

**MEMORANDUM OF UNDERSTANDING
REGARDING ACCESS ACROSS PRIVATE PROPERTY
DURING EVACUATION EVENTS**

This Memorandum of Understanding Regarding Access Across Private Property During Evacuation Events ("Agreement") is made between the City of Oakley ("City"); Reclamation District No. 2025 (Holland Tract) [RD 2025]; and Gary P. and Barbara Ann Rowland ("Owner"), who are sometimes referred to within individually as a "Party" or collectively as "Parties." This agreement is effective as of January 1, 2022.

WHEREAS, Owner owns fee title to the property located at 3900 Holland Tract Road, Knightsen, California, 94548, more particularly described as Contra Costa County Assessor Parcel No. 023-010-002-6 ("Property"); and

WHEREAS, RD 2025 is a public agency organized and operating under the laws of the State of California; and

WHEREAS, RD 2025 owns and maintains a 150 foot easement, at the western edge of the Property, for reclamation purposes, including drainage per 319 Deeds 316 ("RD Property"); and

WHEREAS, City is a general law city organized under the laws of the State of California and has the authority under Article XI, Section 7 of the California Constitution to provide for the public health and safety; and

WHEREAS, the City has a Police Department that provides law enforcement services throughout the City's incorporated territory; and

WHEREAS, the City employs a Police Chief, who exercises the powers provided in California Government Code Sections 38630 et seq. and 41601 et seq. and Section 2.2.304 of the Oakley Municipal Code; and

WHEREAS, the City Manager of the City has the authority under Section 2.5.012(a)(3) of the Oakley Municipal Code to control and direct the emergency organization of the City for the promotion of the effective response to public emergencies, including fires, floods, earthquakes, and natural disasters; and

WHEREAS, the Summer Lakes South development, located in the East Cypress Corridor area of the City, is a residential subdivision that accesses the City's system of public streets to the west through East Cypress Road; and

WHEREAS, to the east of the Summer Lakes South development, East Cypress Road terminates at Sandmound Boulevard, which runs north-south and parallel to Sand Mound Slough and

WHEREAS, in public emergencies in which evacuation orders have been given, the residents of the area have principally travelled west on East Cypress Road to vacate the residential areas subject to the evacuation orders. These areas include the East Cypress Corridor Specific Plan, Summer Lakes South and the unincorporated area of the County; and

WHEREAS, in such emergencies, however, some residents have vacated the area by travelling east on East Cypress Road, then south on Sandmound Boulevard, then east across a dam constructed in Sand Mound Slough, known as the Rock Slough Dam, to access Holland Tract Road in the unincorporated area of Knightsen, California; and

WHEREAS, when the residents have used this alternate evacuation route, they have travelled through a gate maintained on Owner's Property and across Owner's property; and

WHEREAS, when the residents have used this alternate evacuation route, they have travelled upon and across the easement owned and maintained on and about RD 2025's levee and RD 2025 Property; and

WHEREAS, the Parties recognize that in future public emergencies requiring evacuation orders affecting the area, residents are likely to continue to use the alternate evacuation route and travel across Rock Slough Dam and Owner's Property and the easement owned and maintained by RD 2025; and

WHEREAS, the Parties recognize that in future public emergencies requiring evacuation orders affecting the area, residents of Holland Tract are likely to use the alternate evacuation route and travel across Rock Slough Dam and Owner's Property west to Sandmound Boulevard and west on East Cypress Road; and

WHEREAS, the Parties by this Agreement desire to reflect the terms and conditions under which the City and/or RD 2025, through its Police Chief, will allow and direct traffic along the alternate evacuation route in a manner that provides for effective travel while respecting and preserving their respective rights in and to the Property; and

WHEREAS, the Parties also desire to reflect the terms by which the City will defend, indemnify, and hold harmless Owner and repair Owner's Property following any damage sustained during an evacuation event ordered by the Police Chief and/or his designee; and

WHEREAS, the Parties also desire to reflect the terms by which the City will defend, indemnify, and hold harmless RD 2025 and repair RD 2025's levee(s) and/or RD 2025 district facilities following any damage sustained during an evacuation event ordered by the Police Chief and/or his designee.

NOW THEREFORE, in consideration of mutual covenants contained herein, the Parties to this Agreement mutually agree as follows:

1. Right to Direct Traffic Across Property During Evacuation Order

The Parties agree that during a public emergency requiring the partial or full evacuation of the East Cypress Corridor Area and surrounding unincorporated areas of the County, the City, under the direction of its Police Chief, shall have the authority to direct traffic across the Rock Slough Dam and across Owner's Property and RD 2025's Property for purpose of ensuring effective evacuation of those persons subject to the evacuation order. Owner agrees City shall place a lock on the gate located on the Owner's side of the dam and City shall cause the opening of the gate for public access only when an evacuation orders is in effect. Owner, RD 2025 and the City shall all have keys to this lock. Upon the declaration of any order requiring evacuation, in whole or in part, of the East Cypress Corridor Area and surrounding unincorporated areas of the County, City, through its Police Chief or his or her designee, shall immediately notify Owner through all available means of contact to advise of the evacuation order. For the duration of the evacuation order, City shall provide Police officers to direct vehicle traffic across the Rock Slough Dam, RD 2025 Property and Owner's Property to ensure effective access to Holland Tract Road in a manner that minimizes the impact on Owner's Property and upon RD 2025 levees and district facilities. City shall not allow the Rock Slough Dam, RD 2025 Property or Owner's Property to be accessed by any party for any purpose other than as provided in this Agreement.

The Parties further agree that during a public emergency requiring the partial or full evacuation of Holland Tract, under the direction of its Police Chief, shall have the authority to direct traffic across Owner's Property and across the Rock Slough Dam for purpose of ensuring effective evacuation of those persons subject to the evacuation order. Upon the declaration of any order requiring evacuation, in whole or in part, of Holland Tract, through its Police Chief or his or her designee, shall immediately notify Owner through all available means of contact to advise of the evacuation order. For the duration of the evacuation order, City shall provide Police officers to direct vehicle traffic across the Rock Slough Dam, RD 2025 Property and Owner's Property in a manner that minimizes the impact on Owner's Property. City shall not allow the Rock Slough Dam, RD 2025 Property or Owner's Property to be accessed by any party for any purpose other than as provided in this Agreement.

2. Term of Agreement

This Agreement shall remain in effect until such time as any Party gives notice to the other Party of its intention to cancel this Agreement. Any Party may cancel this Agreement by giving 120 days' notice in writing to the other Party, as provided below in Section 12.

3. Indemnification by City to Owner

City shall indemnify, defend, and hold harmless Owner from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation

costs and attorney's fees arising out of, resulting from any negligent or wrongful act or omission of (1) the City or its agents, officers, or employees, in connection with the performance of this Agreement, and (2) by any person causing damage to any other person or property during any evacuation event.

4. Indemnification by City to RD 2025

City shall indemnify, defend, and hold harmless RD 2025 from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees arising out of, resulting from any negligent or wrongful act or omission of (1) the City or its agents, officers, or employees, in connection with the performance of this Agreement, and (2) by any person causing damage to any other person or property during any evacuation event.

5. Duty to Repair Property

City agrees to repair any damage to any the Owner's Property and to RD 2025 Property and to any fixtures, roads, driveways, structures, or personal property located on the Property caused by any person during any evacuation event.

6. Entire Agreement

This Agreement, including any exhibits attached hereto, constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).

7. Written Amendment

This Agreement may only be changed by written amendment signed by the duly appointed representatives of the Parties to this Agreement on the effective date of the amendment. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

8. Severability

If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

9. Choice of Forum

The Parties agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into and is performed in the County of Contra

Costa, that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Contra Costa at a place to be determined by the rules of the forum.

10. Agreement Jointly Drafted

The Parties agree that this Agreement has been jointly drafted and that each Party has had the opportunity to have its legal counsel review, comment upon, and suggest amendments to the Agreement prior to its execution.

11. Notices

If any Party is required to give notice to the other Parties under this Agreement, the notice shall be sent by United States Mail, postage prepaid, as follows:

To City:

City of Oakley
Attention: City Manager
3231 Main Street
Oakley, CA 94561

To Owner


Gary P. & Barbara Ann Rowland
6224 Eagle Ridge Drive
Riverbank, CA 95367

To RD 2025:

Reclamation District No. 2025 (Holland Tract)
Attention: Pamela A. Forbus, Secretary
343 E. Main Street, Suite 815
Stockton, CA 95202


[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Memorandum of Understanding.




Joshua McMurray
City Manager
City of Oakley

2/25/22
Date



Gary and Barbara Rowland, Property Owner

02/23/2022
Date



David A. Forkel, Chairman
Reclamation District No. 2025
(Holland Tract)

1/19/2022
Date