

**LICENSE AGREEMENT BETWEEN
CITY OF PINOLE AND
CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
REGARDING JOINT USE AREAS**

THIS LICENSE AGREEMENT ("License Agreement") is made and entered into this ____ day of _____, 2010, by and between the City of Pinole, a California Municipal Corporation (the "City"), and the Contra Costa County Flood Control and Water Conservation District, a body corporate and politic of the State of California (the "District"). The City and the District are hereinafter referred to individually as a "party" or collectively as the "parties."

RECITALS

- A. The District holds fee title to property located along Pinole Creek in Contra Costa County, which is shown on Exhibit "A," attached hereto and incorporated herein (the "Property"). City and District agree that District's use of the Property for any purpose, including without limitation flood control, water conservation, and water quality improvement, as described in Section 5, titled "DISTRICT'S USE," is paramount to the use of any portion of the Property by City or any other party.
- B. In 1965, the Army Corps of Engineers constructed channel improvements in and along Pinole Creek. The District is responsible for maintaining the channel.
- C. In 2006, the California Resources Agency awarded the City a grant to undertake the Pinole Creek Greenway Demonstration Project ("Project"), which provides for restoration of vegetated habitat and fish passage, improvement of recreation opportunities, and enhancement of flood conveyance in lower Pinole Creek.
- D. The City and District agree that the Project is necessary and beneficial, and wish to cooperatively implement and provide additional funding for the Project, as set forth in this License Agreement.
- E. The City has constructed a sanitary sewer pipeline, bridges, a storm drain outfall structure, trails and appurtenant structures ("City Facilities") on the Property that are unrelated to the Project, and wishes to be able to continue to operate, maintain, repair, and replace the City Facilities.
- F. The purpose of this License Agreement is to provide for the City's use of certain "Joint Use Areas" located on the Property, as described herein, to implement the Project, and to operate, maintain, repair and replace the City Facilities.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and District agree as follows:

1. **JOINT USE AREAS AND PROJECT AREA:** District holds fee title to the Property shown on Exhibit "A," attached hereto and incorporated herein. District has determined that certain areas on the Property, as particularly described on Exhibit "B," attached hereto and incorporated herein, may be used by City on a non-exclusive basis, as further described herein. Those areas described on Exhibit "B" are hereinafter referred to as the Joint Use Areas ("JUAs"). The portion of the JUAs that City may use for

implementation of the Project, as further described herein, is described on Exhibit "C," attached hereto and incorporated herein, and hereinafter referred to as the "Project Area." District and City understand and agree that the boundaries of the JUAs may be modified from time to time as necessary upon the mutual written consent of the parties, in the form of a written amendment to this License Agreement.

2. **TERM:** The term of this License will be twenty-five (25) years commencing on the effective date given above, unless suspended or terminated as hereinafter set forth.
3. **GRANT OF LICENSE:** Subject to the terms and conditions of this License Agreement, District hereby grants to City, a non-exclusive, revocable license to enter upon and use the JUAs for the uses described in Section 6 of this License Agreement, titled "CITY'S USE OF THE JOINT USE AREAS."
4. **DISTRICT'S TITLE:** City hereby acknowledges District's fee title in and to the JUAs and agrees never to assail or to resist District's title. City acknowledges and agrees that it is not acquiring any interest in the JUAs or the land underlying the JUAs by executing this License Agreement, or by constructing, reconstructing or replacing any structures or facilities on or under the JUAs, that no interest or estate in the JUAs is being conveyed to it, and that City will not obtain any title or claim to use the JUAs beyond that specifically granted in this License Agreement.

Without the express, written consent of the District, which may be withheld in District's sole discretion, the City shall not enter into any agreement or contract, or accept grants, gifts or funding provided by a federal, state or other governmental authority that in any way subordinates the rights of the District over the JUAs, including but not limited to, District's right to construct, use, maintain, alter, reconstruct, enlarge or otherwise modify its facilities located in the JUAs. Should City's actions or uses of the JUAs subordinate the rights of the District over the JUAs, the City shall be obligated to cure the subordination, replace District's facilities in another location acceptable to the District at City's sole cost and expense, or compensate the District for any costs, or damages resulting from District's loss of use of such facilities.

Further, the City shall not enter into any agreement or contract with any third parties that extend any rights granted to the City hereunder beyond the extent, terms, or existence of this License Agreement.

5. **DISTRICT'S USE:** District shall have the right to use the JUAs for any purpose, including but not limited to flood control, drainage water conveyance, water conservation, water quality improvement, maintenance, channeling or otherwise controlling the flow of drainage waters, and performing activities required by federal, state, regional or local agencies, including but not limited to, water quality and quantity control and environmental mitigation and enhancement, all of which shall hereinafter be referred to as "District's Use." District's Use of the JUAs shall be paramount or superior to any other use of the JUAs, including but not limited to, City's Uses described below.

District may limit or temporarily suspend the City's use of the JUAs. District shall attempt to minimize such interruption or interference and will provide the City as much advance notice as possible under the circumstances. District shall not under any circumstances be liable to the City or any other users of the JUAs for any cost, expense or damage caused by their loss of use of the JUAs.

Except in the case of an emergency, the District will not make alterations to the JUAs, including the installation of improvements or utilities or performance of any construction, reconstruction, remodeling, alteration, removal, landscaping or tree planting, if such

alterations will have a substantial impact on City's ability to use the JUAs for City's Uses, described below, without prior notice to the City. Except in an emergency situation, the District will provide the City with at least ten (10) working days written notice of such alterations. The District will make every effort to design and/or construct alterations to accommodate the joint use of the JUAs by the City, to the extent economically feasible. As a courtesy, District will attempt to provide the City with design documents no later than the 50% project design milestone for review and comment; provided, however, City approval is not required for District to proceed with the proposed alterations.

6. **CITY'S USE OF THE JOINT USE AREAS:** The City shall have the non-exclusive right to use the JUAs to operate and maintain the existing City Facilities and to implement the Project, as provided in Section 7, titled "CITY'S PROJECT OBLIGATIONS," including the placement of ramps, landscaping, stairs, and lights ("City Improvements"), which uses will hereinafter be referred to as "City's Uses." Prior to commencing use of the JUAs, the City shall obtain written approval from the District of all plans and specifications for the Project. The City shall provide, at the City's sole expense, its own equipment, and other personal property necessary or convenient for its use of the JUAs. Any proposed modification to City's Uses, including use of District equipment, will require written approval from the District's Chief Engineer, or designee.

Prior to execution of this License Agreement, the District will provide City a copy of the District's Vegetation Management Program ("VMP"), schedule, regulatory permits and maintenance performance guidelines and other established plans, programs and practices, applicable to any JUAs. The City shall use the JUAs in a manner compatible with the VMP and District's maintenance program, permits and practices. If the District revises the VMP, it will submit the revised VMP to the City, and the City will modify its use of the JUAs as necessary to conform to the revised VMP within sixty (60) days of receipt or in such time as is approved in writing by the District's Chief Engineer, or designee.

The City shall not permit any motor-driven vehicles on the JUAs, except in designated parking areas, unless the vehicles are those of City or City's permittees that are being used for construction, maintenance, repair, patrol, or public safety purposes. To prevent unauthorized vehicle use, the City shall install access control devices and signage where necessary and appropriate.

Notwithstanding the foregoing, City shall not hinder or obstruct access to the JUAs by District or by any entity allowed by District to use the Property ("Permittees").

City's Uses, and all City's rights granted or implied by this License Agreement, are secondary and subordinate to the District's Use and to the rights of Permittees held prior to the execution of this License Agreement. The City shall not, at any time, use, or permit the public to use, the JUAs in any manner that will materially interfere with or impair District's or Permittees' use of the JUAs.

7. **CITY'S PROJECT OBLIGATIONS:** The City shall perform the following activities in order to implement the Project:

- A. Prepare and approve the necessary CEQA document(s) for the Project.
- B. Secure necessary regulatory permits in cooperation with District.
- C. Prepare plans, specifications, estimates and bid documents.
- D. Coordinate with District by 1) providing copies of plans, specifications, and

- estimates for review and approval by District prior to construction and at the 35%, 90%, and 100% stages of the Project design phase, and 2) meeting with District staff to receive staff's comments for incorporation into the bid documents.
- E. Comply with the requirements of the Union Pacific Railroad ("UPR") for work within UPR property and adjacent to active UPR track facilities.
 - F. Prepare, execute, and implement all utility relocation notices and relocation agreements.
 - G. Obtain an encroachment permit from District to perform the Project work within the Project Area.
 - H. Secure District's written approval of the City Engineer's estimated cost of bid items associated with free-standing flood walls and levees, and flood gates.
 - I. Advertise the design plans for public bid and review bids.
 - J. Secure District's written approval of bid amounts for items associated with free-standing flood walls and levees, and flood gates, prior to award of a contract for Project construction. The District reserves the right to reject the bids and enter into a separate contract with respect to these items.
 - K. Award a contract for Project construction.
 - L. Administer the construction contract for the Project.
 - M. Perform all construction engineering, surveys, material testing, contract administration and inspection of the Project.
 - N. Consult with and obtain the District's approval on any necessary changes or extra-work related to the construction of the Project.
 - O. Take all action necessary to assure that District and UPR property is free from all mechanics liens associated with construction of the Project.
 - P. Perform a joint inspection of the Project with District. After the District has determined that the work has been completed to its satisfaction, accept the Project.
 - Q. Assume all maintenance responsibility for City Improvements not delegated to the District under Section 12 of this License Agreement, titled "DISTRICT'S MAINTENANCE OF JOINT USE AREAS."
 - R. Prepare and submit to the District a report of Project costs, receipts, and disbursements.
 - S. Provide reproducible, as-built drawings to the District upon Project completion.
 - T. Act as a Project liaison with the public on behalf of the District and City.
 - U. Perform any necessary mitigation and monitoring work as required by regulatory permits.
 - V. Pay all costs associated with the Project, including design, engineering, and construction costs, except for those costs listed in Sections 8.G and 8.H of this License Agreement, titled "DISTRICT'S PROJECT OBLIGATIONS."
 - W. Provide District with Project plans or related documents upon request.
 - X. Operate flood gates as necessary to provide the maximum flood containment and conveyance capacity of channel during storm events.
 - Y. Pay, on City's own account, all charges for all utilities used or consumed on the JUAs under this License Agreement.

8. DISTRICT'S PROJECT OBLIGATIONS: To assist the City in the implementation of the Project, the District will perform the following services:

- A. Provide the hydraulic engineering analysis required to secure Army Corps of Engineer's approval of the Project.
- B. Review the Project plans, specifications and estimate, and provide comments to the City for incorporation into the final documents.
- C. Provide the City and its contractor, at no cost to the City or contractor, an encroachment permit to perform the Project work within the Project Area.
- D. Obtain rights of way for flood walls on UPR property.

- E. Perform, at no cost to the City, a joint final inspection of the Project and provide either a determination that the work was completed to the District's satisfaction or a detailed list of the tasks necessary to complete the work in a satisfactory manner.
- F. Assume maintenance responsibility for free-standing flood walls and levees, except for graffiti removal as specified in Section 11, titled "CITY'S MAINTENANCE AND ALTERATION OF THE JOINT USE AREAS."
- G. Pay 100% of the actual costs, including design, construction, and engineering costs, of free-standing flood walls and levees, and the flood gates serving the East Bay Regional Park District's Bay Trail Facility. District will pay these costs upon receipt of an invoice and documentation substantiating the invoiced costs from City. Invoices shall be submitted monthly and will be paid within 30 days of receipt.
- H. Pay 100% of the actual costs associated with the District's coordination with the UPR on the Project. Said costs do not include permit fees, construction coordination, or costs that UPR may request from City or that City may incur to comply with the requirements of the UPR for work within UPR property and adjacent to active UPR track facilities.

9. **PAYMENT OF DISTRICT'S COSTS:** The City shall reimburse District for any increases in the cost to maintain District's facilities in the JUAs due to City's use of said areas pursuant to this License Agreement. The City, with District's consent, shall have the option of doing the maintenance work in the JUAs in order to eliminate the District's increased costs, or contracting with the District, or an outside contractor approved by District, to perform said maintenance.

10. **LAWFUL CONDUCT:** The City agrees that it will obey, observe and use due diligence to the extent reasonably feasible to require all persons entering upon the JUAs to obey and observe all terms of this License Agreement and all applicable laws, ordinances, orders, rules, permits, regulations and requirements relating to the JUAs. The City shall be responsible for paying all fines, penalties, or charges which may be levied for violation of laws, ordinances, orders, rules, permits, and regulations, arising out of operations of the City or its employees, but shall not be responsible for fines, penalties or charges levied against third parties, including agents, Permittees or invitees. The City shall not commit, suffer, or permit any nuisance in or about the JUAs.

11. **CITY'S MAINTENANCE AND ALTERATION OF THE JOINT USE AREAS:** The City shall, at City's sole expense, repair and maintain the City's sanitary sewer pipeline, creek trails, landscaping, trail bridges and trail access points, screened storm drain outfall structure, and all City Improvements within the JUAs, in a safe, clean, neat, orderly and presentable condition, free from weeds, waste, litter, graffiti and other items resulting from the City's use of or public access to the JUAs, in accordance with this License Agreement and those standards described in Exhibit "D" attached hereto (the "Creek Maintenance Standards"). In addition, the City shall remove any graffiti from free-standing flood walls constructed within the JUAs. As used in this License Agreement, the term "litter" shall include, but not be limited to, paper, garbage, refuse, trimmings and other items that detract from the neat and tidy appearance, cleanliness, and safety of the JUAs. The City shall also be responsible for notifying the Contra Costa County ("County") Animal Services Department to report all dead animals within the JUAs.

The City shall provide District in writing, the contact information for a designated representative who shall be responsible for overseeing the day-to-day operations and maintenance of the JUAs.

Except in the case of an emergency, the City shall not make alterations to the JUAs, including but not limited to the installation of improvements or utilities or performance of any construction, reconstruction, remodeling, alteration, removal, landscaping, tree planting, major maintenance work, or other work without first obtaining an "Encroachment Permit for Use of District Right of Way" from the District's Chief Engineer or designee. The City shall make every effort to report emergency work in the JUAs to the District within twenty four (24) hours from commencement of such work. The District's Chief Engineer may require the City to apply to the District, for approval of emergency modifications to the JUAs. District may require the City to alter or remove any emergency work done by the City at the City's sole cost and expense, if the emergency work interferes with District's Use.

12. **DISTRICT'S MAINTENANCE OF JOINT USE AREAS:** The District shall be responsible for repairing and maintaining the structural capacity of free-standing flood walls and levees. District shall be responsible for maintaining the flood conveyance capacity of the channel on the Property by removing silt and debris causing obstructions to flow, and repairing and restoring damaged channel banks. The District shall maintain vegetation within the Property except within the Project Area, where the District shall be responsible for maintaining vegetation in the channel bottom and on the right channel bank and right over-bank area (looking downstream). The District shall not be liable for damage to City Facilities or City Improvements, including landscaping, which results from the District's use, operation, maintenance, repair, or replacement of District improvements/facilities within the Property. The District will exercise reasonable care to minimize adverse impacts to City Facilities and City Improvements within the JUAs.
13. **MECHANIC'S AND MATERIALMAN'S LIENS:** The City shall not permit any mechanic's, material man's, or other lien to be placed against the JUAs, or the Property, in connection with any labor, materials, or services furnished or claimed to have been furnished to the City related to any City Facilities or City Improvements. The City shall remove or discharge any such lien that shall be filed against the District related to the JUAs or the Property, in a timely fashion, whether bonded or not, provided, however that either District or the City may contest any such lien, so long as the enforcement thereof is stayed.
14. **SECURITY OF THE JOINT USE AREAS:** The City shall provide such patrol and security service necessary to prevent unauthorized use of and to the extent feasible protect the safety of the users of the JUAs. City will devote, at a minimum, the same standards and levels of public safety patrol and security service to the JUAs as it devotes to its other recreational facilities.

District shall not have any duty to guard or secure the JUAs or the Property, and shall have no liability for any injury, loss, or damage to, City, or any third person, including goods, property, facilities, or equipment, located upon or near the JUAs, irrespective of the cause of such loss or damage, except to the extent that such loss or damage was caused by the sole negligence or willful misconduct of the District, or its officers, employees or permittees excluding the City.

15. **HOLD HARMLESS AND INDEMNIFICATION:** The City, its officers, employees, agents, contractors, and consultants shall defend, indemnify, save, protect, and hold harmless District and County, their boards, officers, agents and employees from and against any and all demands, claims, suits, costs, losses, expenses, and liabilities for any damages, fines, penalties, sickness, death or injury to persons or property, including without limitation, all consequential damages (collectively, "Liabilities"), from any cause whatsoever arising directly or indirectly from or connected with the operation or use of

the JUAs or the breach of the terms and conditions of this License Agreement by the City or its officers, agents, employees, contractors, subcontractors or invitees hereunder, save and except claims or litigation arising through the sole negligence or sole willful misconduct of the District or County, or their officers, agents or employees, and will make good to and reimburse District for any expenditures, including reasonable attorneys' fees, District or County may make by reason of such matters and, if requested by District, will defend any such suits at the sole cost and expense of the City.

To the extent permitted by law, City shall indemnify, defend, save, protect and hold District harmless from and against any and all Liabilities (including without limitation attorneys fees, consultants fees, and the costs of any required or necessary testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties and from and against the preparation of any cleanup, remediation, closure or other required plans whether such action is required or necessary prior to or following the termination of the license granted hereunder), of any kind or nature, to the extent caused or contributed to by City's Uses or occupancy of the JUAs, or CITY's use, release or disposal of any hazardous material, including all costs, claims, damages (including property and personal injury) caused by the uncovering, release or excavation of hazardous materials (including petroleum) as a result of City's construction, reconstruction, maintenance, use, replacement, or removal of its facilities, to the extent that such activities increase the costs attributable to the cleanup or remediation of such hazardous materials.

16. **CONDITION OF PROPERTY:** District makes no representations as to the suitability of the JUAs for any of the City's Uses. Prior to the execution of this License Agreement, the City shall inspect the JUAs and shall make its own determination as to its suitability for use by the City, and the City shall be solely responsible for determination of such suitability.

The City understands and agrees that the JUAs may be subject to sliding, erosion, subsidence, flooding and other possible hazardous conditions, and that the District is under no obligation to restore, maintain or repair any City Facilities or City Improvements damaged from sliding, erosion, subsidence, flooding or other hazardous conditions therein. The City, upon obtaining an "Encroachment Permit for Use of District Right of Way" from the District, may perform, at City's sole cost and expense, such restoration, maintenance, or repair as the City deems necessary for its proper and safe use of the JUAs. The City agrees that District has no responsibility or liability to the City for any hazardous condition that exists or may occur on or in the JUAs.

17. **HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION:** The City, at its sole cost and expense, shall comply with all present and future applicable laws, statutes, codes, rules and regulations, regarding health, safety, noise, environmental protection, waste disposal, and water and air quality, as they pertain to the City's Uses of the JUAs.

As used in this License Agreement, a "hazardous material" includes but is not limited to any substance, material or waste that is or becomes designated, classified or regulated as being "toxic," "hazardous," or a "pollutant" under any federal, state or local law, regulation or ordinance.

The City shall not cause or permit any hazardous material as defined in this section, to be generated, brought onto, stored, used, emitted, released, discharged, or disposed of in, on, under, or about the JUAs without prior express written permission from the

District. City shall not commit, or suffer to be committed, any nuisance or other act that may pollute or contaminate the JUAs, or the watershed of which the JUAs are a part.

The City is further prohibited from using any herbicide, pesticide, or hazardous material in the JUAs, including those for which it has obtained District's prior written approval to use, in an unsafe or careless manner or in any manner that is contrary to the manufacturer's instructions or contrary to restrictions imposed by the District. The City must satisfy all herbicide and pesticide application permit requirements as may be required by federal, state or local law.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the JUAs due to the City's Uses or occupancy of the JUAs, or City's use, release, or disposal of any pesticide or hazardous material, the City, at City's expense, shall test, remedy, repair, remove, clean, remediate, and detoxify all property affected thereby, whether owned or controlled by the District or by any third person, to the satisfaction of District, and any governmental body having jurisdiction thereover. The City shall immediately notify District verbally and in writing upon either the occurrence or discovery of any such discharge, leakage, spillage, emission, or pollution. The City's notification to District pursuant to this section does not relieve the City of any legal requirement to notify any governmental body with jurisdiction thereover.

City agrees that neither City, its heirs, successors or assigns shall ever claim, have or assert any right or action against District for any loss, damage or other matter arising out of or resulting from the presence of any hazardous material or any other condition of the Property or the JUAs at the commencement of this License Agreement or from the release of any hazardous material in, on or around any part of the Property or the JUAs or in the soil, water, subsurface strata or ambient air by any person or entity other than District following the commencement of this License Agreement. Nothing in this section is intended in any way to restrict the right of City to seek contribution or indemnity from any person or entity other than District whose activities are a cause of any discharge, leakage, spillage or emission of hazardous material on or to the JUAs.

18. **WATER QUALITY CONTROL BOARD REQUIREMENTS:** The City shall comply with all waste discharge requirements related to the Contra Costa Countywide NPDES Municipal Stormwater Permit (NPDES Permit) contained in the California Regional Water Quality Control Board San Francisco Region NPDES Permits No. CA 0029912 and Permit No. CAS612008 and with any future amendments or modifications of the NPDES Permits. Upon request from the District, the City shall submit all reports required of the District by the Regional Board if those reports involve the City's use of the JUAs.

19. **INSURANCE:** The City shall have the right to self-insure. In the event that the City does self-insure, prior to execution of this License Agreement, the City shall provide the District with written evidence of self-insurance coverage of the types and in the amounts as set forth in this section of the License Agreement and shall include the District and County as additional insureds.

If the City does not self-insure, then, during the entire term of this License Agreement, the City shall provide and maintain, in full force and effect at all times, insurance policies meeting the requirements described below.

- A. The City shall provide comprehensive general liability insurance with a minimum combined single-limit coverage of Five Million and No/100 Dollars (\$5,000,000.00) for all damages, including consequential damages, due to bodily injury, sickness, or disease, or death to any person(s) or damage to or destruction of property, including the loss of use thereof, arising from each occurrence.
- B. The City shall take out and maintain Worker's Compensation and Employer's Liability Insurance, as required by law, for all of its employees entering upon the JUAs. The City shall require its contractors and any subcontractors entering upon the JUAs to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance with California State laws.
- C. All insurance policies required under this License Agreement shall name the District and the County, their boards, officers, agents, and employees as additional insureds as to all operations and activities associated with the license granted under this License Agreement.
- D. The City shall require all contractors and subcontractors, performing work in the JUAs or using the JUAs, to provide evidence of insurance coverage of the types and in the amounts as set forth in this section to the City and the District, except comprehensive general liability insurance shall have a minimum combined single-limit coverage of One Million and No/100 Dollars (\$1,000,000.00).
- E. The insurance policies provided by the City or its contractors and subcontractors shall constitute primary insurance as to the District and County, their boards, officers, agents and employees, so that other insurance policies or self-insurance programs held by the District and County shall not be required to contribute to any loss covered under insurance policy or policies of the City or City's contractors and subcontractors.
- F. The insurance policies provided by the City and the City's contractors and subcontractors shall include a provision requiring thirty-days (30) written notice to District before cancellation, lapse, renewal, or material change of the above-specified coverage. This License Agreement shall not become effective until insurance coverage verification satisfactory to the District is received and approved in writing by the District's Chief Engineer.
- G. District may from time to time, at its sole discretion, modify the requirements of this section, including requiring the City and the City's contractors and subcontractors to modify the limits of coverage, to provide and maintain insurance coverage for additional categories of risk, or to otherwise change the policy provided for each type of insurance to reflect changes in general costs or in risk exposure due to the City's use of the JUAs.

20. **ASSIGNMENT:** The City shall not assign or transfer this License Agreement or any interest herein without the prior written consent of the District.

21. **WAIVERS:** No waiver by either party of any breach or violation by the other party of any provision of this License Agreement shall be deemed to be a waiver of any breach or violation of any other provision hereof, nor of any subsequent or continued breach or violation of the same or any other provision of this License Agreement. District's acceptance of any monies that become due under this License Agreement shall not be

deemed to be a waiver of any pre-existing or concurrent breach or violation by the City of this License Agreement.

22. **NON-DISCRIMINATION:** The City shall not discriminate, or allow any discrimination against or segregation of any person or group of persons on account of race, age, color, sex, creed, religion, national origin, or ancestry, or any basis protected under the law, in the use, occupancy, tenure, or enjoyment of the JUAs.
23. **PRIOR AGREEMENTS:** This License Agreement represents the entire agreement of the parties hereto, and replaces any and all other previous agreements between the parties concerning the JUAs, including the August 26, 1980 Agreement for Easement (as amended on November 4, 2008).
24. **TERMINATION:** This License Agreement may be terminated as follows:
- A. At any time upon the mutual written agreement of the parties.
 - B. The District and the City shall each have the right to terminate this License Agreement upon the other party's breach of any material term, covenant or condition of this License Agreement. A party shall be in breach of this License Agreement if said party fails to perform or observe any material term, covenant or condition of this License Agreement for a period of thirty (30) days following receipt of a written "Notice of Breach" from the other party (the "Cure Period"). The Cure Period can be extended at the discretion of and with written consent from the non-breaching party. A dispute between the parties as to whether a breach has occurred or has been adequately cured will be resolved in accordance with Section 26 of this License Agreement, titled "DISPUTE RESOLUTION."
 - C. Sections 15, 16 and 17 of this License Agreement, titled "HOLD HARMLESS AND INDEMNIFICATION," "CONDITION OF PROPERTY" and "HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION," respectively, will survive termination of this License Agreement.
25. **SURRENDER OF THE JOINT USE AREAS:** Upon receipt of District notice to limit or terminate the City's Uses of any or all of the JUAs, the City shall, at City's sole cost and expense, remove any City Facilities and City Improvements and restore affected areas to the extent requested by District in the notice.
26. **DISPUTE RESOLUTION:** Should there be any dispute between the City and District regarding the interpretation or the enforcement of this License Agreement, or regarding the acts or omissions of either the City or District, the parties will meet and confer with the intent to resolve such dispute. District and City representatives will use their best efforts to find solutions that meet the needs of both parties. In the event that the parties are not able to resolve the dispute through informal negotiation, the parties agree to submit such dispute to mediation before either the City or District may commence litigation. If the City or District cannot agree upon the identity of a mediator within ten (10) business days after a party requests mediation, then the City and District shall each select a mediator and those two mediators will select a third mediator to mediate the dispute. The parties shall share equally in the cost of the mediator who ultimately mediates the dispute, but neither the City nor District shall be entitled to collect or be reimbursed for other related costs, including but not limited to attorneys' fees. The City and District shall use all best efforts and due diligence to complete mediation as soon as

possible after it is initiated hereunder. Should mediation prove unsuccessful, the City or District may avail themselves to those remedies available under law or in equity.

27. **NOTICES**: All notices given under this License Agreement shall be served by enclosing the notice in a sealed envelope addressed to the other party, certified mail, postage prepaid, addressed as follows:

To District: Chief Engineer
Contra Costa County Flood Control & Water Conservation District
255 Glacier Drive
Martinez, CA 94553

To City: City Manager
City of Pinole
2131 Pear Street
Pinole, CA 94564

Either party may designate, by written notice to the other, a different agent for service or address for notice. Notice is effective two (2) business days from the date of mailing.

28. **NO THIRD PARTY BENEFICIARIES**: Nothing in the License Agreement shall, nor is it intended to, confer on any person or party other than the District, County and City, any rights or remedies under this License Agreement.
29. **AMENDING LICENSE AGREEMENT**: This License Agreement can only be modified through written amendment agreed upon by both parties hereto.
30. **SEVERABILITY**: If any term, covenant, or provision of this License Agreement, which does not materially affect the consideration of this License Agreement, is held to be invalid, illegal, or unenforceable in any respect, the validity of the remainder of this License Agreement shall not be affected thereby.
31. **CONTROLLING LAW AND VENUE**: This License Agreement shall be construed in accordance with the laws of the State of California. In the event of any dispute arising under this License Agreement, venue shall be set in Contra Costa County and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

32. **COUNTERPARTS:** This License Agreement may be executed in counterparts, each of which is deemed to be an original.

DISTRICT:
CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT

CITY:
CITY OF PINOLE:

By: _____
Julia R. Bueren, Chief Engineer

By: Belinda B. Espinosa
Belinda B. Espinosa, City Manager

Date: _____

Date: December 21, 2009

Recommended for Approval:

By: Karen Laws
Karen Laws, Principal Real Property
Agent

ATTEST:

By: Patricia Athenour
Patricia Athenour, City Clerk

Date: 12-23-09

Date: December 24, 2009

APPROVED AS TO FORM:
Silvano B. Marchesi, County Counsel

By: Silvano B. Marchesi
Deputy County Counsel

APPROVED AS TO FORM:

By: Inga Lintvedt
Inga Lintvedt, City Attorney (pa)

Summary of Exhibits

Exhibit A – District’s property along Pinole Creek on which the JUAs are located

Exhibit B – a description of the JUAs

Exhibit C – a description of the Project Area (which will be a subset of Exhibit B)

Exhibit D – Creek Maintenance Standards, including Contra Costa County Standard Plan CH80i

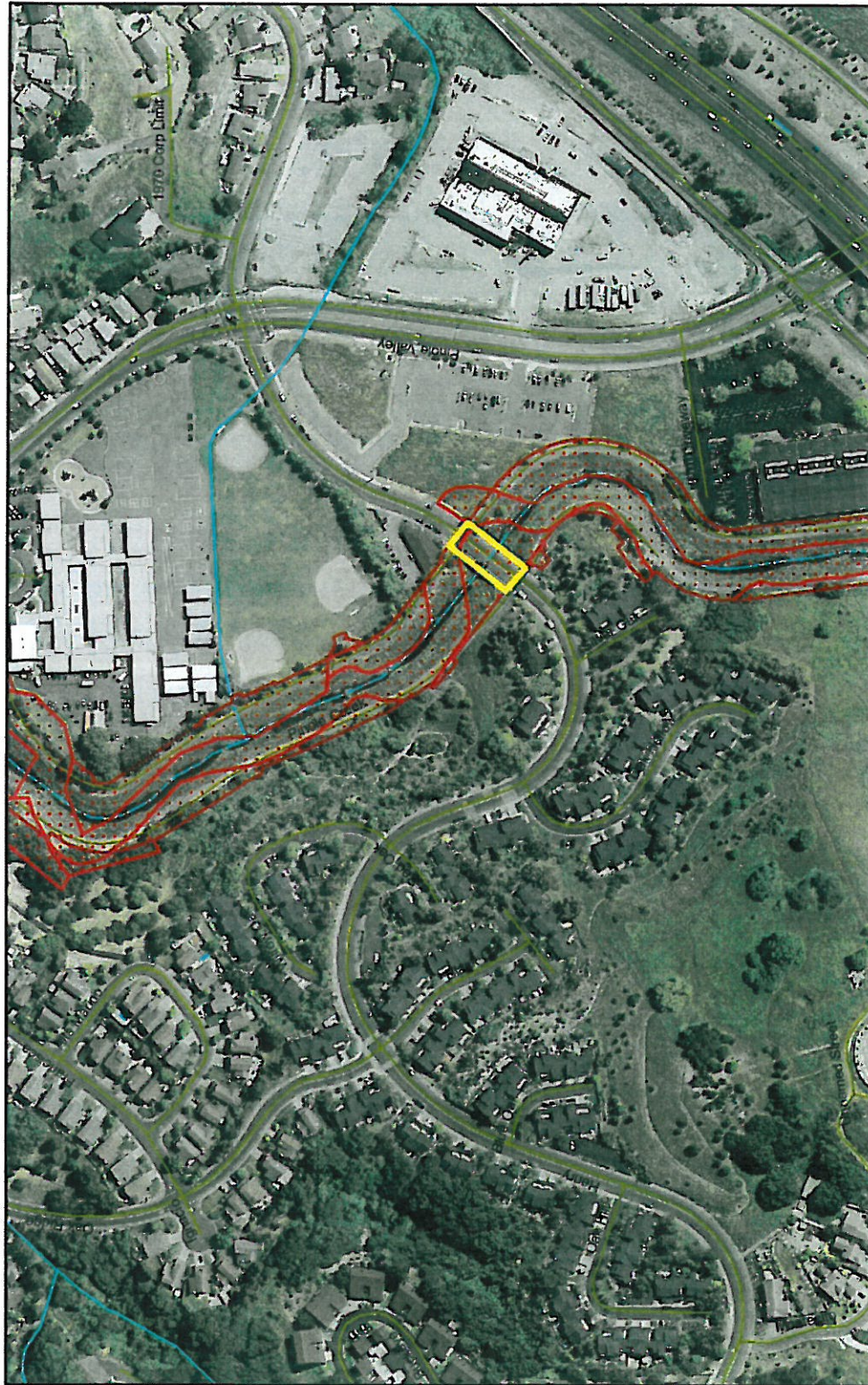
FLOOD CONTROL DISTRICT PINOLE CREEK PROPERTY



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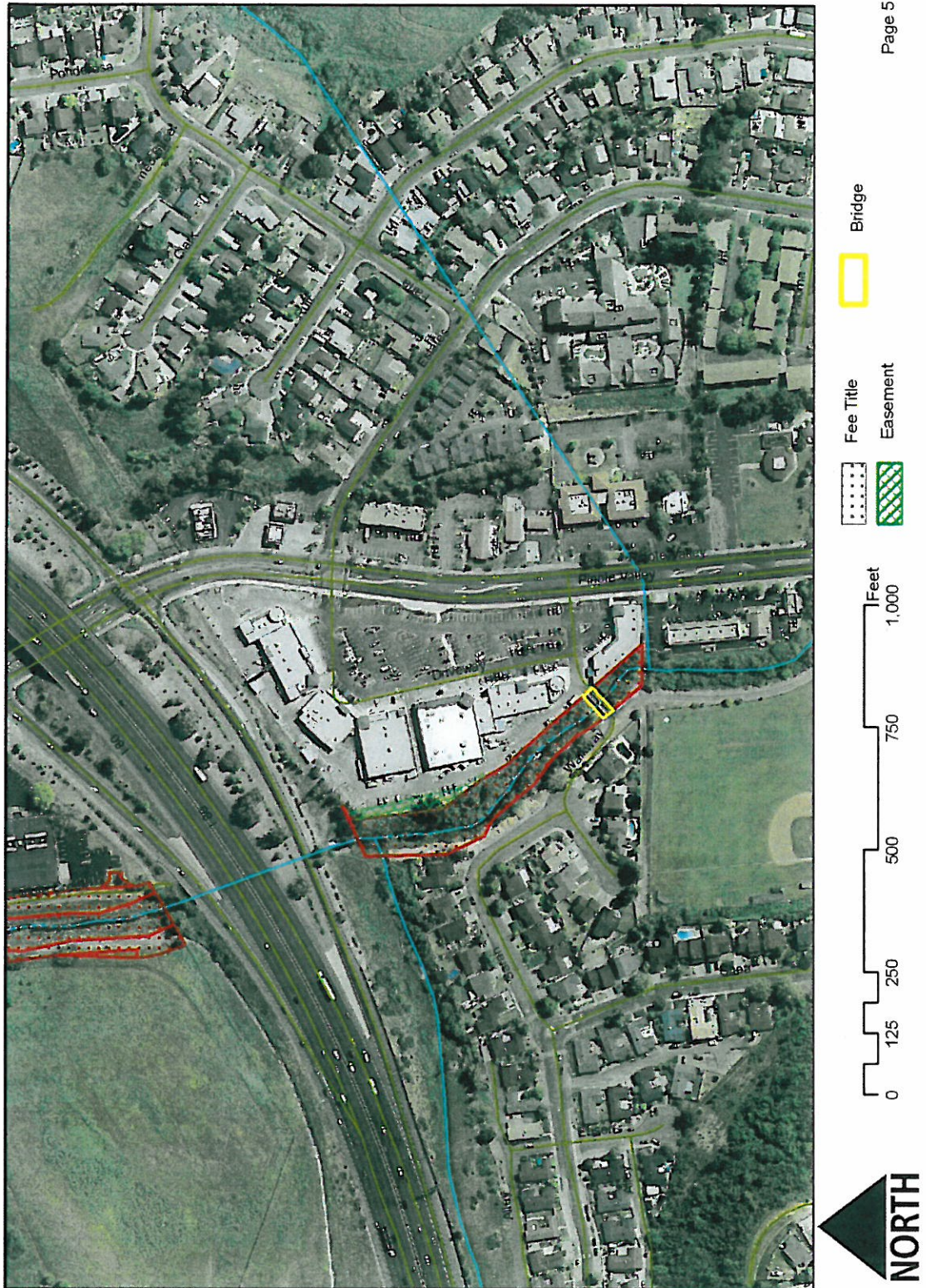


EXHIBIT B

CONTRA COSTA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT AND CITY OF PINOLE—JOINT USE AREAS

CITY and DISTRICT have compiled this list of JUAs for CITY's Uses within DISTRICT's Property. This list includes JUAs encompassing existing CITY Facilities and the PROJECT. This list can be updated in accordance with Section 29 of the License Agreement, titled "AMENDING LICENSE AGREEMENT." Maintenance responsibilities with respect to the JUAs are set forth in the License Agreement.

A. SANITARY SEWER PIPELINE: City shall have use of and maintain a sanitary sewer pipeline within a ten-foot (10') wide corridor along the left bank (looking downstream), encompassing the sewer pipeline and manhole structures, from Orleans Drive to Railroad Avenue, from approximately Station 17+55 to Station 27+35.

B. CREEK TRAILS: City shall have use of and maintain the Pinole Creek Trail ("Trail"), pavement, two-foot (2') wide shoulders, and appurtenant structures, including but not limited to ramps, stairs, bollards, gates, signs, lights, and irrigation equipment in the area between the top of the channel bank and the adjacent District property line and extending from San Pablo Bay to the Union Pacific Railroad corridor, along the right bank (looking downstream), from approximately Station 9+40 to Station 16+30; from Railroad Avenue to Tennant Avenue, along the left bank, from approximately Station 17+40 to Station 61+35; from the Burlington Northern and Santa Fe Railroad corridor to Charles Avenue, along the right bank, from approximately Station 40+30 to Station 44+33; and from Tennant Avenue to Interstate Highway 80, along the right bank, from approximately Station 63+00 to Station 89+40.

C. CREEK LANDSCAPING: City shall have use of and maintain or be responsible for creek landscape maintenance, which includes, but is not limited to maintaining landscaped trees, shrubs other landscaping plants and irrigation equipment, and removing invasive trees, bushes, other vegetation and rubbish, etc., in an area of Pinole creek on the left bank from the toe of the slope on the adjacent marsh plain or floodplain bench to the District Property line and extending from Railroad Avenue to 200 feet upstream of Orleans Drive, from approximately Station 17+40 to Station 29+50.

D. BRIDGES: City shall have use of and maintain bridges at the following locations: Trail Bridge (centerline at Station 16+28); Railroad Avenue Bridge (centerline at Station 17+ 44); Fernandez Park Bridge (centerline Station 43+15); Prune Street Bridge (centerline Station 55+35); Henry Avenue Bridge (centerline Station 77+59); and Sarah Drive Bridge (centerline Station 98+50). Bridge maintenance shall include repair of the channel banks from 10 feet upstream of bridge to 10 feet down stream of bridge.

E. OTHER STRUCTURES: City shall have use of and maintain the lateral storm drain outfall structure including steel grating, and concrete apron, headwall and sidewalls at Station 42+60 on the left bank from the channel bottom to the District Property line. The City shall have use of and maintain the pavement and parking area on the left bank from approximately Station 48+75 to Station 50+50.

EXHIBIT C

PROJECT AREA FOR THE LICENSE AGREEMENT BETWEEN CONTRA COSTA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT AND CITY OF PINOLE

The CITY has designed the Pinole Creek Greenway Demonstration Project ("Project"). The City shall have use of DISTRICT property, described as follows, for construction of the Project:

The full width of District lands from the Union Pacific Railroad to the Burlington Northern and Santa Fe Railroad, from approximately Station 16+90 to Station 39+50.

EXHIBIT D

CREEK MAINTENANCE GUIDELINES BETWEEN TOP OF BANK TO TOP OF BANK FOR LICENSE AGREEMENT BETWEEN DISTRICT AND CITY OF PINOLE

1. PINOLE CREEK

- The 10-year water surface is approximately at the top of the banks.
- Trees shall be "skirted" (branches trimmed to the trunk) below the top of the bank and below the top of the adjacent flood wall or berm.
- Landscaping within the channel shall be maintained to limit the hydraulic roughness to the following maximum values:

From Station 9+40 to Station 29+50:

Channel banks: Manning's Roughness Value, $N=0.040$

Marsh Plain bench: $N=0.035$

From Station 29+50 to Station 61+35:

Channel banks: $N=0.045$

Flood Plain bench: $N=0.040$

2. COUNTY'S ESTIMATED (Once per year) MAINTENANCE COSTS (For July 2009)

(Correct for cost of living increase based on Engineering News Record)

A. MECHANICAL/ HAND CONTROL

Mowing	\$ 2,700 per Acre
Hand Vegetation Control	\$18,500 per Acre
Along graded access Roads	\$ 3,300 per Acre

B. CHEMICAL CONTROL

Chemical Mowing (Highline)	\$ 300 per Acre
Vegetation Control	\$ 1,650 per Acre
Along graded access Roads	\$ 225 per Acre

3. OTHER

- All planting of new landscaping requires an Encroachment Permit for Use of District Right of Way
- All work shall be performed in accordance with City of Pinole/District License Agreement.
- All landscape spacing shall be installed in accordance with attached County Standard Plan CH80i

