

**LICENSE AGREEMENT
BETWEEN
CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
AND
THE CITY OF PLEASANT HILL
FOR JOINT USE OF A PORTION OF GRAYSON CREEK, ON THE WEST BANK,
BETWEEN CHILPANCINGO PARKWAY AND GOLF CLUB ROAD**

This License Agreement (“**Agreement**”) is entered into effective _____, 2020, (“**Effective Date**”) by and between CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district organized under the laws of the State of California, (“**District**”) and the CITY OF PLEASANT HILL, a California municipal corporation (“**City**”). The District and the City are sometimes collectively referred to herein as the “**Parties**,” and individually as a “**Party**.”

Recitals

- A. The District holds fee title to the property (“**District Property**”) within and adjacent to Grayson Creek, in the City of Pleasant Hill in central Contra Costa County, a portion of which is shown on Exhibit A, attached hereto. The District uses the District Property for flood control and other District purposes.

- B. The City approved the development of Diablo Valley Plaza Remodel & Commercial Building, Use Permit #PLN 19-0013 (the “**Development**”) on property located at 180-280 Golf Club Road, Pleasant Hill, adjacent to the District Property. The Development is owned by MGP X DVC, LLC (“**Adjacent Owner**”). As a condition of Development approval, the City agreed to obtain a license in the District Property for use and maintenance of a trail, bollards, signs, landscaping, irrigation, and fencing to be installed and maintained within the District Property and to allow the Adjacent Owner to act on the City’s behalf to use and maintain those facilities, as may be directed by the City. The City desires to obtain that license within a portion of the District Property more particularly identified on Exhibit A, attached hereto (the “**Joint Use Area**”). The District is willing to grant a license to the City for those purposes, subject to the terms of this Agreement, which require the City to maintain the Joint Use Area, including removing debris and litter, and abating weeds and other objectionable vegetation.

Agreement

Now, therefore, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **GRANT OF LICENSE**: Subject to the terms of this Agreement, the District grants to the City a nonexclusive, revocable license upon, over, and across the Joint Use Area, for the purposes described in Section 5 of this Agreement.

2. **TERM:** The term of this Agreement commences on the Effective Date, and this Agreement expires twenty-five (25) years after the Effective Date, unless it is sooner terminated.

3. **DISTRICT'S TITLE:** The City hereby acknowledges the District's fee title in and to the property within the Joint Use Area., and the City agrees never to assail or to resist the District's title to that property. The City acknowledges and agrees that, by executing this Agreement, it is not acquiring any interest or estate in the Joint Use Area, or the property underlying the Joint Use Area. The City further agrees that it does not have and shall not assert any right to use the Joint Use Area beyond that specifically granted in this Agreement. The City shall not enter into any agreement or contract, or accept grants, gifts, or funding provided by the Federal, State, or other governmental authority, that in any way would subordinate the District rights in and title to the Joint Use Area, including but not limited to, District's right to construct, use, maintain, alter, reconstruct, enlarge, or otherwise modify its facilities. Further, the City shall not enter into any agreement or contract with any third party that extends any rights beyond the rights granted by the terms of this License.

4. **NO INTERFERENCE WITH DISTRICT'S USES:**

A. The District has the right to use the Joint Use Area for any lawful District purpose, including, but not limited to, drainage water conveyance, 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 Federal, State, regional, or local governmental agencies (collectively, "**District's Uses**"). District's Uses of the Joint Use Area shall be paramount and superior to any and all other use of the Joint Use Area, including but not limited to City's Uses within the Joint Use Area, as described in Section 5.

B. The City agrees and acknowledges that the District's Uses may cause a temporary interruption of the City's use of, or its permission to enter upon and use, the Joint Use Area. In the event that any of District's Uses interrupts or interferes with any of City's Uses, the District will use its best efforts, as determined by the District, to attempt to minimize the interruption or interference. However, the District shall not be liable to the City, or to any other person who uses the Joint Use Area at the City's direction, for any cost, expense, or damage caused by the District's Uses, except for those costs, expenses, or damages caused by District's sole negligence or sole willful misconduct. The District will provide written notice to the City of any planned District activities within the Joint Use Area at least 30 days before those activities begin. The District will use its best efforts to protect any City improvements within the Joint Use Area.

5. **CITY'S USE OF THE JOINT USE AREA:**

A. The City, its officers, employees, contractors, and agents shall have the non-exclusive right to enter, occupy, and use the Joint Use Area for recreational and landscaping purposes, including use of and maintaining a recreation trail, trees, irrigation facilities, bollards, signs and a split rail fence, removing litter and debris, and maintaining vegetation, in accordance with the terms of this Agreement ("**City's Uses**"). The City may contract with the Adjacent Owner or others to act on the City's behalf and to enter and use the Joint Use Area for City's

Uses. The City shall be solely responsible for requiring the Adjacent Owner or others to use the Joint Use Area in accordance with the terms of this Agreement. The City, at its sole expense, shall provide for any equipment or use of equipment and other personal property which may be necessary or convenient to its use of the Joint Use Area. Before the City allows any third party, including the Adjacent Owner or others, to perform any work within the Joint Use Area on the City's behalf, the City shall enter into an agreement with the third party that requires that party to indemnify and defend both the City and the District to the same extent that the City is required to indemnify and defend the District under this Agreement.

B. The City shall not use, nor shall it permit others to use, any type of motor-driven vehicle in the Joint Use Area, except vehicles required by the City for City's Uses. The City shall install barricades, bollards, and signs, as the District deems necessary, to prevent unauthorized access of the Joint Use Area by motor-driven vehicles. The City shall post signs at points of entry to the Joint Use Area indicating that vehicles are prohibited within the Joint Use Area. The District requires access to all areas of the Joint Use Area, including those areas that are obstructed by barricades and bollards. Each barricade or bollard shall have two padlocks attached to it, to enable both the District and the City to access the Joint Use Area at all times. The City shall not knowingly hinder or obstruct the District's or its permittees' access to the Joint Use Area.

C. The City's Uses and all rights granted or implied by this Agreement, are secondary and subordinate to the District's Uses, as well as to all other uses of the Joint Use Area by the District. In addition, the City's Uses are subordinate to the rights of a public utility or other entity with existing facilities in place upon, in, over, under, or across the Joint Use Area.

D. If the District determines, in its sole discretion, that City's Uses of the Joint Use Area conflict with District's Uses of the Joint Use Area, the District will comply with Section 19.

6. PAYMENT OF DISTRICT'S COSTS:

A. If the District's Chief Engineer, or designee, determines, in its sole discretion, that the District's cost to operate or maintain the District's facilities adjacent to or within the Joint Use Area has increased due to the City's Uses, the City shall reimburse the District for those cost increases. On or before June 1, 2021, and on or before each June 1 thereafter, the District will send the City an invoice documenting the District's cost increases attributed to City's Use during the May 1st through April 30th period that immediately precedes the June 1 on which the invoice is given. Unless the City contests the invoice in accordance with Section 6.B., the City shall pay the District the amount stated on the District's invoice within 30 days after the date the invoice is given.

B. The City may contest the amount stated on a District invoice by giving written notice to the District within 15 days after the date the District's invoice is given. Within 30 days after the District's receipt of that notice, District and City staff will meet to confer regarding the invoice. The District's Chief Engineer shall have sole discretion to determine what, if any, corrective action needs to be taken. Within 15 days after District and City staff meet to confer regarding the invoice, the District's Chief Engineer, or designee, will provide the City a response

indicating whether any corrective action will be taken, and, if any is taken, the District will provide the City a corrected invoice. The City shall pay the District's invoice or corrected invoice within 15 days after the City receives the District's response.

7. **LAWFUL CONDUCT:** While using the Joint Use Area under this Agreement, the City shall, and shall require any person or entity acting on the City's behalf to, obey and observe all terms of this Agreement, and all applicable laws, ordinances, orders, rules, permits, regulations, and requirements relating to the use of the Joint Use Area, whether federal, state, or local in origin. The City shall not commit, suffer, or permit, and shall prohibit any person or entity acting on the City's behalf from committing, suffering, or permitting, any nuisance in or about the Joint Use Area. The City shall be solely responsible for paying all fines, penalties, or charges that may be levied for violation of laws, ordinances, orders, rules permits, regulations, and requirements arising out of the operations of City, its employees, contractors, permittees, and any person or entity acting on the City's behalf.

8. **MAINTENANCE AND SURRENDER OF THE JOINT USE AREA:**

A. As partial consideration for the license granted under this Agreement, the City, at its sole expense, shall maintain the Joint Use Area, and all improvements located within the Joint Use Area under this Agreement, in a safe, clean, neat, orderly, and presentable condition, free from waste, litter, and graffiti resulting from City's Uses or the public's use of the Joint Use Area. However, the City shall not be responsible for any waste, litter, graffiti, or other condition requiring maintenance caused by District or its other permittees. As used in this Agreement, the term "litter" includes, but is not be limited to, paper, garbage, refuse, trimmings, furniture, mattresses, appliances, construction debris, abandoned equipment, abandoned motor vehicles, and other items that detract from the neat and tidy appearance, cleanliness, and safety of the Joint Use Area. The City, at its sole expense, shall be solely responsible for the removal of all dead animals from the Joint Use Area, which may include calling the Contra Costa County Animal Services Department to have them remove the dead animal(s).

B. The City shall maintain all improvements that are installed within the Joint Use Area, including, but not limited to, a recreation trail, bollards, signs, trees, shrubs, irrigation, and a split rail fence, in a safe, clean, neat, orderly, and serviceable condition, such that the improvements do not interfere with the District's Uses. As partial consideration for the license granted under this Agreement, the City shall keep the Joint Use Area along the western creek bank, from the right-of-way line to the water surface in the low flow channel, free from weeds and other objectionable vegetation, and the City shall abate vegetation within the Joint Use Area to Contra Costa County Fire Protection District standards . Except for routine maintenance activities, the City shall obtain the District's consent and approval at least fifteen (15) days before the City performs any activity within the Joint Use Area that may conflict with any of District's Uses.

C. The City, at its sole expense, shall be solely responsible for all repair and maintenance required within the Joint Use Area as a result of City's Uses. Except in the case of an emergency, the City shall not make alterations to the Joint Use Area, including the installation of additional improvements or utilities or performance of any construction, reconstruction,

remodeling, alteration, removal, landscaping, tree planting, major maintenance work, or other work, other than necessary for City's Uses, without the prior written consent of District's Chief Engineer, or designee, which shall be in the form of an Encroachment Permit for Use of District's Right of Way ("**Encroachment Permit**"). The City shall make every effort to report emergency work in the Joint Use Area to the District within one (1) business day after the emergency work commences. If the District revokes an Encroachment Permit previously issued, the City shall immediately remove any of alterations made under the permit. The District may require the City to alter or remove, at the City's sole expense, any emergency work done by the City if the emergency work interferes with District's Uses. The City shall reimburse the District for the District's cost to process an Encroachment Permit application. If an Encroachment Permit is issued, the City shall pay the District's costs to inspect the City's encroachments made under that permit.

D. Unless the District notifies the City otherwise before the expiration or termination of this Agreement, within 6 months after the expiration or termination of this Agreement the City shall remove any improvements installed within the Joint Use Area under this Agreement, and the City shall restore the Joint Use Area to the condition it was in before the Effective Date. However, if the District provides written notice to the City that certain improvements shall remain in place upon the expiration or termination of the Agreement, the City shall leave those designated improvements in place, and the City shall remove any other improvements not designated to remain in place. The 6-month period can be extended at the discretion of and with written consent from the District.

E. The City, at its sole expense, shall promptly clean, repair, remove, or replace any improvements located in the Joint Use Area under this Agreement, or any District improvements within the Joint Use Area, if the improvements are damaged, vandalized, or otherwise determined by the District to be nuisances or hazards.

F. The City agrees that the granting of the license under this Agreement coupled with the City's installation or construction of any equipment, structures, or fixtures within the Joint Use Area shall not render the license irrevocable, and shall not be construed to create a license coupled with an interest in the District Property.

9. SECURITY; CITY'S DUTIES REGARDING PROPERTY:

A. The City, at its sole expense, shall provide patrol and security service, fencing, and gates as may be necessary to prevent the unauthorized use of the Joint Use Area by third parties and the general public. The City, at its sole cost, shall evict trespassers, if necessary, to protect the safety of the users of the Joint Use Area, and the District shall not be responsible for any of such security responsibilities within the Joint Use Area. At a minimum, the City shall devote the same standards and levels of public safety patrol, security service, fencing, and gates within the Joint Use Area as the City devotes to its other outdoor recreational facilities.

B. The District shall not have any duty to guard or secure the Joint Use Area, and it shall have no liability for any injury, loss, or damage to, the goods, property, facilities, improvements, or equipment of the City or anyone acting for or on behalf of the City,

irrespective of the cause of such injury, loss, or damage, except to the extent that an injury, loss, or damage is caused by the sole negligence or sole willful misconduct of the District, or its officers, employees, or agents.

C. The City shall designate a representative who shall be responsible for overseeing the day-to-day operation and maintenance of the Joint Use Area. Within 10 days after the Effective Date, the City shall provide the District written notice identifying and providing contact information for the City's representative. When the City's representative changes, the City shall provide the District written notice identifying and providing contact information for the City's new representative within 10 days.

10. CONDITION OF PROPERTY:

A. The District makes no representations as to the suitability of the Joint Use Area for any of City's Uses. By executing this Agreement, the City acknowledges that it has inspected the Joint Use Area, and that the City has made its own determination as to the suitability of the Joint Use Area for City's Uses.

B. The City agrees that the Joint Use Area is subject to naturally-occurring hazardous conditions, including but not limited to sliding, erosion, subsidence, and flooding. The City further agrees that, if the District determines those naturally-occurring hazardous conditions do not affect the operation of the flood control channel or other District uses of the District Property, the District is under no obligation to restore, maintain, or repair any damage resulting from the naturally-occurring hazardous conditions. The City, with the prior written approval of the District's Chief Engineer, may perform, at the City's sole cost and expense, any restoration, maintenance, or repair as the City deems necessary for its proper and safe use of the Joint Use Area. The City agrees that the District has no responsibility or liability to the City for any naturally-occurring hazardous condition that exists, or that may later occur, on, in, or adjacent to the Joint Use Area.

11. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION:

A. The City, at its sole cost and expense, shall comply with all present and future applicable laws, statues, 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. The City shall not commit, suffer, or permit the commission of, any waste in the Joint Use Area, or any nuisance or other act that may pollute or contaminate the Joint Use Area or the watershed and District Property of which the Joint Use Area is a part.

B. The 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 Area by the City or its officers, employees, agents, contractors, guests, or invitees, or any person acting on its behalf including the Adjacent Owner, without having first obtained express written permission from the District, which shall be in District's sole discretion to provide. As used herein, "hazardous substance" includes but is not limited to any substance, material, or waste which is or becomes designated, classified, or

regulated as being “toxic,” “hazardous” or a “pollutant” under any federal, state, or local law, regulation, or ordinance.

C. The City is prohibited from using within the Joint Use Area any herbicide, pesticide, or hazardous substance, including those for which it has obtained District’s prior approval to use, 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. The City must satisfy any and all herbicide and pesticide application permit requirements, as may be required by Federal, State, or local regulations or agencies.

D. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Joint Use Area due to the City’s Uses, or due to the City’s use, release, or disposal of any pesticide or hazardous substance, the City, at its sole 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 party, to the satisfaction of District, and to the satisfaction of any governmental body having jurisdiction thereover. **The City shall immediately notify the 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 the District pursuant to this Section does not relieve the City of any legal requirement to notify any governmental body with jurisdiction over the Joint Use Area.

12. WATER QUALITY CONTROL BOARD REQUIREMENTS: The City shall conform fully to the requirements of the California Regional Water Quality Control Board San Francisco Bay Region’s (“**Regional Board**”) most current National Pollutant Discharge Elimination System Permit regarding waste discharge requirements for Contra Costa County, the City of Pleasant Hill, and other cities that form the Contra Costa Clean Water Program, which was adopted by the Regional Board on July 29, 1999, and including all subsequent amendments by the Regional Board (the “**NPDES Permit**”). The NPDES Permit regulates storm water and non-storm water discharges associated with activities within District rights of way. Prior to using the Joint Use Area, the City shall develop, implement, and maintain a District-approved Facility Pollution Prevention Plan (“**FPPP**”), describing the pollution prevention practices associated with activities within the Joint Use Area and facilities located within the Joint Use Area. The FPPP shall accomplish compliance by implementing Best Management Practices described in the Contra Costa Clean Water Program Countywide 1999 Storm Water Management Plan, including any subsequent plan adopted by the District’s governing board (the “**SWMP**”). The City shall modify its FPPP as the District deems necessary to assure the conformance of City’s Uses with the SWMP, as may be revised, modified, or recreated in the future.

13. HOLD HARMLESS AND INDEMNIFICATION: The City shall defend, indemnify, save, protect, and hold harmless the District, and its governing board, officers, agents, and employees (“**Indemnitees**,” and each an “**Indemnitee**”), from and against any and all claims, suits, costs, losses, expenses, and liabilities for any damages, sickness, death, or injury to persons or property, including without limitation all consequential damages, (“**Liabilities**”) from any cause whatsoever arising directly or indirectly from use of the Joint Use Area under this Agreement by the City, its officers, agents, employees, contractors, subcontractors, or invitees,

or by the Adjacent Owner or any other person or entity acting on City's behalf hereunder, and the City shall make good to and reimburse the District for any expenditures, including reasonable attorneys' fees, that the District may make by reason of such matters. If requested by the District, the City shall defend any such suits at the sole cost and expense of the City. Notwithstanding the foregoing, the City shall not be required to defend, indemnify, save, protect, and hold harmless the Indemnitees from any Liabilities that arise from the sole negligence or sole willful misconduct of an Indemnitee. This Section shall survive the expiration or termination of this Agreement.

14. **INSURANCE:**

A. Unless the City self-insures as permitted by this Section, throughout the term of this Agreement, the City shall provide and maintain, in full force and effect at all times, insurance policies meeting the following requirements, unless otherwise expressed in writing by the District's Chief Engineer.

1. 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.

2. The 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 Area. The City shall require any contractor or other person acting on its behalf within the Joint use Area to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance with California State laws.

B. The City shall have the right to self-insure for any or all insurance required under this Section. In the event that the City does self-insure, the City shall provide written evidence of such self-insurance to District, and shall include the District as an additional insured under such self-insurance coverage.

C. All insurance policies required by this Agreement shall include the following language, or substantially similar language acceptable to the District's Chief Engineer: **"Contra Costa County Flood Control and Water Conservation District, its governing body, officers, agents, and employees are additional insureds under this insurance policy as to all operations and activities performed on District property by the City, its employees, contractors, and agents."** Said policies shall constitute primary insurance as to the District and its 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 the City's insurance policy or policies.

D. Before the City may enter and use the Joint Use Area under this Agreement, the District's Chief Engineer, or designee, must provide written approval of the City's liability

insurance policy, or written approval of the City's evidence of self-insurance. The City shall provide the District with a copy of the City's insurance policies issued by a carrier evidencing liability insurance as required herein; or the City shall provide the District evidence of self-insurance that meets the requirements of this Section. If the 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 Agreement, the City shall provide a current copy of the insurance policy to the District.

E. The City shall require its contractors and subcontractors, the Adjacent Owner, and any other person acting on the City's behalf, to provide insurance coverage of the types and in the amounts specified by the District, and to furnish evidence of such insurance to the City and the District, before the City authorizes those persons to begin performing work on behalf of the City within the Joint Use Area. Those insurance policies must contain the language in Section 14.C. that the City is required to include in its insurance policies. Those insurance policies must constitute primary insurance as to the District, its 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 contractors and subcontractors, the Adjacent Owner, and any other person acting on the City's behalf.

F. Upon 90 days' advance written notice to the City, the District's Chief Engineer, at its sole discretion, may modify the requirements of this Section, including but not limited to requiring City 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 City's Uses. Within 30 days after that notice is given, the City shall modify its insurance coverage, and it shall require its contractors and subcontractors, the Adjacent Owner, and any other person acting on the City's behalf to modify their insurance coverage, and the City will provide the District new certificates of insurance that comply with the District's changes to insurance.

G. All insurance policies required to be provided under this Section shall include a provision requiring thirty (30) days' written notice to the District before cancellation, lapse, or material change in coverage.

H. The provisions of this Section shall accrue to the benefit of any public entity successor to fee title to the District Property.

15. **ASSIGNMENT**: The City shall not assign or transfer this Agreement to any other person or entity without the prior written consent of the District, which shall be within the District's sole discretion to provide.

16. **WAIVERS**: No waiver by the District of any breach or violation by the City of any provision of this Agreement shall be deemed to be a waiver of any breach or violation of any other provision of this Agreement, nor of any subsequent or continued breach or violation of the same or any other provision of this Agreement. The District's acceptance of any monies that become due under this Agreement shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the City of any provision of this Agreement.

17. **NON-DISCRIMINATION:** The City shall not discriminate against, 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 Area.

18. **PRIOR AGREEMENTS:** This Agreement represents the entire agreement of the Parties hereto, and it replaces any and all other previous agreements, if any, between the Parties concerning the City's use of the Joint Use Area.

19. **LIMITATIONS OF USE:**

A. The District and the City have determined, and the City hereby acknowledges, that City's Uses may not always be compatible with District's Uses, even if the City observes and complies with the terms of this Agreement. In circumstances where, in the District's determination, City's Uses of the Joint Use Area materially and substantially conflicts with District's Uses of the Joint Use Area, or presents a threat to the public's health and safety, the District shall have the right, in its discretion, to suspend, limit, or modify City's Uses of the Joint Use Area, including the right to require City to remove or modify any facilities, improvements, equipment, or other property, within the Joint Use Area, or to restore the condition of the Joint Use Area, as the District deems necessary. This Section shall not apply to temporary interferences in City's Uses of the Joint Use Area caused by District's Uses, as governed by Section 4, nor shall temporary interferences in use be deemed a conflict for purposes of this Section. If the District's Chief Engineer, or designee, determines that any suspension, limitation, or modification of City's Uses of the Joint Use Area are necessary, the District's Chief Engineer, or designee, shall provide the City ninety (90) days advance written notice ("**Modification Notice**") of that suspension, limitation, or modification, and the District's Chief Engineer, or designee, shall have the right to require City to remove its improvements from, or modify its improvements within, the Joint Use Area. If the City determines that the removal or modification will take more than ninety (90) days from the date the Modification Notice is given, the City shall submit a schedule to the District's Chief Engineer, or designee, stating the date by which the modification or removal will be completed. During the course of removing or modifying improvements, the City may request, in writing, one or more ninety (90) day extensions to the removal period, one at a time, at least thirty (30) days before the end of the current ninety (90) day removal period. However, the total time for the City to remove its facilities shall not exceed three hundred sixty-five (365) days following the date the Modification Notice is given. If the District does not require the City to remove its improvements from the Joint Use Area, the City shall still have the option of removing its improvements to allow for the District's work.

B. Notwithstanding Section 19.A., if the District's Chief Engineer determines that the City's Uses present an immediate threat to public health and safety, the District shall not be required to provide the City prior written notice of a suspension, limitation, or modification of the City's Uses, so long as the District's Chief Engineer, or designee, notifies the City of the threat to public health and safety and its decision to suspend, limit, or modify City's Uses as soon as the Chief Engineer deems practicable under the circumstances. If the District's Chief

Engineer determines that the City must remove its improvements due to a threat to public health and safety, the Chief Engineer will provide written notice to the City, and, upon receipt of that notice, the City, at its sole expense, shall immediately act to remove the improvements. If the District's Chief Engineer determines that an emergency exists, the District, at its sole discretion, may do either of the following: (1) require the City to immediately remove its facilities, improvements, equipment, or other property from the Joint Use Area; or (2) immediately remove the City's improvements, equipment, or other property in the Joint Use Area, in which case the City shall reimburse the District for the District's removal costs within 30 days after the District gives the City a written demand for reimbursement of those costs.

C. Nothing in this Section is intended to require the District to provide prior notice to the City as a condition of the District's entry, alteration, or use of the Joint Use Area for District's Uses. Nevertheless, the District will endeavor to provide the City with advance notice at least ten (10) business days before the District performs any regular maintenance or other activities that the District determines could disrupt City's Uses. The City acknowledges and agrees that the District's use of the District Property, which includes the Joint Use Area, is paramount to City's Uses.

20. TERMINATION: This Agreement may be terminated as follows:

A. This Agreement may be terminated at any time upon the mutual written agreement of the Parties or for Flood Control purposes relating to flooding or expansion.

B. Either Party may terminate this Agreement upon ninety (90) days' prior written notice to the other Party.

21. NOTICES: All notices, demands, and communications under this Agreement shall be in writing and served by enclosing the same in a sealed envelope, and given personally, by overnight delivery, or by certified U.S. Mail, with postage or delivery fees 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 Pleasant Hill
100 Gregory Lane
Pleasant Hill, CA 94523

or to such other address as either Party may designate by written notice to the other. Notice is deemed effective immediately if it is given personally, on the next business day following deposit for delivery if it is given by overnight delivery, or on the third business day following the date of mailing if it is given by certified U.S. Mail.

22. **NO THIRD PARTY BENEFICIARIES:** Nothing in this Agreement shall, nor is it intended to, confer on any person or party other than the Parties hereto, any rights or remedies under this Agreement.

23. **NO MODIFICATION:** This Agreement may not be modified or amended except in writing agreed upon and executed by both Parties hereto, and approved by both Parties' governing bodies. Any requests by the City for modification of this Agreement shall be made in writing and given to the District.

24. **UTILITIES:** The City shall not install any utilities, including, but not limited to, gas, water, electricity, garbage disposal, storm water, cable TV, fiber optic cables, sanitary sewer services, and telephone services, on, in, over, or under the Joint Use Area without the District's prior written consent, which consent shall be within the District's sole discretion to provide. If the District provides the City prior written consent to the installation of utilities, the City shall be solely responsible for all installation costs, and for all charges for utilities used within the Joint Use Area. Unless the District's Chief Engineer provides written notice to leave utilities in place, upon the expiration or termination of this Agreement, the City shall remove all utilities from the Joint Use Area.

25. **SEVERABILITY:** If any term or provision of this Agreement, which does not materially affect the consideration 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 thereby.

26. **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.

[Remainder of Page Intentionally Left Blank. Signatures on Next Page.]

DISTRICT:
CONTRA COSTA COUNTY
FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

By: _____
Brian M. Balbas
Chief Engineer

Date: _____
(Date signed)

Recommended for Approval:

By: _____
Jessica L. Dillingham
Principal Real Property Agent

Approved as to form:
Sharon L. Anderson, County Counsel

By: _____
Stephen Siptroth
Deputy County Counsel

Exhibits:
Exhibit A – Depiction of the Joint Use Area

CITY:
CITY OF PLEASANT HILL

By: June W. Catalano/gy
June W. Catalano
City Manager

Date: 6/23/2020
(Date signed)

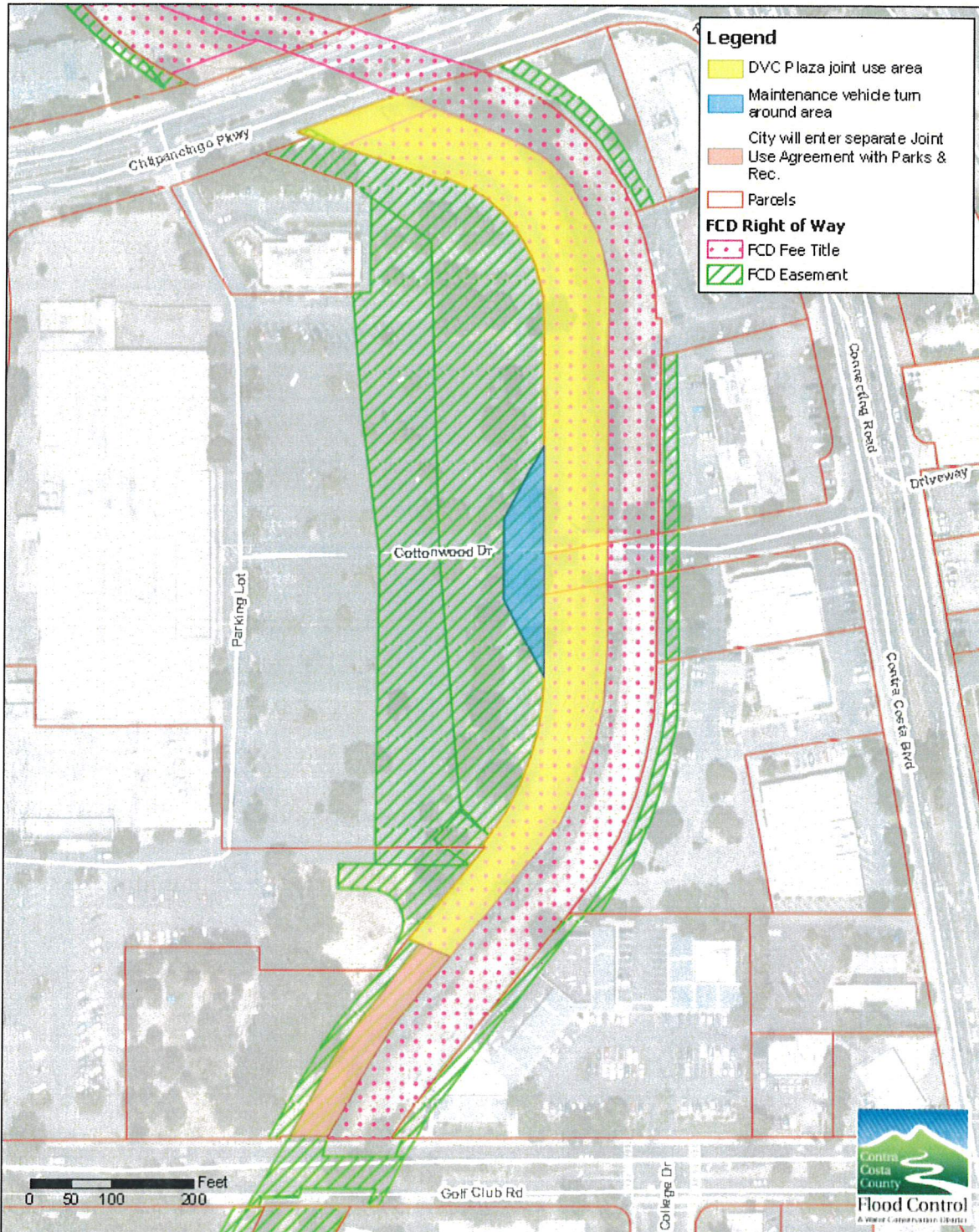
Recommended for Approval:

By: [Signature]
Mario Moreno,
City Engineer

Approved as to form:

By: Janet Coleson/ko
Janet Coleson
City Attorney

Grayson Creek - DVC Plaza Joint Use Agreement - Exhibit A



Document Path: P:\GIS\USERS - PROJECTS\FCD\ROAD\ROAD\PROJECTS\2016-10-26 Grayson Creek McDonalds Development\60 DVC Plaza\A_ Exhibit_2016-09.mxd Date: 5/14/2016