PARTNER'S failure to comply with state and federal child, family and spousal support reporting requirements regarding a partner's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this MOU.

- B. PARTNER'S failure to cure such default within 90 days of notice by COUNTY shall be grounds for termination of this MOU.

- C. If PARTNER has a Principal Owner, Partner shall provide Principal Owner information to the COUNTY upon request. Principal Owner is defined for purposes of this MOU as a person who owns an interest of 25% or more in the PARTNER. Information required may include the Principal Owner's name, address, and social security number. Failure to provide requested information about a Principal Owner within 60 days of request shall be deemed a material breach of this contract and may be grounds for termination.

IX. BENEFITS WAIVER

If PARTNER is unincorporated, PARTNER acknowledges and agrees that PARTNER is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should PARTNER or any employee or agent of PARTNER seek to obtain such benefits from COUNTY, PARTNER agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

X. CONFLICT OF INTEREST

PARTNER and PARTNER'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this MOU.

XI. GOOD NEIGHBOR POLICY – AMERICAN RIVER PARKWAY PLAN

- A. PARTNER'S OPERATION shall comply with COUNTY'S Good Neighbor Policy and shall comply with the rules and policies found in the American River

Parkway Plan. PARTNER shall establish good neighbor practices for its work project including, but not limited to:

1. Litter control around the areas of work during operational hours;
 2. Removal of any litter around the areas of work at the end of operational hours;
 3. Active care, stewardship, and protection of the areas of work;
 4. Participation in area crime prevention and reporting;
 5. Undertake such other good neighbor practices as determined appropriate by COUNTY based on COUNTY'S individualized assessment of PARTNER'S OPERATION and actual impacts on the American River Parkway.
- B. PARTNER shall identify, either by sign or other method as approved by the DIRECTOR, a named representative who shall be responsible for responding to any complaints relating to PARTNER compliance with the required good neighbor practices specified in this Section. PARTNER shall post the name and telephone number of such contact person on the outside of the OPERATION, unless otherwise advised by DIRECTOR.
- C. PARTNER shall comply with all applicable public nuisance ordinances.
- D. If COUNTY finds that PARTNER has failed to comply with the Good Neighbor Policy or the American River Parkway Plan, COUNTY shall notify PARTNER in writing that corrective action must be taken by PARTNER within a specified time frame. PARTNER'S continued non-compliance with the Good Neighbor Policy or the American River Parkway Plan shall be grounds for termination of this MOU and may also result in ineligibility for additional or future contracts with COUNTY.

XII. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

- A. PARTNER agrees and assures COUNTY that PARTNER and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this MOU, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical

condition (including HIV and AIDS), or physical or mental disability. PARTNER shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.

- B. PARTNER represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. PARTNER agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

XIII. INDEMNIFICATION

PARTNER shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, elected representatives, officers, directors, agents, employees and volunteers from and against any and all demands, claims, actions, losses, liabilities, costs, damage, fine or expense (including but not limited to the payment of reasonable attorney's fees, court costs and expert fees), or liability of any kind or character to any person or property resulting from or arising out of the performance of this MOU, except and in proportion to the extent caused by the "active" as opposed to "passive" negligence or willful misconduct of COUNTY, its Board of Supervisors, Elected representatives, officers, directors, agents, employees and volunteers."

PARTNER shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this MOU, regardless of whether caused in part by a party indemnified hereunder.

XIV. INSURANCE

Without limiting PARTNER'S indemnification, PARTNER shall maintain in force at all times during the term of this MOU and any extensions or modifications thereto, insurance as specified in Exhibit B. It is the responsibility of PARTNER to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. Failure to

maintain insurance as required in this MOU may be grounds for material breach of contract.

XV. PAYMENT

- A. There shall be no compensation by or to either party in association with this MOU.

XVI. SUBCONTRACTS, ASSIGNMENT

PARTNER shall not subcontract or assign any of its work OPERATION provided by this MOU without the express, written, permission of the COUNTY. PARTNER remains legally responsible for the performance of all contract terms, including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this MOU. PARTNER shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.

XVII. SUCCESSORS

This MOU shall bind the successors of COUNTY and PARTNER in the same manner as if they were expressly named.

XVIII. TIME

Time is of the essence of this MOU.

XIX. INTERPRETATION

This MOU shall be deemed to have been prepared equally by both of the parties, and the MOU and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

XX. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this MOU shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this MOU shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

XXI. DIRECTOR

As used in this MOU, "Director" shall mean the Director of the Department of Regional Parks, or his designee.

XXII. DISPUTES

In the event of any dispute arising out of or relating to this MOU, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, PARTNER agrees to immediately suspend its OPERATION and either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this MOU or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

XXIII. TERMINATION

- A. COUNTY or PARTNER may terminate this MOU with or without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing.

XXV. PRIOR MOUS

This MOU constitutes the entire contract between COUNTY and PARTNER regarding the subject matter of this MOU. Any prior MOUs, whether oral or written, between COUNTY and PARTNER regarding the subject matter of this MOU are hereby terminated effective immediately upon full execution of this MOU.

XXVI. SEVERABILITY

If any term or condition of this MOU or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this MOU are declared severable.

XXVII. FORCE MAJEURE

Neither PARTNER nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents,

earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

XXVIII. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this MOU are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this MOU or any extension thereof. Further, the terms, conditions and warranties contained in this MOU that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this MOU shall so survive.

XXVIX. DUPLICATE COUNTERPARTS

This MOU may be executed in duplicate counterparts. The MOU shall be deemed executed when it has been signed by both parties.

XXX. AUTHORITY TO EXECUTE

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU for or on behalf of the parties to this MOU. Each party represents and warrants to the other that the execution and delivery of the MOU and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO, a
political subdivision of the State
of California**

American River Parkway Foundation

By _____
Jeffrey R. Leatherman, Director
Department of Regional Parks

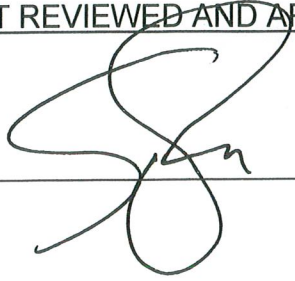
By _____
Dianna Poggetto,
Executive Director

Date: _____

Date: _____

CONTRACT REVIEWED AND APPROVED BY COUNTY COUNSEL

By:

A large, stylized handwritten signature in black ink, appearing to be 'S. J. ...' with a large loop at the top and a long tail.

Date:

1/31/14

EXHIBIT A to MOU

between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY," and
AMERICAN RIVER PARKWAY FOUNDATION, hereinafter referred to as
"PARTNER"

SCOPE OF SPECIAL SERVICES

I. SERVICE LOCATION(S)

PARTNER's improvements shall take place along the American River Parkway at Discovery Park within the boundaries of the Developed Recreation Land Use designation located in the American River Parkway Plan. ("WORK ") All work enumerated in Section II of this Exhibit A shall take place along the American River Parkway at Discovery Park within the boundaries of the Developed Recreation Land Use designation and outside the County and City transportation right-of-way as delineated in the American River Parkway Plan. Partner's work shall hereafter be referred to as 'Partner's Work'. County work shall hereafter be referred to as 'County Work'."

II. DESCRIPTION OF SPECIAL SERVICES

COUNTY and PARTNER shall coordinate all improvements to Discovery Park. All assigned work project are subject to the availability of funding, volunteers and must be compliant with the American River Parkway Plan. COUNTY and PARTNER shall coordinate all work performed in accordance with this MOU. All work items are subject to the availability of funding, and, in the case of PARTNER, a sufficient number of volunteers to commence and complete Partner's Work. All work shall comply with the American River Parkway Plan as in effect at the time of the work, as well as all other applicable federal, state and local laws and regulations. All work undertaken by PARTNER shall be subject to Director's prior review and approval

COUNTY

- a. Inspect all work performed by Partner.
- b. Repair and rehabilitate Discovery Park sewer system.
- c. Repair and rehabilitate the Jibbom Street Bridge.
- d. Repair and rehabilitate the entrance from Garden Hwy.
- e. Replace the Tisconia beach restroom facility.
- f. Install vehicle turn-around at the west end of Tisconia Beach.

- g. Add hot coal containers at rental picnic sites.

PARTNER

PARTNER shall coordinate volunteer work and fundraising to accomplish the following projects consistent with the provisions of this Agreement.

- a. Upgrade park entrances including planter beds and curb side improvements.
- b. Repair, renovate, or replace picnic shelters.
- c. Repair and renovate existing Discovery Park kiosks, including informational and interpretive kiosks.
- d. Replace Discovery Park picnic BBQ grills and install hot coal containers near major picnic areas.
- e. Relocate horseshoe pits and remove volleyball courts.
- f. Repair walkway near Discovery Park boat ramp.
- g. Update interpretive language on the 4 sided kiosk at mile 0.0.
- h. Plant additional trees around picnic sites.
- i. Repair Discovery Park picnic benches.
- j. Paint the interior and exterior of the restrooms.