

**MEMORANDUM OF UNDERSTANDING
FOR TEMPORARY SITE ACCESS**

**CHATTAHOOCHEE RIVERLANDS SHOWCASE TRAIL
SITE DEVELOPMENT AND MANAGEMENT**

This Memorandum of Understanding (the “MOU”) is entered into by and between the City of Smyrna, a Georgia Municipal Corporation, hereinafter called the “City”, whose address is 2800 King Street, Smyrna, GA 30080, and **THE TRUST FOR PUBLIC LAND**, a California public benefit corporation d/b/a The Trust for Public Land (Inc.) (“TPL”), having an office at 600 West Peachtree Street, Suite 1840, Atlanta, Georgia 30308.

RECITALS

WHEREAS, TPL is a conservation organization having among its purposes the acquisition and improvement on behalf of the public of open space, scenic and recreational lands and trails; and

WHEREAS, in 2020, TPL and the City were among multiple groups and agencies that completed the Chattahoochee Riverlands Study (the “Study”); and

WHEREAS, a large portion of the first stretch of the Riverlands Trail system outlined in the Study to be constructed (the “Riverlands Showcase”) lies in the City Limits of the City, including land formerly or soon to be dedicated to the City as public park land; and

WHEREAS, the City is the owner in fee simple and in possession of Cobb County Tax Parcel 18017500120, also known as Riverview Park and described in Exhibit “A” attached hereto and made a part hereof and hereinafter referred to as the Property; and

WHEREAS, TPL possesses a permanent trail easement on Cobb County Tax Parcel 18017200050, also known as the “City Owned Parcel,” and is in the process of acquiring a permanent trial easement on Cobb County Tax Parcel 18017200270, also known as the “Ardent Parcel,” which are described in Exhibit B attached hereto and made a part hereof, and which are adjacent to the Exhibit A Property. The Exhibit B parcels are hereinafter referred to as the “Trail Easements”, with the Ardent Parcel expected to be dedicated fee simple to the City for park and recreation purposes in the near future; and

WHEREAS, the City desires to grant to TPL a temporary easement for access and construction on the Property to provide for planning, site investigation, design and

construction of a recreational bicycle and pedestrian trail and associated amenities, which include but are not limited to site furnishings, signage and landscaping, and improvements on the Property for the benefit of the public (the “Site Work”); and

WHEREAS, TPL intends to conduct similar Site Work on the Easement Properties, with the final trail and other improvements to be transferred to the City upon the conveyance of the Trail Easements to the City; and

WHEREAS, TPL, through various agreements with contractors, and TPL’s or contractor’s agents, successors, or assigns, will contract for, manage and monitor the Site Work, and that the contractors shall perform the Site Work.

NOW, THEREFORE, the City and TPL enter into this MOU for the cooperation toward the completion of this portion of the Riverlands Showcase Trail:

1. Provisions Affecting the Property.

- 1.1 Temporary Rights of Access. The City for itself and for its successors and assigns, hereby conveys and grants to TPL, its contractors, agents, successors and assigns, a temporary non-exclusive right of access (the “Access Rights”) over, under, in, along, across and upon the property described on the attached and incorporated in Exhibit “A” (the “Property”) solely and for the lawful construction, installation, maintenance, if necessary, of the Site Work. Prior to the commencement of any of the Site Work, the City shall have approved all final plans for the intended improvements, such plans being done in compliance with the Chattahoochee Riverlands Design Guidelines, which can be found at <https://www.chattahoocheeriverlands.com/wp-content/uploads/2022/06/Riverlands-Design-Guidelines-Part-01.pdf> and incorporated herein.
- 1.2 Temporary Right to Complete Construction. The City for itself and for its successor and assigns, hereby conveys and grants to TPL, its contractors, successors and assigns, a temporary, non-exclusive right to complete construction (the “Construction Rights”) over, under, in along, across and upon the Property for use in the construction of the Site Work and other construction purposes reasonably related to the construction of the Site Work. Prior to the commencement of the Construction Rights, TPL shall have access to the Property during normal business hours to conduct all studies, tests, examinations and surveys necessary to plan, design, and construct the Site Improvements. The Construction Rights shall encumber the entire Property.
- 1.3 Completion of Construction/Acceptance by City. Upon completion of all Site Work, including trail construction, the City will have 30 days to inspect the Site Work to raise any objections or concerns. Once all

objections and concerns are resolved, the City shall accept ownership of the Site Work improvements and shall take over all obligations and responsibilities for maintenance, repair and management thereafter.

2. Provisions Affecting the Easement Properties.

2.1 Approval of Site Work. TPL, at its own cost and expense, shall complete site investigation, planning and design for the trail and associated improvements across the Easement Properties. Prior to the commencement of any of the Site Work, the City shall have approved all final plans for the intended improvements, such plans being done in compliance with the Chattahoochee Riverlands Design Guidelines, as identified in paragraph 1.1 above.

2.2 Completion of Construction/Acceptance by City. Upon completion of all Site Work, including trail construction, the City will have 30 days to inspect the Site Work to raise any objections or concerns. Once all objections and concerns are resolved, and easement interest in the Trail Easements has been dedicated by TPL to City, and accepted by the City, the City shall accept ownership of the Site Work improvements and shall take over all obligations and responsibilities for maintenance, repair and management thereafter.

2.3 Transfer to City. Upon the dedication of the easement interest in the Trail Easement, the City will then accept and own the trail and improvements and shall take over all obligations and responsibilities for maintenance, repair and management thereafter.

Term of MOU. This MOU shall commence on the effective date of this Agreement and shall run with the land and continue in full force and effect until 11:59 p.m. June 30, 2026. Upon the expiration of the term of the MOU, all of the rights and benefits of TPL in, to and under this Easement with respect to the Site Improvements, with the exception of those provisions regarding Perpetual Public Access as outlined in Section 3 below, shall automatically terminate and be of no further force and effect.

3 Reservation by City/Non-Exclusive Use. All right, title and interest in the Property and the City Owned Parcel which may be used and enjoyed without interfering with the completion by TPL of its Site Work are reserved by City, provided, however, that City shall not enact or maintain any improvements which may cause damage to or interfere with the Site Work to be placed on the Property or the City Owned Parcel.

4 Perpetual Public Access. The City hereby agrees that upon completion of the trail improvements on both the Property and the Trail Easements, the City shall maintain and manage the trails so as to allow the general public the right to use and enjoy the trail. Nothing in this provision shall prevent the City from regulating use of the trail, posting and enforcing use rules, or temporary closing the trail or portions thereof for

maintenance, repair or in the event of an emergency for the protection of life and safety.

5. Indemnity, Liability, and Liability Insurance. TPL shall conduct its activities subject to this Agreement so as not to endanger any persons or property therein. TPL shall indemnify, save, and hold harmless and defend the city and all of its officers, agents, and employees from any and all claims resulting from losses, injuries, damages, and liabilities to persons or property resulting, wholly or in part, from acts or omissions of TPL, including acts or omissions of its agents, officers, and employees, to the full extent of its insurance coverage provided within this section. Notwithstanding the foregoing, the TPL shall not be liable (or held to indemnify) liability arising from and caused by any act or omission of the County.

During the term of this Agreement, TPL shall, at TPL's expense, purchase and maintain, or cause to be purchased and maintained, for the benefit of the City, a policy or policies of Commercial General Liability Insurance, issued in the name of the TPL or the general contractor hired by TPL to install the Site Work, and naming the City as an additional insured, with limits not less than One Million (\$1,000,000.00) Dollars for injury to and/or death of any one person in a single occurrence, and not less than One Million (\$1,000,000.00) Dollars for injury to and/or death of more than one person in a single occurrence, and not less than One Million (\$1,000,000.00) Dollars for damage to property in a single occurrence. Said insurance policy shall include contractual liability coverage which shall recognize and include the indemnification provisions of this Agreement. TPL agrees that, in the event TPL contracts with a third-party or third-parties ("TPL's Vendors"), TPL shall require that its vendors shall have adequate insurance at all times at TPL's expense or TPL's Vendor's expense, which coverages shall include the same coverages as specified for TPL, and further agrees to furnish TPL Vendor's Certificate of Insurance to City prior to the commencement of the Site Work.

- 6 Cost/Lien-Free Construction and Compliance with Laws. TPL shall bear and promptly pay, without the imposition of any lien or charge on or against all or any portion of the Property, all costs and expenses of construction and maintenance of the Site Work. TPL shall construct the Site Work in a workmanlike manner and in compliance with the applicable statutes, ordinances, rules and regulations of all governing public authorities as those statutes, ordinances, rules and regulations are amended from time to time. Venue for any action hereunder shall be in the appropriate court of Cobb County, Georgia.
- 7 This MOU may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 8 Time is hereby expressly made of the essence with respect to each and every term and provision of this MOU, including, but not limiting the generality of the

foregoing, with respect to each and every time constraint and deadline imposed by the terms of this MOU.

9 In case any one or more of the provisions contained in this MOU shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed, to the extent reasonably possible, as if such invalid, illegal or unenforceable provision had never been contained herein.

10 Each person executing this MOU warrants and represents that he or she is fully authorized to do so.

IN WITNESS WHEREOF, the City executed this Agreement as aforesaid.

Witnesses:

Print name: _____

Print name: _____

BY: _____

Name: _____

Title: _____

DATE: _____

Witnesses:

Print name: _____

Print name: _____

**THE TRUST FOR PUBLIC
LAND**, a nonprofit California
corporation

BY: _____

By: George Dusenbury

Title: State Director

DATE: _____

EXHIBIT “A”