

**LICENSE AGREEMENT
BETWEEN
CONTRA COSTA COUNTY
AND
CITY OF CONCORD**

This License Agreement (this "Agreement") is entered into on December 4, 2012, by and between CONTRA COSTA COUNTY, a political subdivision of the State of California (hereinafter called "County"), and the CITY OF CONCORD, a general law city in Contra Costa County, California (hereinafter called "Licensee").

RECITALS

- A. County owns real property known and designated as the Iron Horse Corridor (herein after referred to as "IHC") that runs from Mayette Avenue in the City of Concord to the County line in the City of San Ramon.
- B. The IHC includes real property in Concord, California as shown in yellow on Exhibit A, which is attached to this Agreement and incorporated herein by this reference (hereinafter referred to as the "Licensed Premises").
- C. Licensee desires to develop approximately 1.1 miles of the Licensed Premises in the IHC, with a shared use trail located north of Monument Boulevard to Mayette Avenue, hereinafter referred to as the "Trail".
- D. Based on the information available to Licensee and County as of the effective date of this Agreement, the Licensed Premises is or may be contaminated with railroad related containments that exceed residential exposure thresholds and the Regional Water Quality Control Board ("RWQCB") screening levels as identified in the GEOCON Consultants, Inc. ("GEOCON") report entitled Supplement Arsenic in Soil Assessment Monument Corridor Shared Uses Trail Project, Concord, Contra Costa County, California, dated January 13, 2012, and in the GEOCON report entitled Preliminary Site Investigation Status Summary Monument Corridor Shared Use Trail Project, Concord, California, dated October 3, 2011, (hereinafter referred to collectively as the "Reports", copies of which are attached hereto as Exhibit B and Exhibit C, respectively).
- E. Licensee is to work under the oversight of the Contra Costa Health Services Department, ("CCHSD") and/or the State of California Department of Toxic Substance Control ("DTSC") in establishing a long-term maintenance and operation plan that will protect the users of the Trail and/or Licensed Premises from any of the contaminants of concern ("COCs") as identified in the Reports exceeding the residential exposure thresholds and RWQCB screening levels.
- F. The purpose of this Agreement is to authorize the Licensee's use of the Licensed Premises and to designate the terms and conditions of that use.

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

AGREEMENT

1. **Grant of License:** Subject to the terms and conditions of this Agreement, County hereby grants to Licensee a nonexclusive, revocable license to enter onto and use the Licensed Premises for the uses described in this Agreement.
2. **Effective Date:** This Agreement shall be effective as of the date first set forth above (the "Effective Date").
3. **"As- Is" Condition:** Licensee acknowledges that the Licensed Premises and the IHC are known by both Licensee and County to have environmental issues and Licensee agrees that the Licensed Premises is being licensed to Licensee in an "As-Is" condition. Licensee is fully responsible for the remediation clean-up activity within the Licensed Premises as identified in the Reports. Licensee shall comply with any and all requirements imposed by any regulatory agency, including but not limited to DTSC, having jurisdiction over the Licensed Premises in regards to the clean-up activity of the COCs. During the course of construction of the Improvements (as defined in Section 4 below) within the Licensed Premises, Licensee shall inform County if it identifies COCs exceeding the residential exposure thresholds and RWQCB screening levels as currently identified in the Reports located outside of the Licensed Premises, but within the IHC. Licensee shall also inform County if additional testing reveals COCs located outside of the Licensed Premises, but within the IHC exceeding the residential exposure thresholds and RWQCB screening levels identified in the Reports. Licensee shall undertake appropriate actions to minimize COC exposure to users of the Licensed Premises as follows: (a) during the course of construction of the Trail; and (b) after completion of construction activities, Licensee's responsibilities to minimize COC exposure to users of the Licensed Premises shall only extend to the Licensed Premises and for five feet beyond the boundaries of both sides of the Licensed Premises. Any additional remediation or exposure minimization of COC's within the IHC but beyond the area of Licensee's responsibility shall be the responsibility of County. The appropriate actions may include capping with one foot of soil or fencing. Licensee shall be responsible for installing and maintaining the soil cap and/or fencing, and any other appropriate actions to minimize COC exposure to users of the Licensed Premises within the limitations as described above.
4. **Use:** Licensee shall install, construct, maintain, repair, and replace the Trail over the alignment of the former Southern Pacific Railroad railbed where the highest concentrations of the COCs were located by GEOCON. The Trail will consist of a 10-foot wide asphalt concrete pathway with an underlayment of a 16-foot wide lime treated base and decomposed granite and 3-foot wide crushed aggregate shoulders (hereinafter referred to as "Improvements"), which are to cap-in-place the COCs and to protect the users of the Licensed Premises and Trail. Use of the Licensed Premises for any other purposes shall be cause for the immediate termination of this Agreement.

5. **Primary Use of the Licensed Premises:** Licensee's rights granted or implied by this Agreement shall be subordinate to any existing and future County uses or uses granted to other parties by the County ("Primary Uses") through, without limitation, right of way agreements, reservations, franchises, easements, or licenses (such users are hereinafter collectively be referred to as "Co-users").

Licensee shall not, at any time, use or permit the public to use the Licensed Premises in any manner that will materially interfere with or impair Primary Uses of the Licensed Premises.

The IHC consists of a ± 19.5 mile corridor which, as of the effective date of this Agreement, the County is developing for transportation, utility, and associated purposes. Underground utility facilities are already in place and it is anticipated that, in the future, a fixed guideway system and additional utility facilities will be constructed or installed within the IHC, including within the Licensed Premises area. Licensee's use of the Licensed Premises will be subordinate, as stated above, to this proposed future use.

6. **Term:** Unless suspended or revoked as hereinafter set forth, this Agreement will terminate twenty-five (25) years from the Effective Date. By mutual written consent of the parties hereto, this Agreement may be extended for an additional 25-year term or the parties may enter into a new agreement that will be for a 25-year term.
7. **County's Title:** County holds fee title to the IHC including the Licensed Premises, and Licensee agrees never to assail or to resist said title. Any maintenance, repair, and replacement of the Improvements by Licensee shall not give rise to a license coupled with an interest.
8. **Revocation and Termination of Agreement:** County may revoke the license granted hereunder and terminate this Agreement at any time, for any reason or no reason, with or without cause, upon sixty (60) days written notice to Licensee. If the County revokes or terminates the license during the first twenty (20) years of this Agreement, the County shall leave the Improvements in place and maintain the Improvements for the remaining duration of the federal maintenance period as required by the terms and conditions of the State Transportation Improvement Program – Transportation Enhancements Grant dated 2009, funded through the Metropolitan Transportation Commission, Transportation Improvement Program ID No. CC-090067, granted to Licensee by the federal government. In the event of revocation and/or termination of the license granted herein, Licensee shall have no right to any reimbursement or compensation of any kind from County, and shall not seek any reimbursement for its expenses, or seek reimbursement or compensation for any other purpose.

Upon the expiration of or within sixty (60) days following termination of this Agreement, Licensee shall surrender the Licensed Premises and all Improvements (except as otherwise provided herein) in good condition, ordinary wear and tear excepted. Notwithstanding the foregoing, if County does not desire some or all of the Improvements to remain on the Licensed Premises after the first twenty (20) years of this Agreement, County will provide written notice to Licensee identifying the

Improvements that Licensee must remove. Licensee shall, within sixty (60) days following receipt of County's notice, and at Licensee's sole cost and expense, remove all of the Improvements identified in County's notice, and surrender the Licensed Premises to County in good condition and clear of any and all Improvements, above or below ground level, as identified in the notice from County. Prior to the notice ordering removal of the Improvements, County shall obtain approval for such removal from CCHSD and DTSC or any other regulatory agency having jurisdiction over the Licensed Premises since the removal of the Improvements could adversely impact the remediation of the COC's as previously identified. If the County orders removal of the Improvements, County shall assume all responsibility and liability for future remediation of the COC's.

9. **Consideration:** As consideration for this Agreement, Licensee hereby agrees to provide the necessary cleanup and protection of the public from the COCs and to keep the Licensed Premises and the Improvements in a safe and attractive condition at its sole cost and expense and as determined by the County, in its sole discretion. Licensee shall also be responsible for any and all mitigation measures to clean-up the COCs outside of the Trail and within the Licensed Premises that are required by CCHSD, DTSC and any other regulatory agency having jurisdiction over the Licensed Premises.
10. **No Warranties:** County does not represent or warrant that the Licensed Premises is safe or suitable for the purposes permitted under this Agreement. Licensee shall make its own determination as to the suitability of the Licensed Premises by use of Licensee, and Licensee shall be solely responsible for determination of such suitability.

Licensee understands and acknowledges that County makes no representations, warranties or guarantees of any kind of character, express or implied, with respect to the Licensed Premises and Licensee is entering into this Agreement without relying on any such representation or warranty by County.

11. **Security:** Licensee shall provide patrol and security service necessary to prevent unauthorized use of and, to the extent feasible, protect the safety of the Licensed Premises. Licensee will devote, at a minimum, the same standards and levels of public safety patrol and security service to the Licensed Premises as it devotes to its own facilities. County shall not have any duty to guard or secure the Improvements, Licensed Premises goods, property, facilities, or equipment, located upon or near the Licensed Premises, 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 County, its officers, or employees.
12. **Suspension or Limitation of Use:** County and its Co-users will have the right to suspend or limit the use of the Licensed Premises by the Licensee and the general public, without compensation to Licensee, for a reasonable amount of time as solely determined by County, for protection of public safety, or for the construction, installation, operation, maintenance or repair of other facilities on the Licensed Premises. The County or Co-users will provide Licensee with written notice at least fifteen (15) days prior to the suspension or limitation of Licensee's and the public's use of the Licensed Premises, except in cases of emergency maintenance or repairs. Co-

users will obtain approval from County prior to issuing any suspension or limitation notice.

The County shall not be held responsible or liable for damage or removal of any Improvements on the Licensed Premises when the County finds it necessary to accomplish work for the maintenance, construction, repair, reconstruction, or alteration of the County's property. However, the County will exercise reasonable care to minimize adverse impacts of such work upon the Licensed Premises. Except in cases of emergency prior to performing work within the Licensed Premises that could adversely affect the remediation of the COC's, County shall obtain approval from CCHSD, DTSC or any other regulatory agency having jurisdiction over the Licensed Premises.

13. **Permits and Approvals:** Licensee is responsible for obtaining and paying for any and all permits or approvals from the County, Co-users, and any agency having jurisdiction over the Licensed Premises before Licensee begins any work, including but not limited to encroachment permits. Licensee shall give notice to the County in accordance with Section 25 (Notices), of this Agreement, prior to beginning any work. This Agreement does not release Licensee from any applicable governmental application, review, or requirement for existing or future Improvements.
14. **Existing Facilities:** County has leases, licenses, easements and/or rights with other Co-users, and may give similar or other rights to other entities in the future, for all or a portion of the Licensed Premises. Licensee is responsible for identifying the location of all facilities and improvements in the Licensed Premises and will take all precautions required to avoid damage to the facilities and improvements. Licensee agrees that it will be solely responsible for any damage to said facilities and improvements resulting from or in connection with its operations under this Agreement. Licensee will obtain prior written approval from the County and Co-users before altering the ground elevation or installing improvements on the Licensed Premises.

Licensee understands and acknowledges that the absence of markers, monuments, or maps indicating the presence of subterranean facilities does not constitute a warranty or representation that no such facilities exist. Licensee is fully aware of the potential presence of such facilities, and agrees that 48-hours prior to any subsurface work, Licensee will contact **Underground Service Alert at (800) 624-2444** to determine whether there are any subterranean facilities within the proposed excavation area.

15. **Maintenance:** Licensee shall maintain the Licensed Premises and the Improvements in a clean, safe and presentable condition, free from waste, graffiti, litter, including but not be limited to, paper, garbage, refuse, trimmings, and other items that detract from the neat and tidy appearance of the Licensed Premises, and other items incidental to the use of the Licensed Premises..

As part of its maintenance obligations, Licensee shall perform maintenance of the Licensed Premises in such a manner as not to disturb or otherwise affect the remediation of the COC's as provided in sections 3 and 4 above. In the event that maintenance activities could disturb or affect the remediation of the COC's, Licensee

shall obtain approval for the maintenance work from CCHSD and DTSC and any other regulatory agency having jurisdiction over the Licensed Premises.

Licensee will abate weeds and clear, thin, or space vegetation in compliance with local fire district standards and Pacific Gas & Electric Company guidelines. Licensee will not allow vegetation to extend outside the Licensed Premises. All trees and shrubs shall be properly maintained as needed to prevent safety concerns to vehicles, pedestrians and/or the general public.

All trimmings generated during pruning operations shall be disposed of by the Licensee on the day of pruning.

If County sends a notice to Licensee stating that the Licensee has failed to maintain the Licensed Premises and Improvements pursuant to this Agreement, Licensee must take all steps outlined in County's notice to bring the Licensed Premises and Improvements into compliance with this Agreement. If Licensee does not undertake the necessary work, as outlined in County's notice within thirty (30) days of receipt of said notice, County may perform the work or arrange for the work to be performed at Licensee's sole expense.

16. **Indemnification:** To the maximum extent permitted by law, and subject to Section 22 below, Licensee will indemnify, defend, save, protect and hold harmless County, its governing body, officers, employees, representatives, agents, successors and assigns ("Indemnitees") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury, or death (collectively "Liability") arising directly or indirectly from, or connected with, this Agreement, or Licensee's or third parties' use of, or activities on, the Licensed Premises. Licensee will reimburse County for any expenditures, including costs and attorneys' fees, County may make by reason of such matters and, if requested by County, will defend any such suits at the sole cost and expense of Licensee. Licensee's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Licensee will not be required to indemnify Indemnitees for the proportion of Liability a court determines is attributable to the sole negligence or sole willful misconduct of the Indemnitees.

This indemnification clause shall survive the termination, revocation, or expiration of this Agreement.

17. **Waste, Hazardous Materials; Hazardous Materials Indemnity:** Licensee, at its sole cost and expense, shall comply with all applicable laws, regulations, rules, and other requirements, with respect to the use of the Licensed Premises, 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 County.

Licensee shall not commit, or suffer or permit the commission of any waste upon the Licensed Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of the use of the IHC or surrounding property. Licensee shall not, and shall

ensure that no others store or dispose of any Hazardous Materials on the Licensed Premises. As used in this Agreement, the term "Hazardous Materials" means any hazardous or toxic substance, hazardous or radioactive material, hazardous waste,

pollutant or contaminant at any concentration that is, or during the term of this Agreement becomes, regulated by any local or regional government authority having jurisdiction over the Licensed Premises, by the State of California, or by the United States other than those already identified in the Reports.

Licensee shall not permit any activity on the Licensed Premises that directly or indirectly produces unlawful amounts or levels of air pollution (gases, particulate matter, odors, fumes, smoke, or dust), water pollution, noise, glare, heat emissions, radioactivity, or trash or refuse accumulations, or vibration that is hazardous or dangerous by reason of risk of explosion, fire, or harmful emissions other than those already identified in the Reports.

To the maximum extent permitted by law, and subject to Section 22 below, Licensee shall indemnify, defend, save, protect and hold the Indemnitees and Co-Users harmless from and against all Liability, including without limitation, penalties, consequential damages and losses, and further costs (including but not limited to consulting and engineering fees, the costs of any required or necessary testing, remediation, repair, removal, cleanup or detoxification of the Licensed Premises and surrounding properties, and all costs for preparation of any cleanup, remediation, closure or other required plans whether such action is required or necessary prior to or following the expiration or termination of this Agreement), of any kind or nature, to the extent caused or contributed to by Licensee's use of the Licensed Premises, or Licensee's use, release or disposal of any Hazardous Material, including all costs, claims and damages (including property and personal injury) caused by the uncovering, release or excavation of Hazardous Materials (including petroleum) as a result of Licensee's construction, reconstruction, maintenance, use, replacement or removal of any of the Improvements except those identified in the Reports. The obligations contained in this section shall survive the expiration or other termination of this Agreement.

18. **Compliance With The Law:** Licensee, at its sole cost and expense, shall comply with all applicable existing and future laws, regulations, rules, and other requirements, with respect to the use of the Licensed Premises.
19. **Mechanic's and Materialman's Liens:** Licensee shall not permit any mechanic's, materialman's, or other lien to be placed against the Licensed Premises, in connection with any labor, materials, or services furnished or claimed to have been furnished to Licensee related to any of Licensee's Improvements. Licensee shall remove or discharge any such lien that shall be filed against the County related to the Licensed Premises, in a timely fashion, whether bonded or not, provided, however that either County or Licensee may contest any such lien, so long as the enforcement thereof is stayed.
20. **Insurance:** Licensee will obtain and maintain during the entire duration of this Agreement, the following insurance:

- A. General Liability: Comprehensive General Liability insurance including coverage for owned and non-owned automobiles, with minimum combined single-limit coverage of THREE MILLION AND NO/100 DOLLARS (\$_3,000,000.00) for all claims and losses due to bodily injury or death to any person, or damage to property, including loss of use thereof arising out of each accident or occurrence.
- B. Worker's Compensation: Worker's Compensation insurance as required by law.
- C. Certificates: Licensee will name the County and its officers, agents, and employees as additional insureds under all policies held for the Licensed Premises, including at a minimum the General Liability policy and Workers' Compensation policy required by Sections 20(A) (General Liability), and 20(B) (Worker's Compensation), respectively. All coverage shall provide for thirty (30) days' written notice to the County of cancellation or lapse in coverage. A Certificate of Insurance for each of the policies hereunder required, indicating the name and telephone number of the insurance agent most responsible for the insurance policy and evidencing such coverage, shall be furnished to the County prior to the effective date of this Agreement and annually thereafter. If Licensee renews or amends existing insurance or acquires new insurance, Licensee will provide updated certificates to County.
- D. Self-Insurance: Licensee has the right and the option to self-insure the foregoing requirements under this Section 20 (Insurance), upon written notice to County that Licensee assumes the foregoing obligations in the place and stead of any insurance carrier, any reference to failure of coverage notwithstanding. In the event that Licensee elects to self-insure, Licensee shall provide County with a certificate or other evidence of self-insurance acceptable to the County certifying that adequate funds are available to meet contractual obligations as provided under this Section 20 (Insurance). County's acceptance of insurance certificates or proof of self-insurance shall not limit in any respect Licensee's indemnification obligations set forth in this Agreement, or decrease the liability of Licensee in any instance.
21. **As-Built:** Within thirty (30) days following completion of construction of any segment of the Improvements, Licensee shall, at its sole expense, provide County with detailed as-built drawings showing the actual placement of the Improvements. Except as directed otherwise in writing by County, the as-built drawings shall comply in all respects with the encroachment permit and other written approvals previously given for such segment by County.
22. **County's Use of Herbicides:** Licensee hereby acknowledges and understands that the County may, at any time, use chemical herbicides within the IHC. Licensee agrees to allow such use, without disruption or challenge, on and around the Licensed Premises. Licensee hereby waives any claim for liability against the County for any damage resulting from County's use of chemical herbicides within the IHC. Notwithstanding Licensee's waiver under this Section 22, County will indemnify, defend, and hold harmless Licensee from claims brought by third parties alleging liability for harm or damage caused by County's use of herbicides within the IHC.

23. **Assignment and Transfer:** Licensee shall not assign or transfer any of Licensee's rights under this Agreement. Licensee's assignment or transfer of Licensee's rights hereunder shall be cause for County's immediate termination of this Agreement.
24. **No Third-Party Beneficiaries:** Nothing in this Agreement, express or implied, is intended to confer on any person, other than County and Licensee, and their respective successors-in-interest, any rights or remedies under or by reason of this Agreement.
25. **Notices:** All notices (including requests, demands, approvals or other communication) under this Agreement shall be in writing.

A. Notice shall be sufficiently given for all purposes as follows:

- (1) When delivered by first class mail, postage paid, notice shall be deemed delivered three (3) business days after deposit in the United States Mail.
- (2) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (3) When delivered by overnight delivery by a nationally recognized overnight courier, notice shall be deemed delivered one (1) business day after deposit with that courier.
- (4) When personally delivered to the recipient, notice shall be deemed delivered on the date personally served.

B. The place for delivery of all notices given under this Agreement shall be as follows:

County: Contra Costa County
Public Works Department
Real Property Division
255 Glacier Drive
Martinez, CA 94553
Attn: Iron Horse Corridor Property Manager
Telephone: (925) 313-2220

Licensee: City of Concord
Building, Engineering and Neighborhood Services
1950 Parkside Drive MS/40
Concord, CA 94519
Telephone: (925) 671-9692

Either party may, at any time, designate in writing different addresses to which its notices shall be sent.

26. **Non-Waiver of Breaches:** County's failure to insist upon strict performance of any of the terms or conditions of this Agreement shall not be considered as a waiver of any subsequent breach of a term or condition. All waivers of provisions of this Agreement shall be in writing and executed by County.
27. **Non-Discrimination:** Licensee 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 Licensed Premises or the construction or use of the Improvements.
- In the event of breach of the above non-discrimination covenant, County shall have the right to terminate this Agreement without compensation to Licensee.
28. **Entry and Inspection:** Licensee agrees that County, its agents and employees, may enter upon the Licensed Premises at any time to inspect, make any changes or alterations or repairs which County considers necessary for the protection, improvement or preservation thereof, or to post any notice provided for by law, or otherwise to protect any and all rights of County. Nothing herein contained shall be construed to obligate County to make any changes, alterations or repairs to the Licensed Premises.
29. **Modification:** This Agreement shall not be modified or amended without the mutual written consent of both parties.
30. **Severability:** If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remainder of this Agreement shall not be affected.
31. **Controlling Law:** This Agreement shall be construed in accordance with the laws of the State of California. In the event of any dispute arising under this Agreement, venue shall be set in Contra Costa County.
32. **Entire Agreement:** This document contains the entire agreement between the parties relating to the subject matter hereof, and all prior understandings or agreements, oral or written, regarding the rights hereby granted are superseded by this Agreement.

33. **No Recording:** This Agreement shall not be recorded with any Clerk-Recorders office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

COUNTY:

CONTRA COSTA COUNTY

By: _____

Julia R. Bueren
Public Works Director

Date _____

RECOMMENDED FOR APPROVAL:

By: _____

Carla Peccianti
Senior Real Property Agent

By: _____

Karen Laws
Principal Real Property Agent

APPROVED AS TO FORM

Sharon L. Anderson
County Counsel

By: _____

Eric Gelston
Deputy County Counsel

LICENSEE:

CITY OF CONCORD

By: _____

Valerie J. Barone
Interim City Manager

Date _____

11/27/12
(Date Signed by Licensee)

ATTEST:

By: _____

Mary Rae Lehman
City Clerk

APPROVED AS TO FORM:

for _____

Mark S. Coon
City Attorney, City of Concord

Finance Director's Certification
City of Concord

Date: 11/27/12

Account Code: NA

Amount: \$ Ø

sm 11/27/12

I hereby certify that adequate funds exist or will be received during the current fiscal year 2012/2013 to pay the anticipated expenses to be incurred pursuant to this contract.

Wilson
Finance Director

Reference License Agreement between
Contra Costa County and City of Concord
City Contract No. CCA-5261

Exhibits A, B, and C referenced in the
agreement are on file in the City Clerk's
office and can be viewed by contacting the
Clerk's office and referencing the City
Contract No. CCA-5261.

Telephone: (925) 671-3430 or
e-mail: CityClerk@cityofconcord.org