

Recorded at the request of and
when recorded please mail to:

East Bay Regional Park District
Land Acquisition Department
2950 Peralta Oaks Court
P. O. Box 5381
Oakland, CA 94605-0381
Attn: Nancy Wenninger

APN 001-011-040

Request is made that this document be recorded without fee
pursuant to Government Code Section No 27383.

GRANT OF EASEMENT

THIS INDENTURE is made and entered into this _____ day of _____, 2012, by and between CONTRA COSTA COUNTY, a political subdivision of the State of California, hereinafter called "County," and EAST BAY REGIONAL PARK DISTRICT, a California special district, hereinafter called "Parks."

WITNESSETH:

That County, for a good and valuable consideration but no further fee or charge, and in further consideration of the faithful performance and observance by Parks of all of the terms and conditions herein contained, does hereby grant to Parks, for the benefit of Parks' adjacent property a non-exclusive, non-assignable appurtenant easement ("Easement") to use the Undercrossing, as defined below, for purposes of ingress to and egress from the Parks' adjacent property, and for no other purpose.

The easement above-mentioned is granted by County and accepted by Parks upon the following terms and conditions and Parks does hereby agree with County as follows:

1. Definitions:

As used in this Grant of Easement, the "Property" shall refer to that portion of the relocated Vasco Road right of way as described in Exhibit "A" and shown on Exhibit "B" attached hereto and thereby incorporated in this agreement.

"Undercrossing" means the opening under the relocated Vasco Road and a corrugated metal or concrete culvert.

2. Title of Grantor:

Parks hereby acknowledges the title of County in and to the Property and agrees never to assail or to resist said title. Parks agrees that it has not acquired nor will it hereafter acquire any rights or interest in the Property, nor does Parks have nor will it obtain any right or claim to the use of the Property beyond that specifically granted in this Easement.

3. Primary Use of County's Property:

A public roadway that is owned and maintained by the County for the transportation use of the general public traverses the Property. Any and all rights granted or implied by this Easement are subordinate and subject to use of the public roadway by the general public, as well as to the prior and continuing rights and obligations of County, its successors and assigns, to use Property described herein. County makes no covenant or warranty against any existing encumbrance.

Parks may not at any time use the Undercrossing in any manner that will materially interfere with or impair said (i) County's use of the Property, or (ii) use of the public roadway by the general public. All rights granted to Parks hereunder are subject to all existing and future rights, rights of way, reservations, franchises, licenses, and easements in the Property, regardless of who holds the same, including County's right to use the Undercrossing for emergency or maintenance vehicle access or any other purpose as described in Paragraph 4 hereof.

4. Suspension or Limitation of Use:

County and its permittees have the right to suspend or to limit the use of the Undercrossing by Parks for a reasonable amount of time for protection of public safety, or for the construction, installation, operation, maintenance or repair of other facilities on the Property, including on the public roadway. Should such suspension or limitation be necessary, County shall provide Parks thirty (30) days' prior notice in writing, except in cases of emergency maintenance or repairs. County will make every reasonable effort as determined by County to avoid the necessity of limiting Parks' use of the undercrossing and, if limitation is unavoidable; County shall make reasonable efforts, as determined by County in its discretion, to minimize the impact on Parks' operation.

5. Existing Facilities:

Parks agrees to take all precautions necessary to avoid damage to the Property. In the event Parks damages any improvements installed by County within the Property, Parks shall reimburse County for all reasonable costs and expenses associated with the repair or replacement of such improvements.

6. Maintenance and Litter:

Parks shall maintain the Undercrossing and Parks' Benefitted Property under its control in a clean, safe and presentable condition, free from waste, graffiti, litter and other items incidental to Undercrossing's use and left by parties other than County and its permittees. As used in this section, the term "litter" includes, but is not limited to, paper, garbage, refuse, dead animals, trimmings and other items that detract from the neat and tidy appearance of the Undercrossing. If Parks fails to keep the Undercrossing as specified above, after thirty (30) days' prior written notice specifying the needed work, County may perform or hire the necessary work at the reasonable expense of Parks, which expense Parks agrees to pay to County upon demand.

Parks agrees to keep the Undercrossing free from weeds and other vegetation, and to abate weeds to local fire district standards.

Nothing in this section or elsewhere in this document requires Parks to repair, maintain or replace the structural support elements of the Undercrossing except to the extent that such repair, maintenance or replacement results from the negligence of Parks.

7. Approval and Inspection of Work:

Parks may not perform any construction, reconstruction, remodeling, repair, removal, and material alteration of ground elevation or other work within the Undercrossing without first obtaining County's approval in writing. In seeking County's approval, Parks shall furnish to County a complete description and sketch of the work proposed to be performed. In performing work approved by County, Parks shall comply with all reasonable terms, conditions and requirements imposed by County and shall not deviate in any material manner from the description and sketch approved by County, without first obtaining additional approval in writing from County.

Notwithstanding the foregoing, Parks is not required to obtain County's prior written approval for the performance of routine maintenance or emergency repairs. As used in this section, the term "routine maintenance" refers to work that does not alter the original condition of improvements previously approved in writing by County, which work is required to prevent deterioration of said improvements. As used in this section, the term "emergency repairs" refers to repairs that do not alter the original condition of improvements previously approved in writing by County, which repairs are necessary to protect the safety of the public and others or repairs without which Parks cannot maintain operation and for which it is not practical for Parks to comply with the approval process required by the preceding paragraph. Except in the case of emergency or routine maintenance, Parks shall consult County at least thirty (30) days before any major maintenance operations are performed by Parks. Parks shall cause work to be done in such a manner that County will at all times be able to use and gain access to its facilities.

All work performed by Parks under this section requires an encroachment permit and is subject to inspection by County.

8. Conveyance of Easement:

This Easement runs with the land and inures to the benefit of Parks and any future owner of the appurtenant property which is currently used for public park, trail and open space purposes, grazing cattle and wind turbine operations

9. Assignment:

No rights of Parks hereunder shall be transferred or assigned to another party unless the written consent of the County is first secured, which consent shall not be unreasonably withheld if the transfer or assignment is made in connection with a transfer of Park's property. With exception, this Easement and each and all of the covenants herein contained shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto

10. Hold Harmless and Indemnification:

Parks agrees to indemnify and hold harmless County its Board of Supervisors, officers, agents, employees, contractors and assigns from and against any and all loss, damage, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, to the extent arising from work conducted or performed by Parks or its contractors pursuant to Parks' operation or performance under this Easement or from the negligence or willful misconduct of Parks or its contractors in the performance of the work pursuant to this Easement.

If requested by the County, Parks will, at its sole cost and expense, defend the County, its Board of Directors, officers, agents, employees, contractors and assigns, in any claim or suit alleging that any loss, damage, liability, costs and expenses whatsoever arose solely from work conducted or performed by Parks or its contractors pursuant to this Easement or solely from the negligence or willful misconduct of Parks or its contractors in the performance of work pursuant to this Easement.

11. Restricted Use:

Vehicles are permitted to use the Undercrossing when used (i) in the service of Parks, County or a party holding an easement over Parks' adjacent property, and (ii) for construction, maintenance, repair, patrol or public safety purposes. Parks may not install gates or barricades that prevent County from gaining access to the Property. If Parks installs gates or barricades, Parks shall cause such gates or barricades to be locked with locks supplied by the County.

The easement shall include the right for Parks to operate and maintain a recreational trail to be used by the general public for hiking, bicycling and equestrian use. County acknowledges that the general public shall have the use of said trail.

12. Safety:

Parks shall take such measures as are reasonably necessary to reasonably prevent unauthorized use of the Undercrossing and to protect the safety of the users of the Undercrossing.

13. Pollution:

Parks, at its expense, shall comply with all applicable laws, regulations, rules and other governmental restrictions with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, and furnish satisfactory evidence of such compliance upon request of such compliance upon request of County

Parks accepts this Easement in an "as is" physical condition, with no warranty express or implied on the part of the County as to any matter, including but not limited to the condition of the soil, water, subsurface strata or ambient air in, on, under at or in the vicinity of the Property. Parks agrees that neither Parks, its heirs, successors or assigns shall ever claim, have or assert any right or action against County for any loss, damage or other matter arising out of or resulting from the presence of any hazardous substance or any other condition of the property at the commencement of the Easement or from the release of any hazardous substance in, on or around any part of the Property or in the soil, water, subsurface strata or ambient air by any person or entity other the County following the commencement of this Easement. As used herein, "hazardous substance" means any substance, material or waste that is or may become designated, classified or regulated as being "toxic," "hazardous" or a "pollutant" under any federal, state or local law, regulation or ordinance. Nothing in this section is intended in any way to restrict the right of Parks to seek contribution or indemnity from any person or entity other than County whose activities are a cause of any discharge, leakage, spillage or emission of hazardous materials on or to the Property.

14. Undercrossing Improvement and Maintenance:

Parks shall maintain at its expense all Undercrossing improvements that have been installed or constructed by Parks, including Undercrossing pavement, related drainage structures, fences, gates and landscaping.

15. Permits:

County has the sole right to grant encroachment permits or rights of entry within the Property Notification of encroachment permits granted and plans approved by County will be forwarded to Parks. Parks shall obtain permits from all other agencies as required for construction of the Undercrossing improvements.

16. Modification:

This Easement is subject to modification or amendment only by the written mutual consent of both parties.

17. Entire Agreement:

It is understood that this document contains the entire agreement between the parties hereto and all prior understandings or agreements, oral or written, of whatsoever nature regarding the rights hereby granted are superseded by this Easement and are hereby abrogated and nullified.

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18. No Third-party Beneficiaries:

It is not the intention of either County or Parks that any person or entity occupy the position of intended third party beneficiary of the obligations assumed by either party to this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Easement the day and year first above written.

COUNTY:

Contra Costa County

PARKS:

East Bay Regional Park District

By: _____
Julia R. Bueren
Public Works Director

By: _____
Robert E. Doyle
General Manager

Date: _____

Date: _____

RECOMMENDED TO THE BOARD OF
SUPERVISORS FOR APPROVAL:

By:  _____
Real Property Agent

By: _____
Karen A. Laws
Principal Real Property Agent

ATTACH APPROPRIATE ACKNOWLEDGMENTS