

**LICENSE AGREEMENT
BETWEEN
CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
THE CITY OF WALNUT CREEK**

This LICENSE AGREEMENT ("License") is made and entered into this _____ day of _____ 2019, ("Effective Date") by and between CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a Flood Control District existing under the laws of the State of California, (the "District") and the CITY OF WALNUT CREEK, a California Municipal Corporation (the "City"). City and District are sometimes hereinafter referred to individually as a "party" or collectively as the "parties".

RECITALS

- A. The District holds fee title to the Joint Use Areas, as defined in Section 1 of this License. City desires to use the Joint Use Areas for recreational purposes such a pedestrian bridge, trails, combined vehicle/pedestrian access, and other ancillary recreational uses, and associated uses such as landscaping, fencing, bollards, and signs. District is willing to allow City to use the Joint Use Area for those purposes for the benefit of City and its residents and other persons.
- B. The purpose of this License is to provide for City's continued use of the Joint Use Areas under the terms and conditions of this License.

AGREEMENT

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

- 1. **Description of the Joint Use Areas:** The "Joint Use Areas" are that certain real properties more particularly shown in the orange highlighted hashed areas on Exhibits "A" and "B," attached hereto and incorporated herein by this reference. District and City understand and agree that the Joint Use Areas may be modified or amended from time to time as necessary upon the mutual written consent of the parties, which consent may be given by City's City Manager or his/her designee and the Districts' Chief Engineer or his/her designee on behalf of the City and District respectively.
- 2. **Grant of License:** As of the Effective Date, District hereby grants to City a revocable, non-exclusive license to enter upon, occupy, and use the Joint Use Areas for the purposes described in, and subject to the terms and conditions of, this License.
- 3. **Term:** The term of this License commences on the Effective Date, and it ends _____, 2044, unless or until the earlier occurrence of either of the following: (a) this License amended by mutual written agreement of the parties, or (b) this License is suspended, partially revoked, or terminated by either party in writing in accordance with the provisions contained herein.
- 5. **District's Title:** City hereby acknowledges District's fee title in and to the Joint Use Areas, and agrees never to assail or to resist District's title. City acknowledges and agrees that it is not acquiring any interest or estate in the Joint Use Areas, or the land underlying the Joint

Use Areas, by executing this License, and that no interest or estate in the Joint Use Areas is being conveyed to it, that this License will never convey such right or estate in or to the Joint Use Areas, or the land underlying the Joint Use Areas, nor will City obtain any title or claim to use the Joint Use Areas beyond that specifically granted in this License.

The City shall not enter into any agreement or contract, or accept grants, gifts or funding provided by the Federal, State or other government authority that in any way subordinates the rights of the District over the Joint Use Areas, including but not limited to, District's right to construct, use, maintain, alter, reconstruct, enlarge or otherwise modify its facilities located within the Joint Use Areas without the expressed written consent of the District. Should City's actions or uses of the Joint Use Areas subordinate the rights of the District over the Joint Use Areas, the City shall be obligated to cure the subordination or to replace District's facilities in another location acceptable to the District at its sole cost and expense, or compensate the District for any costs, loss, or damages resulting from its loss of use of such facilities.

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

6. **District's Uses:** District shall have the right to use the Joint Use Areas, for any purpose, including, but not limited to, flood control detention basins, drainage water conveyance, water conservation, water quality improvement, maintenance, channeling, or otherwise controlling the flow of drainage waters, as well as performing any other activities, and constructing or maintaining any facilities that the District may be required to perform, construct, or maintain by other agencies at the Federal, State, Regional or Local level, including but not limited to, water quality and quality control and environmental mitigation and enhancement, all of which shall hereinafter be referred to as "District's Uses." District's Uses of the Joint Use Areas shall be paramount or superior to any other use of the Joint Use Areas, including but not limited to, City's Uses described in Section 7 titled "City's Uses of the Joint Use Areas".

District may require access to all Joint Use Areas blocked by City barricades or bollards. Each such barricade/bollard shall have two padlocks attached to it such that both District and City can access each area independent of one another. Further, City shall not hinder or obstruct District's access, including access by District or District's permittees' vehicles, to those areas so barricaded. District shall provide its padlock at no cost to the City.

District's Uses may cause a temporary interruption in the City's use or permission to enter upon and use the Joint Use Areas. In the event that any of the District's Uses causes an interruption or interference with any of City's Uses, 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 City or any other users of the Joint Use Areas for any cost, expense or damage caused by their loss of use of the Joint Use Areas unless due to the gross negligence or willful misconduct of the District.

7. **City's Uses of the Joint Use Areas:** City shall have the non-exclusive right to use the Joint Use Areas for recreational purposes such a pedestrian bridge, trails, combined vehicle/pedestrian access, and other ancillary recreational uses, and associated uses such as landscaping, fencing, bollards, and signs, in accordance with the provision of Section 10. Maintenance, Alterations, and Surrender of the Joint Use Areas shall hereinafter be referred to as "City's Uses." City's Use of the Joint Use Areas for various special events ("Special Events"), shall include but not limited to, such things as organized Creek Cleanup Parties by

outside third parties, Bike or Running Races, and Neighborhood events. City shall provide, at City's sole expense, its own equipment, and other personal property necessary or convenient to its uses of the Joint Use Areas unless otherwise expressly agreed to by the District from time to time. Any of City's permits with third parties to use the Joint Use Areas shall include a hold harmless provision whereby both the District and Contra Costa County (the "County") are held harmless as provided in Section 13, titled "Hold Harmless and Indemnification".

City shall not permit any motor-driven vehicles on the Joint Use Areas, except in designated parking areas, unless the vehicles are those of the City or the City's permittees that are being used for construction, maintenance, repair, patrol, or public safety purposes. To prevent unauthorized motor-driven vehicles in any of the Joint Use Areas, City, at its sole cost, will install barricades/bollards or similar devices and signage where necessary and appropriate. The City shall also install, at its sole cost, such access control devices in areas where the installation of new improvements or modification of existing Joint Use Areas has provided access that otherwise did not exist prior to the City installed work.

Any of City's Uses, and all City's rights granted or implied by this License, are secondary and subordinate to the District's Uses. In addition, any joint uses by the City or by others as allowed by the District, will be subordinate to the rights of any entity (hereinafter "Permittees") with existing facilities installed on the District's property, including the Joint Use Areas. The City shall not, at any time, use, or permit the public to use, the Joint Use Areas in any manner that will materially interfere with or impair District's or Permittees' use of the Joint Use Areas. Any application for easements, right of entry, permit or other right to use District's property received by the District that may affect the City's Use of the Joint Use Areas will be submitted for City review and the District will not grant a Permittee any rights in the Joint Use Areas that are inconsistent with any of City's Uses existing at the time of Permittee's request and will make a good faith effort to condition applicant to cure their effect on City's future use.

8. **Payment of District's Costs:** City shall reimburse District for any reasonable increases in the cost to maintain District's facilities in the Joint Use Areas due to the City's use of said areas. City, with District's reasonable consent, shall have the option of doing the maintenance work, contracting with the District or hiring an outside contractor to perform any normal and customary maintenance in the Joint Use Areas to eliminate the District's increased costs. If the City chooses to contract with the District for maintenance services and the District agrees to enter into a contract, the scope and cost for the maintenance work in the Joint Use Areas will be mutually agreed upon in writing prior to any maintenance work being performed by the District.

City shall pay all reasonable expenses associated with the alteration of the Joint Use Areas pursuant to an Encroachment Permit for Use of District Right of Way and the restoration, maintenance or repair of the Joint Use Areas pursuant to an Encroachment Permit for Use of District Right of Way (as defined in Section 10).

9. **Lawful Conduct:** City agrees that it will obey, observe and use due diligence to the extent reasonably feasible to require all persons entering upon the Joint Use Areas to obey and observe all terms of this License and all applicable laws, ordinances, orders, rules, permits, regulations and requirements relating to the Joint Use Areas. 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 the operations of City, or its officers,

employees including agents, permittees or invitees. City shall not commit, suffer, or permit any nuisance in or about the Joint Use Areas.

- 10. Maintenance, Alterations, and Surrender of the Joint Use Areas:** City shall, at City's sole expense, repair and maintain the Joint Use Areas as described herein and as shown on Exhibit "A" and "B", and all City improvements therein in a safe, clean, neat, orderly and presentable condition, free from weeds, waste, litter, graffiti and other items resulting from City's use of or public access to the Joint Use Areas, and left by parties other than District and its Permittees. As used in this License, the term "litter" shall include, but not be limited to, paper, garbage, refuse, trimmings, and other items that detracts from the neat and tidy appearance, cleanliness, and safety of the Joint Use Areas. City shall also be responsible for the removal of all dead animals from the Joint Use Areas, at its sole expense, which responsibility may include calling the Contra Costa County Animal Services Department to have them remove the dead animal(s).

The City shall maintain and repair all improvements the City installs or constructs in the Joint Use Areas, including but not limited to, Pine Creek, Lime Ridge and Shell Ridge trail improvements, pedestrian bridge and bridge abutments, fencing, barricades/bollards, signs, landscaping, asphalt concrete, aggregate base material, grass, and erosion protection in a safe, clean, neat, orderly and serviceable condition, such that the improvements do not interfere with the District's Uses. City shall keep the Joint Use Areas free from weeds, grasses and other objectionable vegetation where applicable and shall abate vegetation within the Joint Use Areas to local County fire district standards. For improvements within Pine Creek, City shall abide by the conditions and requirements of the U.S. Army Engineer District, San Francisco Corps of Engineers (Corps) Operations and Maintenance Manual ("O&MM") and any other restriction or condition imposed by the Corps. Except for City's routine maintenance activities, City shall obtain District's consent and approval at least fifteen (15) business days prior to any activity that could reasonably disrupt any of District's Uses of the Joint Use Areas.

City is responsible, at its expense, for all repair and maintenance associated with City's improvements in the Joint Use Areas. Except in the case of an emergency, the City shall not make alterations to the Joint Use Areas, including 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 the prior application to the District and written consent of District's Chief Engineer, or his or her designee. Written application for City's alterations to the Joint Use Areas shall be in the form of an "Encroachment Permit for Use of District's Right of Way" ("Encroachment Permit"). City shall make every effort to report emergency work in the Joint Use Areas to the District within twenty four (24) hours from commencement of such work. When deemed necessary, at the sole but reasonable discretion of the District's Chief Engineer, the City shall apply to the District for approval of emergency modifications to the Joint Use Areas. District may require City to alter or remove any emergency work done by City at City's sole cost and expense, if the emergency work interferes with District's Uses.

Except in the case of an emergency, District shall not make alterations to the Joint Use Areas, including the installation of improvements or utilities or performance of any construction, reconstruction, remodeling, alteration, removal, landscaping, tree planting, maintenance or other activities without prior notice to City. District is aware that such alterations could disrupt any City-approved use of the Joint Use Areas. District will provide the City with at least ten (10) working days written notice of such alterations unless the District can reasonably provide the City with greater advanced notice under the

circumstances. Any modification of, or amendment to, the Joint Use Areas will be designed and/or constructed, as applicable, to accommodate the joint use by City. District will provide City with design documents no later than the 50% project design milestone for review and comment.

11. **Mechanic's and Materialman's Liens:** City shall not permit any mechanic's, materialman's, or other lien to be placed against the Joint Use Areas, or the property of which the Joint Use Areas forms a part, in connection with any labor, materials, or services furnished or claimed to have been furnished to the City related to any City-installed improvements. City shall remove or discharge any such lien that shall be filed against the District related to the Joint Use Areas or property of which the Joint Use Areas forms a part, in a timely fashion, whether bonded or not, provided, however that either the District or the City may contest any such lien, so long as the enforcement thereof is stayed.
12. **Security of the Joint Use Areas:** City shall provide patrol and security services necessary to prevent unauthorized use of and to protect the safety of users of the Joint Use Areas, as are reasonably practical and feasible. City agrees to devote, at a minimum, the same standards and levels of public safety patrol and security service to the Joint Use Areas as it devotes to its other recreational facilities. City shall designate, in writing to District, a representative who shall be responsible for overseeing the day-to-day operations and maintenance of the Joint Use Areas.

District shall not have any duty to guard or secure, 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 the Joint Use Areas 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 District, or its officers, employees or permittees excluding the City.

13. **Hold Harmless and Indemnification:** City shall defend, indemnify, save, protect, and hold harmless District and Contra Costa County ("County"), their boards, officers, agents and employees, from and against any and all claims, suits, costs, loss, expense, and liability for any damages, death or injury to persons or property, from any cause whatsoever arising directly or indirectly from or connected with the operations or use of the Joint Use Areas by the City or its officers, agents, employees, contractors, subcontractors or invitees hereunder, save and except claims or litigation arising through the sole or active 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 requested by District, and will defend any such suits at the sole cost and expense of City.

To the maximum extent permitted by law, City's obligations to District and County, their boards, officers, agents and employees, under this Section shall also extend to District's related agencies and entities, affiliates, successors and assigns, and other permitted users of the Joint Use Areas, for all liability, claims, suit, demands, cause of action, damage, cost or expense including, without limitation, any fines, penalties, judgements, litigation costs, attorney's fees, consulting, engineering, and construction costs, all costs of any required or necessary testing, remediation, repair, removal, cleanup and detoxification of the Joint Use Areas, and all costs for preparation of any cleanup, remediation, closure or other required plans incurred by District and such other permitted users of the Joint Use Areas, as a result of City's breach of Section 15 titled "Health, Safety and Environmental Protection", or as a result of City's breach that causes any such discharge, leakage, spillage, emission, or

pollution, regardless of whether such liability, cost, or expense arises during or after the termination of this License.

District shall indemnify, defend and hold harmless City for District's and or County's share of liability, as determined by a court of law, for any damage, injury or death of or to any person or property of any person, including attorneys and expert fees, arising out of the negligence or willful misconduct of District or County, or either entity's officers, employees, or agents, in the exercise of District's obligations under this License or the use of the property by District or County.

- 14. Conditions of Property:** District makes no representations as to the suitability of the Joint Use Areas for any of City's Uses. Prior to the execution of this License, City shall inspect the Joint Use Areas 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 agrees that the Joint Use Areas are subject to sliding, erosion, subsidence, flooding and other possible hazardous conditions, and if these conditions do not affect the operation of the channel, then the District is under no obligation to restore, maintain or repair any damage resulting from sliding, erosion, subsidence, flooding or other hazardous conditions therein. The City, with the prior written approval of the District, may perform, at City's sole cost and expense, such restoration, maintenance, or repair as City deems necessary for its proper and safe use of the Joint Use Area. City agrees that District has no responsibility or liability to City for any hazardous condition that exists or may occur on or in the Joint Use Areas.

- 15. Health, Safety and Environmental Protection:** City, at its sole cost and expense, shall comply with all present or future applicable laws, statutes, codes, rules and regulations regarding health, safety, noise, environmental protection, waste disposal, water and air quality as they pertain to the City's use of the Joint Use Areas. No hazardous materials shall be handled by City, at any time, on or in the Joint Use Areas, without the District's express written permission. City shall not commit, or suffer to be committed, the discharge of any waste in the Joint Use Areas, or any nuisance or other act that may pollute or contaminate the Joint Use Areas, or the watershed of which the Joint Use Areas are a part.

City shall not cause or permit any hazardous materials as defined in this Section, to be generated, brought onto, stored, used, emitted, released, discharged, or disposed of in, on, under, or about the Joint Use Areas except that City, its officers, employees, agents, contractors, guests, or invitees may do so with prior express written permission from the District, which may be denied in District's sole discretion.

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

City is further prohibited from using any herbicide, pesticide or hazardous substance, including those for which it has obtained District's prior approval to use, anywhere on the Joint Use Areas, in an unsafe or careless manner or in any manner that is contrary to the manufacturer's instructions or contrary to greater restrictions that the District may impose. City must satisfy any and all herbicide, pesticide application permit requirements as may be required by Federal, State or local regulations or agencies.

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

16. Water Quality Control Board Requirements: City shall conform fully to the requirements of the California Regional Water Quality Control Board San Francisco Bay Region (Order No. 99-058) NPDES Permit No. 0029912 regarding waste discharge requirements for Contra Costa County Flood Control and Water Conservation District, Contra Costa County and the cities that formed the Contra Costa Clean Water Program adopted by the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"), on July 29, 1999, and any subsequent amendments by the Regional Board. This Regional Board's permit regulates storm water and non-storm water discharges associated with activities within District rights of way. City shall report to the Regional Board any and all reporting requirements necessitated by City's Uses of the Joint Use Areas as if City was owner of the property.

17. Insurance: City shall have the right to self-insure. In the event that City does self-insure, City shall provide written evidence of such self-insurance to District, and shall include District and County as additional insured under such self-insurance coverage as described in this section.

If City does not self-insure, then, during the entire term of this License, City shall provide and maintain, in full force and effect at all times, insurance policies meeting the requirements described in this Section below, unless otherwise expressed in writing by the District's Chief Engineer. The City shall furnish copies of the required insurance policies for review by the District.

A. 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 damages to or destruction of property, including the loss of use thereof, arising from each occurrence. All insurance policies required by this License shall include the following language: "Contra Costa County Flood Control and Water Conservation District, and Contra Costa County, their boards, officers, agents, and employees are additional insureds under this insurance policy as to all operation and activities associated with the License for the Joint Use Areas." Said policies shall constitute primary insurance as to the District and County, their directors, officers, and employees, so that other insurance policies held by them or their self-insurance programs shall not be required to contribute to any loss covered under City's insurance policy or policies.

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 Joint Use Areas.

- B. City shall take out and maintain Worker's Compensation and Employer's Liability Insurance, as required by law, for all of its employees working on the Joint Use Areas. City shall require any subcontractor to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance with California State Laws.
- C. City shall provide District with a copy of City's insurance policies issued by a carrier evidencing liability insurance as required herein no later than the effective commencement date of this License. If City should renew the insurance policies or acquire either a new insurance policy or amend the coverage afforded through an endorsement to the policy at any time during the term of this License, City shall provide a current copy of the insurance policy to the District.
- D. City shall require all contractors and subcontractors, performing work for the City in the Joint Use Areas or using the Joint Use Areas in accordance with the activities defined in this License, to provide insurance coverage of the types and in the amounts as set forth in this section or as specified by the District and to furnish evidence of such insurance to the City and the District. The insurance policies provided by the City's contractors and subcontractors shall constitute primary insurance as to the District and County, their boards, officers, agents and employees, so that other insurance policies held by them or their self-insurance programs shall not be required to contribute to any loss covered under insurance policy or policies of the City's contractor and subcontractors.

The insurance policies provided by City and the City's contractors and subcontractors shall include a provision requiring thirty-days (30) written notice to District before cancellation, lapse, or material change of the above-specified coverage. This License shall not become effective until insurance coverage verification satisfactory to the District is received and approved in writing by the District. The City shall modify its insurance coverage and compel the modification of the insurance coverage of its contractors and subcontractors upon thirty (30) days written notification by the District's Chief Engineer to do so.

- 18. **Assignment:** City shall not assign or transfer this License or any interest herein, without the prior written consent of District.
- 19. **Waivers:** No waiver by either party of any breach or violation by the other party of any provision of this License 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. District's acceptance of any monies that become due under this License shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by City of this License.
- 20. **Non-Discrimination:** 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 Joint Use Areas.

21. Prior Agreements: This License represents the entire agreement of the parties hereto, and replaces any and all other previous agreements, if any, between the parties concerning the Joint Use Areas. This License can only be modified by a written amendment signed by each of the parties hereto.

22. Limitations of Use: District and City have determined, and City hereby acknowledges, that City's Uses, as described in Section 7 titled "City's Uses of the Joint Use Areas", may not always be compatible with District's Uses, as described in Section 6 titled "District's Use", even if City observes and complies with the terms of this License. In circumstances where City's Use of the Joint Use Areas either conflicts with District's Use of the Joint Use Areas or presents a threat to the public's health and safety, in the reasonable determination of the District, the District shall have the right to suspend, limit, or to modify City's Use of the Joint Use Areas upon twenty (20) working days written notice from the District, including requiring City to remove any of its facilities, improvements, equipment, or other property from the Joint Use Areas, or from the area of which the Joint Use Areas forms a part, if applicable, or to restore the condition of the Joint Use Areas, as necessary, at no cost to the District; provided, however; in those circumstances where the District has approved the City's Uses and development of related facilities, improvements and/or equipment prior to a determination that such uses and/or improvements present a reasonable threat to the public's health and safety or conflict with the District's Uses, the District shall be required to consult with the City in good faith to determine if a remediation plan is possible and financially viable which will minimize disruption in the City's Uses and removal of all or part of the City's facilities, improvements and/or equipment developed thereupon before suspending, limiting or modifying the City's Use of the Joint Use Areas.

City understands that District's primary uses of the Joint Use Areas, or the areas of which the Joint Use Areas form a part, are paramount, and City's Use of the Joint Use Areas for recreational and other purposes can continue only if such use does not interfere with or increase the costs of District's operations associated with the Joint Use Areas, unless mitigated by the City.

District shall not be responsible or liable for damage or removal of any improvements placed, installed, repaired or constructed by the City in the Joint Use Areas when there is an emergency related to District's Uses described in Section 6, "District Uses" above unless such damage or removal is due to the gross negligence or willful misconduct of the District. In all other cases, District shall notify City of work that is necessary and allow City the opportunity to make repairs. Both parties will use their best efforts to minimize damage to the other party's facilities.

23. Termination: This License may be terminated as follows:

- A. At any time upon the mutual written agreement of the parties as approved by each party's governing body.
- B. District and City shall each have the right to terminate this License upon the other party's breach of any material term, covenant or condition of this License. A party shall be in breach of this License if said party fails to perform or observe any material term, covenant or condition of this License for a period of thirty (30) days following receipt of a written "Notice of Breach" from the other party (the "Cure Period"); provided, however; a party shall not be in breach if the nature of the alleged breach is such that it cannot reasonably be cured within the Cure Period but the party commences a cure within the Cure Period and diligently proceeds to complete a cure

of the breach. In those instances where there is a dispute between the parties as to whether a breach has occurred or the cure is adequate, the parties agree to resolve the dispute in accordance with Section 25 titled "Dispute Resolution", below.

- 24. Surrender of the Joint Use Areas:** Upon receipt of District's notice to suspend, limit or terminate the City's Use of any or all of the Joint Use Areas, City shall have the right to remove any improvements installed by City upon the Joint Use Areas affected by the District's decision. If, following such notice from the District, City determines that it does not want to remove some or all of the affected improvements, District shall determine whether or not District will want the improvements to remain on the Joint Use Areas. In the event that District determines that it does not want the improvements to remain on the Joint Use Areas, then City shall immediately remove the improvements, and shall restore the Joint Use Areas to the condition existing just prior to City's Use of the Joint Use Areas, such to be at no cost to the District.
- 25. Dispute Resolution:** Should there be any dispute between City and District regarding the interpretation or the enforcement of this License, or regarding the acts or omissions of either City or District, such dispute shall be first submitted to mediation before a mutually agreed-upon mediator before either City or District may commence litigation. If City or District cannot agree upon the identity of a mediator within ten (10) business days after a party requests mediation, then City and District shall each select a mediator and those two mediators will select a third mediator to mediate the dispute. Neither City nor District shall be entitled to collect or be reimbursed for its attorneys' fees in connection with any such mediation or for the fees of the mediator paid by any party hereto. However, the parties shall share equally in the expense of the mediator who ultimately handles the mediation. 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 either party, in its sole discretion, determine that mediation is proving unsuccessful, such party shall give notice to the other party and, thereafter, both parties may avail themselves to those remedies available under law or in equity.
- 26. Notices:** All notices given under this License shall be served by enclosing the same 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 and Water Conservation District
 255 Glacier Drive
 Martinez, CA 94553

To City: City Manager
 City of Walnut Creek
 1666 N. Main Street
 Walnut Creek, CA 94596

Or to such other address as either party may designate by written notice to the other. Delivery shall be deemed effective: on the same day if delivery is made in person; on the next day after the date of mailing if delivery is made by overnight carrier; or on the fifth day following the date of mailing, if delivery is made by First Class U.S. mail.

27. **No Third Party Beneficiaries:** Nothing in the License shall, nor is it intended to, confer on any person or party other than District, County and City, any rights or remedies under this License.
28. **Amending License Agreement:** This License cannot be modified or amended except in writing agreed upon by both parties hereto, which written agreement shall be in the form of an amendment to this License.
29. **Utilities:** City shall not install any utilities, including, but not limited to, gas, water, electricity, garbage disposal, storm water and sanitary sewer services, and telephone services, on the Joint Use Areas without District's prior written consent. Upon District's prior written consent, City shall install all utilities so approved at City's sole expense, and City shall pay, on City's own account, all charges for said utilities used or consumed on the Joint Use Areas.
30. **Severability:** If any term, covenant, or provision of this License, which does not materially affect the consideration of this License, is held to be invalid, illegal, or unenforceable in any respect, the validity of the remainder of this License shall not be affected thereby.
31. **Controlling Law and Venue:** This License shall be construed in accordance with the laws of the State of California. In the event of any dispute arising under this License, 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. **Paragraph Headings:** Paragraph headings as used herein are for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning thereof.

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33. **Counterparts:** This License may be executed in three (3) or more counterparts, each of which is deemed to be an original.

DISTRICT:
CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

CITY:
CITY OF WALNUT CREEK

By _____
Brian M. Balbas
Chief Engineer

By _____
Dan Buckshi
City Manager

Date: _____
(Date of Board Approval)

Date _____
(Date signed)

RECOMMENDED FOR APPROVAL:

ATTEST:

By _____
Karen A. Laws
Principal Real Property Agent

By _____
Suzie Martinez
City Clerk

Date: _____

Date _____

APPROVED AS TO FORM:
Sharon L. Anderson, County Counsel

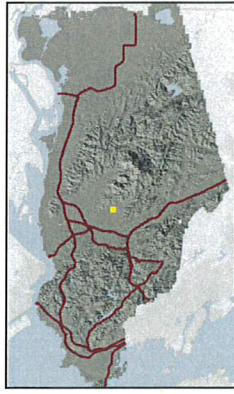
APPROVED AS TO FORM:

By _____
Stephen M. Siptroth
Deputy County Counsel

By _____
Brian Hickey
City Attorney

**License Agreement with
the City of Walnut Creek**

**Diablo Shadows Park
& Pine Creek Trail**



Data Sources: County GIS data
Orthophoto date: 2014

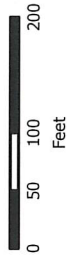


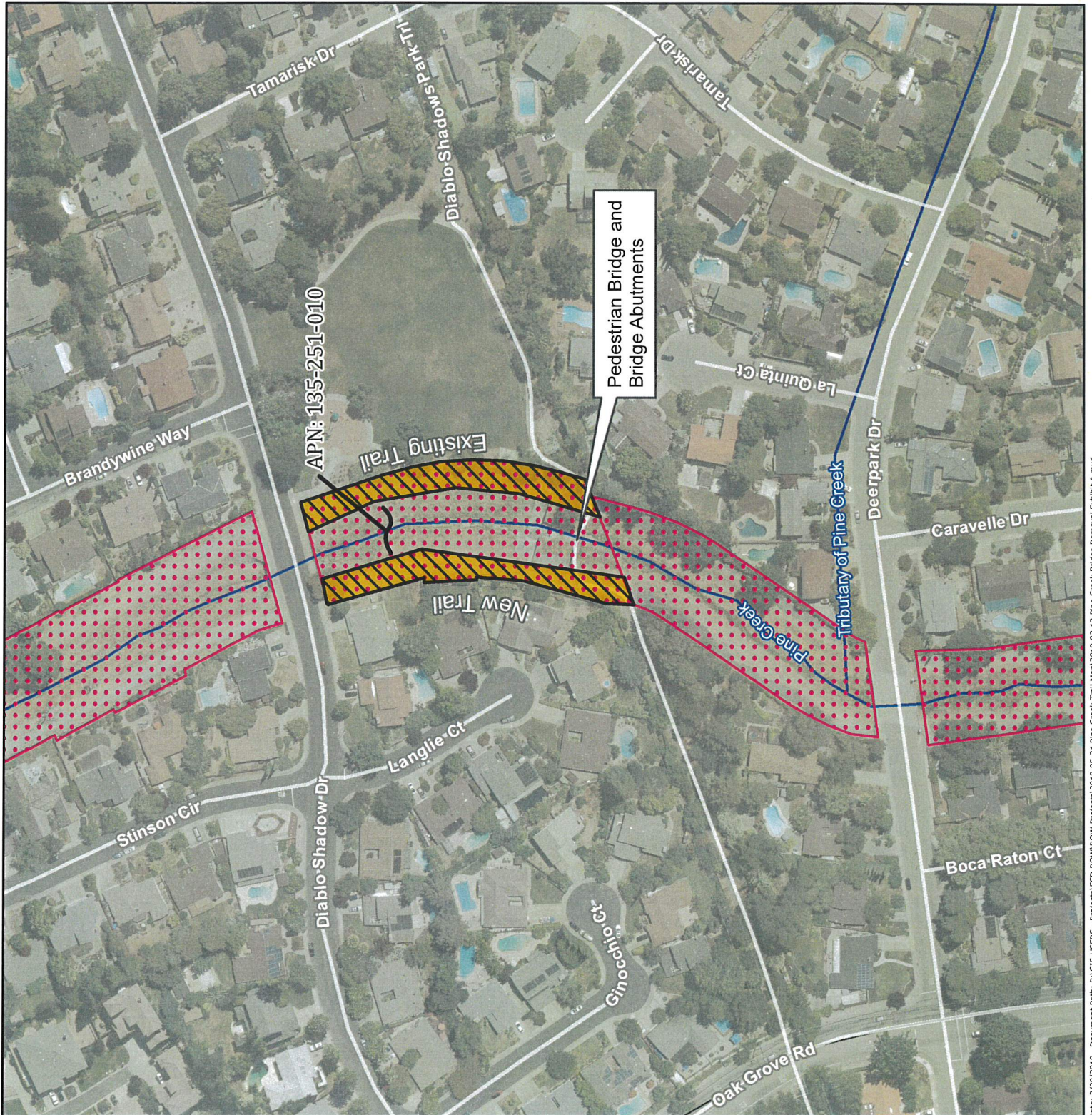
Exhibit A

Flood Control ROW

-  FCD Fee Title
-  Joint Use Area
-  Creeks

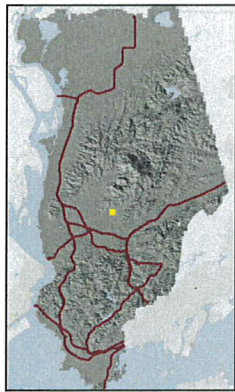


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License Agreement with the City of Walnut Creek

Milton Kubicek Detention Basin & Pine Creek Trail



Data Sources: County GIS data
Orthophoto date: 2014



Exhibit B

Flood Control ROW

- FCD Fee Title
- Joint Use Area
- Creeks



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