

**LICENSE AGREEMENT
AMONG
CONTRA COSTA COUNTY,
CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
EAST BAY REGIONAL PARK DISTRICT**

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**LICENSE AGREEMENT
AMONG
CONTRA COSTA COUNTY
CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
EAST BAY REGIONAL PARK DISTRICT**

This License Agreement ("Agreement") is entered into on _____, 2021, by and between CONTRA COSTA COUNTY, a political subdivision of the State of California, hereinafter called "**County**", CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district existing under the laws of the State of California hereinafter called "**Flood Control**" and EAST BAY REGIONAL PARK DISTRICT, a California special district, hereinafter called "**District**".

RECITALS

- A. County is the owner of real property known and designated as the Iron Horse Corridor ("IHC") from Mayette Avenue in the City of Concord ("Concord"); to the Contra Costa County/Alameda County line in the City of San Ramon ("San Ramon"). County accepted the grant deed conveying thirteen (13) former Redevelopment Agency owned parcels in the Iron Horse Corridor, recorded 08/27/2019, 20190138269 and is shown on Exhibit "A" attached hereto and incorporated herein.
- B. Flood Control is the fee owner of the IHC from the south side of Mt. Diablo Boulevard to Newell Avenue, Walnut Creek. Flood Control also has permanent easement rights in the IHC from Ygnacio Valley Road to Mt Diablo Boulevard and from Newell Avenue to Rudgear Road, Walnut Creek for its flood control channel and is shown on Exhibit "B" attached hereto and incorporated herein.
- C. Located within the IHC is District's Iron Horse Regional Trail ("IHT"), a public facility, constructed in the late 1980's and 1990's under the License Agreement between County and District dated October 14, 1986. The IHT is for use by pedestrians, equestrians, bicyclists, and other non-motorized modes of transportation, including those allowed under the Americans with Disabilities Act ("ADA").
- D. As used in this License, the IHT shall refer to a 20-foot-wide area from Monument Boulevard in Concord to the Contra Costa/Alameda County line as is shown on Exhibit "C" attached hereto and incorporated herein that may include existing rock, asphalt, or concrete path, shoulders, equestrian trail, signs, drainage facilities, barrier fencing or walls. Additionally, the IHT shall include paved driveway sections, which are situated on and adjacent to the 20-foot-wide area.
- E. The purpose of this Agreement is to authorize the District's continued use of the IHT 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, Flood Control, and District agree as follows:

AGREEMENT

1. **Grant of License:** Subject to the terms and conditions of this Agreement, County, as to the portion of the IHC owned by it as described herein, and Flood Control, as to the portion of the IHC owned by it as described herein, each hereby grants to District a nonexclusive, revocable license to enter onto the IHC for the uses described below.
2. **Effective Date:** This Agreement shall be effective on the date set forth in the opening paragraph above following approval by the District's, County's and Flood Control's governing boards (the "Effective Date").
3. **Use:** District shall have the right to construct, reconstruct, maintain, remove, replace, repair, and use the IHT. Use of the IHT for any other purposes shall be cause for the immediate termination of this Agreement and revocation of this License.
4. **Primary Use of the IHC:** The IHC consists of a corridor of real property that the County and Flood Control are in the process of developing for transportation, utility, and other purposes of the County and Flood Control ("Primary Uses"). Underground utility facilities are already in place and it is anticipated, in the future, additional transportation and utility facilities will be constructed or installed in the IHC. Other persons and entities, including public utilities, occupy, use, and/or maintain facilities within the IHC under easements, licenses, and/or permits granted by County, Flood Control, and/or a prior owner of the IHC ("Co-Users"). District's rights granted or implied by this Agreement shall be subordinate to any existing and future County and Flood Control uses. District shall not, at any time, use or permit the public to use, the IHT in any manner that will materially interfere with or impair said Primary Uses of the IHT. Flood Control, as an easement holder, enjoys certain rights, which may be affected, by the presence and use of District's IHT.
5. **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 all the parties hereto, it may be extended for an additional twenty-five (25) year term.
6. **County and Flood Control's Title:** County holds fee title to the IHC, from Mayette Avenue to Monument Boulevard, Concord; from Newell Avenue, Walnut Creek to the Contra Costa County/Alameda County line, San Ramon. County accepted the grant deed conveying thirteen (13) former Redevelopment Agency owned parcels in the Iron Horse Corridor, recorded August 27, 2019, as Document No. 2019-0138269.

Flood Control holds fee title to the IHC from Mt. Diablo Boulevard to Newell Avenue, Walnut Creek. District agrees never to assail or to resist County or Flood Control's title. Any maintenance, repair, or replacement of the Improvements by District shall not give rise to a license coupled with an interest.

7. **Revocation:** In the event and in the sole discretion of the County and Flood Control, the primary uses of the IHC by the County, Flood Control, their permittees, and/or Co-Users reasonably require some permanent use of a portion or portions of the IHT which, by nature thereof, precludes the District's use thereof, County and Flood Control may, upon six (6) months' proper notice, revoke this License as to the area the County and Flood Control deems necessary for such permanent primary uses. The County and Flood

Control shall supply the District with a map or drawing identifying the area(s) as to which this License is revoked. In the event of such revocation, County will make every reasonable effort to provide an alternative IHT route within the IHC.

8. **Termination:** Upon the expiration of, or within thirty (30) days following termination of, this Agreement, District shall surrender the IHT and all Improvements (except as otherwise provided herein) in good condition, ordinary wear and tear excepted. Notwithstanding the foregoing, if County or Flood Control does not desire some or all of the Improvements to remain in the IHC, County or Flood Control will provide written notice to District identifying the Improvements that District must remove. Within thirty (30) days following receipt of County's or Flood Control's notice, and at District's sole cost and expense, District shall remove all of the Improvements identified in County's or Flood Control's notice, and surrender the IHT to County and Flood Control in good condition and clear of any and all, Improvements above or below ground level, as identified in the notice from County or Flood Control.
9. **Consideration:** As consideration for this Agreement, District hereby agrees to maintain the Improvements and IHT to the same standards as District devotes to its other recreation trails and facilities within its jurisdiction and in a safe and attractive condition at its sole cost and expense.
10. **No Warranties:** County and Flood Control do not warrant or represent that the IHC is safe or suitable for the purposes permitted under this Agreement. District shall make its own determination as to the suitability of the IHC for use by District, and District shall be solely responsible for determination of such suitability.

District understands and acknowledges that County and Flood Control make no representations, warranties, or guarantees of any kind or character, express or implied, with respect to the IHT, and District is entering into this transaction without relying on any such representation or warranty by County and District.

Some areas within the IHC are known to contain soils with arsenic levels that exceed environmental screening levels established by the California Regional Water Quality Control Board, San Francisco Bay Region (the "ESLs"). Those areas contain a chemical (Arsenic) known to the State of California to cause cancer. (Cal. Code Regs., tit. 27, §25604.2.) District shall include a warning of the presence of a chemical known to the State of California to cause cancer, pursuant to Proposition 65 in any contract that it enters into for maintenance or repair of the IHT or the Improvements that may result in the disturbance of any soil. County and Flood Control do not know whether the location of the IHT is in areas of the IHC that may contain soils with arsenic levels that exceed the ESLs. If, at any time during this Agreement or any extension thereof, County or Flood Control becomes aware of the presence of soils with arsenic levels that that exceeds the ESLs within the area of the IHT, County or Flood Control will promptly notify the District.

11. **Suspension or Limitation of Use:** County and Flood Control will have the right to suspend or limit the use of the IHT by the District and the general public, without compensation to District, for a reasonable amount of time, as solely determined by County or Flood Control, for protection of public safety, or for the construction, installation, operation, maintenance or repair of other facilities on the IHT and IHC.

County or Flood Control will provide District with written notice at least thirty (30) days prior to suspension or limitation, except in cases of emergency maintenance or repairs.

County and Flood Control shall not be held responsible or liable for damage or removal of any of District's Improvements on the IHT when the County or Flood Control finds it necessary to accomplish work for the maintenance, construction, repair, reconstruction, or alteration of the County's or Flood Control's property. However, the County and Flood Control will exercise reasonable care to minimize adverse impacts of such work upon the IHT.

While County and Flood Control are under no obligation to repair damage to District's Improvements on the IHT, or to reimburse District for any costs District incurs to repair damage to District's Improvements, County or Flood Control, each at its sole discretion, may elect repair pavement damage, or may elect to reimburse the District for District's actual cost to repair pavement damage, or may elect to do nothing.

12. **Existing Facilities:** District understands and agrees that the County has leases, licenses, easements and/or rights with other Co-Users, and may give similar or other rights to entities in the future, for all of a portion of the Property. District is responsible for identifying the location of all facilities and improvements in the IHT and will take all precautions required to avoid damage to the facilities and improvements. District 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. District will obtain prior written approval from the County, Flood Control, and others, if required before altering the ground elevation or installing Improvements on the IHT. Upon request from District, County and Flood Control will provide District with a list of known co-users and their contact information. Permittee(s) will be required to obtain appropriate permits in accordance with Section 27. **Permits and Approvals.**

District 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. District is fully aware of the potential presence of such facilities, and agrees that, at least forty-eight (48) hours prior to any subsurface work, District will contact **Underground Service Alert at (800) 624-2444** to determine whether there are any subterranean facilities within the proposed excavation area. If facilities exist, District shall be responsible for performing subsurface work in a manner that does not disturb the facilities, or for removing the facilities.

13. **Restricted Use:** The rights granted hereunder are for multi-use recreational purposes only and no motor-driven vehicles are authorized within the IHC, except those allowed under ADA guidelines, and those required by District, County, Flood Control, or Co-users for construction, maintenance, repair, patrol, or public safety purposes. District shall install such barricades as are necessary to prevent unauthorized access by motor-driven vehicles, and District shall post signs at points of entry to the IHT that state that such vehicles are prohibited.
14. **E-Bikes:** The Department of Motor Vehicles ("DMV") has amended its definition of non-motorized vehicles to include E-bikes as part of their designation. By Resolution No. 2019-03-057, adopted March 19, 2019, the District's Board of Directors approved E-Bike use, for only Class 1 & 2 E-bikes, on the Iron Horse Regional Trail. Class 1 E-Bikes are pedal assisted and can only be activated through pedaling. Class 2 E-Bikes can be

activated through a throttle. Both Class 1 & 2 E-Bikes are to follow the 15-mph speed limit, and ring or call out when passing. County and Flood Control will allow the use of E-Bikes on the IHT in accordance with the District's resolution and all applicable DMV and Vehicle Code requirements.

15. **Security:** District shall provide patrol and security service necessary to prevent unauthorized use of, and, to the extent feasible, to protect the safety of, the IHT. Security provided by District shall be of the same standard and level of public safety patrol and security service as District devotes to its own facilities.

County and Flood Control shall not have any duty to guard or secure the Improvements, IHT, goods, property, facilities, or equipment, located upon or near the IHT.

16. **Maintenance and Litter:** During the term of this License, District shall maintain the IHT, including the Staging Areas (located at Rudgear Road and Stone Valley Road), and Improvements, in a clean, safe, and presentable condition, free from waste, litter, graffiti, and other items incidental to the IHT use and left by parties other than County and Flood Control. As used in this section, the term "litter" shall include, but not be limited to, paper, garbage, refuse, trimmings, and other items that detract from the reasonable neat and tidy appearance of the IHT.

In addition, the Licensed area shall include an existing gravel lot ("Lot") at Lisa Lane, measuring approximately 6,200 square feet. District and County agree that the Lot shall be operated and maintained by District as part of the IHT. District shall maintain the lot in a clean, safe and presentable condition, free from waste, litter and other items resulting from public access to the IHT and left by persons other than County, Flood Control and its permittees in a manner consistent with its other Regional Park facilities. District's Public Safety officers shall have the right to enforce District's rules and regulations, including, but not limited to, writing citations and removing vehicles from the lot.

In addition, District is responsible for vegetation management in the wetland area ("Wetlands") that is located on the IHC between Norris Canyon Road and Bollinger Canyon Road, San Ramon. The Wetlands are shown as an "18-foot wide channel" on Exhibit "D," which is attached hereto and incorporated herein. District shall maintain the Wetlands at least to a level that prevents or eliminates any health or safety hazards, and at a level that, at minimum is consistent with the level of maintenance of other District's facilities.

If District fails to maintain the IHT, the Staging Areas, the Improvements, the Lot, and the Wetlands as described herein, after thirty (30) days' prior written notice by County or Flood Control specifying the needed work, County or Flood Control may perform or hire the necessary work at the reasonable expense of District, which expense District agrees to pay to County or Flood Control upon demand. Notwithstanding the foregoing, District shall not be responsible for the maintenance of any landscaping, plantings, trees, water fountains, curbs, benches, and fences not installed by or on behalf of, District in the Staging Areas. District shall not be responsible for the maintenance and care of the water fountains located at Rudgear Road, Hillgrade Avenue, Ridgewood Road, and Stone Valley Road.

District shall pay the water bill generated by EBMUD for the water services provided for the water fountains located in the Staging Areas.

17. **Trees and Vegetation:** District agrees to maintain, at its expense, all trees and vegetation installed by or on behalf of, District in the IHT, with the exception of those trees located in the Staging Areas. District will not be responsible for the maintenance of trees and vegetation not installed by District.
18. **Signs:** District shall maintain existing signs and install appropriate informational and warning signs along the IHT. District shall also install signs along the IHT designating permitted uses of the IHT by the general public, regulations governing such uses, and specifically prohibiting operation of unauthorized motor vehicles, except those motor vehicles authorized in Section 13. **Restricted Use** of this Agreement.
19. **Weed Abatement:** District agrees to keep the 20-foot wide IHT and Staging Areas free from weeds and other vegetation and to abate weeds to local fire district standards. County and Flood Control agree to perform weed abatement on the remaining portions of the IHC according to local fire district standards.
20. **Homeless Encampments:** Consistent with applicable laws, District agrees to remove homeless encampments within the 20-foot wide IHT, Staging Areas, and areas underneath the Arroyo Bridge and any other bridges specified in Section 23 Bridge Structures. Consistent with applicable laws, County agrees to remove homeless encampments under the railroad bridge south of Monument Boulevard.
21. **Fencing:** District agrees to maintain, at its expense, all fencing, bollards, and barricades on the IHC installed by County, Flood Control, or District in the event it is damaged by vandalism, accidents, or District operations except for normal wear and tear and corrosion Flood Control shall be responsible for repairing damage attributable to normal wear and tear and corrosion.

District shall not be responsible for the maintenance of residential fencing installed by parties other than County, Flood Control, and District, or for the normal maintenance (deterioration over time) of chain link fencing appurtenant to the County's and Flood Control's facilities.
22. **San Ramon Bypass Wall Extensions:** The District constructed two sections of concrete wall (wall extensions) on top of the existing San Ramon Bypass Flood Control Channel wall north of Newell Avenue, on the west side, to accommodate their trail. Flood Control shall be responsible for the San Ramon Bypass wall and wall extensions, unless damage to the San Ramon Bypass wall and wall extensions is caused by District's operations.
23. **Bridge Structures:** District shall, at its own expense, provide litter, graffiti, paving and structural maintenance to the former railroad bridge located south of Monument Boulevard, Concord and south of Ygnacio Valley Road (Arroyo), Walnut Creek and the three bridges located south of La Serena Avenue, south of Wayne Avenue, Alamo, and south of Greenbook, Danville.
24. **Road Crossings:** County agrees to maintain, at its expense, all road improvements,

including traffic signs, pedestrian crossings, pavement markings, drainage culverts and road pavement, in the areas where the IHT crosses or adjoins County-maintained public roads within the unincorporated area of Contra Costa County where the IHC is located.

25. **Drainage:** County and Flood Control agree to maintain, at their expense, all longitudinal drainage and cross culverts not part of the IHT. District agrees to maintain, at its expense, drainage facilities necessary for IHT operation.
26. **Damage to Property:** It is understood and agreed by and between the parties hereto that the IHC is subject to sliding, erosion, subsidence, and flooding, and that County, Flood Control, and District are under no obligation to maintain the IHC or repair any damage thereto resulting from sliding, erosion, subsidence, or flooding. However, in the event of any such damage, District may perform such maintenance or repair, that District deems necessary for proper and safe operation of the IHT.
27. **Permits and Approvals:** District will be responsible for obtaining at no cost to the District any permits or approvals from County. District will be responsible for obtaining, including permit costs, any permits or approvals from Flood Control. Flood Control may waive permit costs for minor projects if requested by the District. County and Flood Control will require their contractors to obtain no cost permits from District for County and Flood Control sponsored projects where the contractor is bringing heavy equipment onto the trail or physically altering the trail. District shall give notice to County and Flood Control in accordance with Section 38. **Notices,** of this Agreement, prior to beginning any work within the IHT other than routine maintenance and emergency repair. As used in this section, the term "routine maintenance" refers to work that does not alter the original condition of improvements previously approved in writing by County, Flood Control or District, which work is required to prevent deterioration of said improvements. As used in this section, the term "emergency repairs" refers to repairs that do not alter the original condition of improvements previously approved in writing by County and Flood Control, which repairs are necessary to protect the safety of the public and others.

This Agreement does not release District from any applicable governmental application, review, or requirement for existing or future Improvements. County and Flood Control shall each have the sole right to grant permits, easements, licenses, and leases to other permittee(s) for use of the IHC within its jurisdiction. Any work to be conducted by permittee(s), which may require access on or across the IHT, or may affect the IHT, will require the permittee(s) to obtain and pay for an encroachment permit from District, in addition to an encroachment permit from County or Flood Control, if necessary.

28. **Special Event Permits:** District will be responsible for granting Special Event Permits and ensuring Permittee indemnifies and holds harmless County and Flood Control, their officers, employees, and agents. Each Permittee will need to have General Liability insurance coverage with a minimum combined coverage of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) 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. Each Certificate of Insurance shall also name the County and Flood Control as additional insured. District will send County and Flood Control a listing of Special Events permitted on the IHT, and shall verify data that list, as necessary.
29. **County and Flood Control's Use of Herbicides:** District hereby acknowledges and understands that the County and Flood Control may, at any time, use chemical

herbicides within the IHC. The District agrees to allow such use, without disruption or challenge, on and around the IHT. The District hereby waives any claim for liability against the County and Flood Control for any damage resulting from such use of such herbicides.

30. **Entry and Inspection:** District agrees that County and Flood Control, their agents and employees, may enter upon the IHT at any time to inspect the IHT and make any changes, alterations, or repairs that County or Flood Control consider 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 and Flood Control. Nothing herein contained shall be construed to obligate County or Flood Control to make any changes, alterations, or repairs to the IHT. If any changes, alterations, or repairs are made by County or Flood Control that impact District's facilities, County or Flood Control will notify District of the changes, alterations, or repairs. The County and Flood Control shall be responsible for repairing any damage and restoring District facilities.
31. **Indemnification:** District shall indemnify, save, protect, defend and hold harmless County and Flood Control, their boards, officers, employees, agents and contractors from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorney's fees arising out of or connected with the IHT or its use by any person other than County, Flood Control, their officers, employees, agents and contractors.

County and Flood Control shall indemnify, save, protect, defend and hold harmless District, its boards, officers, employees, agents and contractors from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorney's fees, arising out of or connected with the use of the IHT by County, Flood Control, their officers, employees, agents or contractors.

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

32. **Pollution:** District, at its expense, shall comply with all applicable laws, regulations, rules, and others, with respect to the use of the IHT, 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 shall furnish satisfactory evidence of such compliance upon request of County or Flood Control.

No hazardous materials, except those commonly used for routine maintenance purposes shall be handled by District at any time upon the IHT or IHC. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the IHT or IHC caused by District's employees, contractors and agents, District, at its expense, shall be obligated to clean all the property affected thereby, whether owned or controlled by County, Flood Control or any third person, to the satisfaction of the County or Flood Control (insofar as the property owned or controlled by County or Flood Control is concerned) and governmental body having jurisdiction to the extent such liability is caused or contributed to by the negligence or willful misconduct of District, its officers, agents, employees, or contractors.

To the extent permitted by law, District shall indemnify, hold harmless and defend the County and Flood Control against all liability, cost and expense (including without

limitation any fines, penalties, judgments, litigation costs and attorney's fees) incurred by County or Flood Control as result of District's breach of this section or as result of any such discharge, leakage, spillage, emission or pollution, to the extent such liability, cost or expense is proximately caused by the negligence of District or willful misconduct of District, its officers, agents, employees or contractors.

33. **Compliance with the Law:** The District, 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 IHT.
34. **Insurance:** District 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:** District will name the County and Flood Control, their officers, agents, and employees as additional insured under all policies held for the IHT. All coverage shall provide for thirty (30) days' written notice to the County and/or 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 and Flood Control prior to the effective date of this Agreement and annually thereafter. If District renews or amends existing insurance or acquires new insurance, District will provide updated certificates to County and Flood Control.
 - D. **Self-Insurance:** District has the right and the option to self-insure the foregoing requirements under this Section 34. upon written notice to the County, that District assumes the foregoing obligations in the place and stead of any insurance carrier, any reference to failure of coverage notwithstanding. In the event that District elects to self-insure, District 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 34. County's acceptance of insurance certificates or proof of self-insurance shall not limit in any respect District's obligations of indemnification herein, or decrease the liability of District in any instance.
35. **Assignment:** No rights of District hereunder shall be transferred or assigned unless to a successor public agency, and unless the written consent of County and Flood Control is first secured. With that exception, this Agreement, and each and all of the covenants herein contained, shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.
36. **No Third-Party Beneficiaries:** Nothing in this Agreement, express or implied, is intended to confer on any person, other than County, Flood Control, and District, and their respective successors-in-interest, any rights or remedies under, or by reason of,

this Agreement.

37. **Abandonment by District:** If District for a period of at least one-hundred and twenty (120) consecutive days, District fails to use or maintain the IHT, or any portion thereof, then all rights of District in and to such portions not used or maintained shall immediately terminate, at County's and Flood Control's sole discretion.
38. **Notices:** All notices (including requests, demands, approvals, and other communications) 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 and Flood Control: Contra Costa County Public Works
Real Estate Division
255 Glacier Drive
Martinez, CA 94553
Attn: Iron Horse Corridor Property Manager
Telephone: (925) 313-2000

District: East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605
Attn: Land Acquisition Manager
Telephone: (510) 544-2600

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

39. **Non-Waiver of Breaches:** County or Flood Control'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 or Flood Control.
40. **Non-Discrimination:** District 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, sexual orientation, religion, national origin, or ancestry, or any basis protected under the law, in the use, occupancy, tenure, or enjoyment of the IHT, or the construction or use of the Improvements.

In the event of breach of the above non-discrimination covenant, County and Flood Control shall have the right to terminate without notice this Agreement without compensation to District.

41. **Modification:** This Agreement shall not be modified or amended without the mutual written consent of all parties.
42. **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.
43. **Controlling Law:** This Agreement shall be construed in accordance with the laws of the State of California.
44. **Entire Agreement:** This document contains the entire agreement between the parties hereto and all prior understandings or agreements, oral or written, regarding the rights hereby granted are superseded by this Agreement.

[Remainder of page left blank. Signatures on next page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in duplicate, the day and year written on page 1 of 13.

COUNTY:

DISTRICT:

CONTRA COSTA COUNTY

EAST BAY REGIONAL PARK DISTRICT

By: _____
Brian M. Balbas
Public Works Director

By: _____
Sabrina Landreth
General Manager

Date _____

Date _____

FLOOD CONTROL:

APPROVED AS TO FORM:

**CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT**

By: _____
Jason Rosenberg
District Counsel

By: _____
Brian M. Balbas
Chief Engineer

RECOMMENDED FOR APPROVAL

By: _____
Jessica Dillingham
Principal Real Property Agent

APPROVED AS TO FORM:
Mary Ann McNett Mason
County Counsel

By: _____
Stephen M. Siptroth
Deputy County Counsel

CR:az
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