

FIFTH AMENDMENT TO LICENSE AGREEMENT
MARSH CREEK RECREATIONAL TRAIL
CONTRA COSTA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT
AND
EAST BAY REGIONAL PARK DISTRICT

This Fifth Amendment to License Agreement (“Fifth Amendment”) is entered into and effective as of the ____ day of _____, 2022 (“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, (“Licensor”) and the East Bay Regional Park District, a California special district, (“Licensee”) to amend the License Agreement, Marsh Creek Recreational Trail, dated November 3, 1992 (the “License Agreement”), as previously amended. Licensor and Licensee are sometimes individually referred to herein as a “Party,” and collectively as “Parties.”

WHEREAS Licensor owns certain real property under, within, and adjacent to Licensee’s Marsh Creek Recreational Trail (“Trail”) as depicted in Exhibit “A” (the “Property”) attached hereto and made a part hereof; and

WHEREAS, on November 3, 1992, Parties entered into the License Agreement to provide for construction, reconstruction, maintenance, removal, and use of the Trail for the passage of pedestrians, equestrians, and bicycles only, together with the necessary appurtenances thereto, as more particularly set forth in the License Agreement; and

WHEREAS, on May 16, 1995, pursuant to the terms of the License Agreement, Licensor and Licensee amended the License Agreement, including by adding sections identifying Licensee’s obligations for Drainage and Licensee’s obligations for Bridges (“First Amendment”), as more particularly set forth in the First Amendment; and

WHEREAS, on October 24, 1995, pursuant to the terms of the License Agreement, Licensor and Licensee amended License Agreement terms concerning Maintenance and Litter, Patrol, Drainage, Entire Agreement, Floodwall, and Gates (“Second Amendment”), as more particularly set forth in the Second Amendment; and

WHEREAS, on March 15, 2005, pursuant to the terms of the License Agreement, Licensor and Licensee amended the License Agreement Definitions and terms to redefine and reduce the limits of the Trail (“Third Amendment”), as more particularly set forth in the Third Amendment; and

WHEREAS, on August 19, 2008, pursuant to the terms of the License Agreement, Licensor and Licensee amended the License Agreement terms to further redefine and reduce the limits of the Trail (“Fourth Amendment”), as more particularly set forth in the Fourth Amendment; and

WHEREAS, Licensor desires to further modify the alignment of the Trail as part of its Three Creeks Parkway Restoration Project, to remove portions of the Trail no longer on Licensor-owned Property, and to include new Trail segments and interpretive signs; and

WHEREAS, Licensor and Licensee desire to enter into this Fifth Amendment to modify Licensee's area of responsibility under the License Agreement, as previously amended, by removing a portion of the Trail, and including new Trail segments and interpretive signs, within that portion of the Property generally located between Central Boulevard and the AT&SF railroad right of way, in the Brentwood area, as more particularly described herein and shown on the attached Exhibit "F."

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the Parties hereby agree to amend the License Agreement, as previously amended, as follows:

- A. Exhibits. Exhibit "A" to the License Agreement is hereby deleted and replaced with new Exhibit "A," attached hereto and incorporated herein. Exhibit "F," attached hereto and incorporated herein, is hereby added to and made a part of the License Agreement. Exhibit "B" attached to the Third Amendment is hereby deleted and replaced with Exhibit "D," attached hereto and incorporated herein. Exhibit "B" attached to the Fourth Amendment is hereby deleted and replaced with Exhibit "E," attached hereto and incorporated herein.
- B. Removal of a Portion of the Trail. The segment of the Trail depicted in solid red on the attached Exhibit "F" ("Removed Segment") is hereby removed and no longer a part of the Trail. Beginning on the Effective Date of this Fifth Amendment, Licensee's rights and obligations under the License Agreement, as previously amended, that apply to the Removed Segment are terminated and of no further force or effect; excepting, however, that any of Licensee's obligations under the License Agreement, as previously amended, connected with or related to the Removed Segment that survive termination, or that accrue before the Effective Date, shall remain fully enforceable against Licensee.
- C. EVMA Areas. Licensee may occupy and use, and may permit its contractors and all fire, emergency response, and law enforcement personnel to occupy and use, the areas of the Property depicted in red hash marks on Exhibit "F," and generally located on opposite sides of Central Boulevard, for emergency vehicle and maintenance access ("EVMA") purposes only. Licensee shall not use, and shall not permit the public to use, said areas of the Property for any other purpose. Licensee shall maintain said areas of the Property in a manner consistent with the level of service Licensee provides for the Trail under the License Agreement, as previously amended.
- D. EVMA & Maintenance Areas. Licensee may occupy and use, and may permit its contractors and all fire, emergency response, and law enforcement personnel to occupy and use, the area of the Property depicted in black hash marks on Exhibit

“F,” and generally located south of the Removed Segment, for EVMA and Trail maintenance purposes only. Licensee shall not use, and shall not permit the public to use, said area of the Property for any other purpose. Licensee shall maintain said area of the Property in a manner consistent with the level of service Licensee provides for the Trail under the License Agreement, as previously amended.

- E. Interpretive Signs. Subject to all applicable requirements in the License Agreement, as previously amended, including but not limited to Section 10 (“Approval and Inspection of Work”), Licensee may install two interpretive signs on the Property at the approximate locations shown as black asterisks on Exhibit “F.” Beginning when an interpretive sign is installed, Licensee shall be solely responsible for maintaining, repairing, and replacing that sign to ensure it is maintained in a clean and safe condition. Licensee shall maintain each sign in a manner consistent with the level of service Licensee provides for the Trail under the License Agreement, as previously amended.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Except as specifically modified by this Fifth Amendment, all terms and conditions of the License Agreement, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment, in duplicate, the day and year first above written.

LICENSOR

LICENSEE

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
a flood control district organized under the laws of the State of California

EAST BAY REGIONAL PARK DISTRICT
a California special district

APPROVED:

By: _____
Sabrina Landreth
General Manager

By: _____
Brian M. Balbas
Chief Engineer

Approved as to form:

RECOMMENDED FOR APPROVAL:

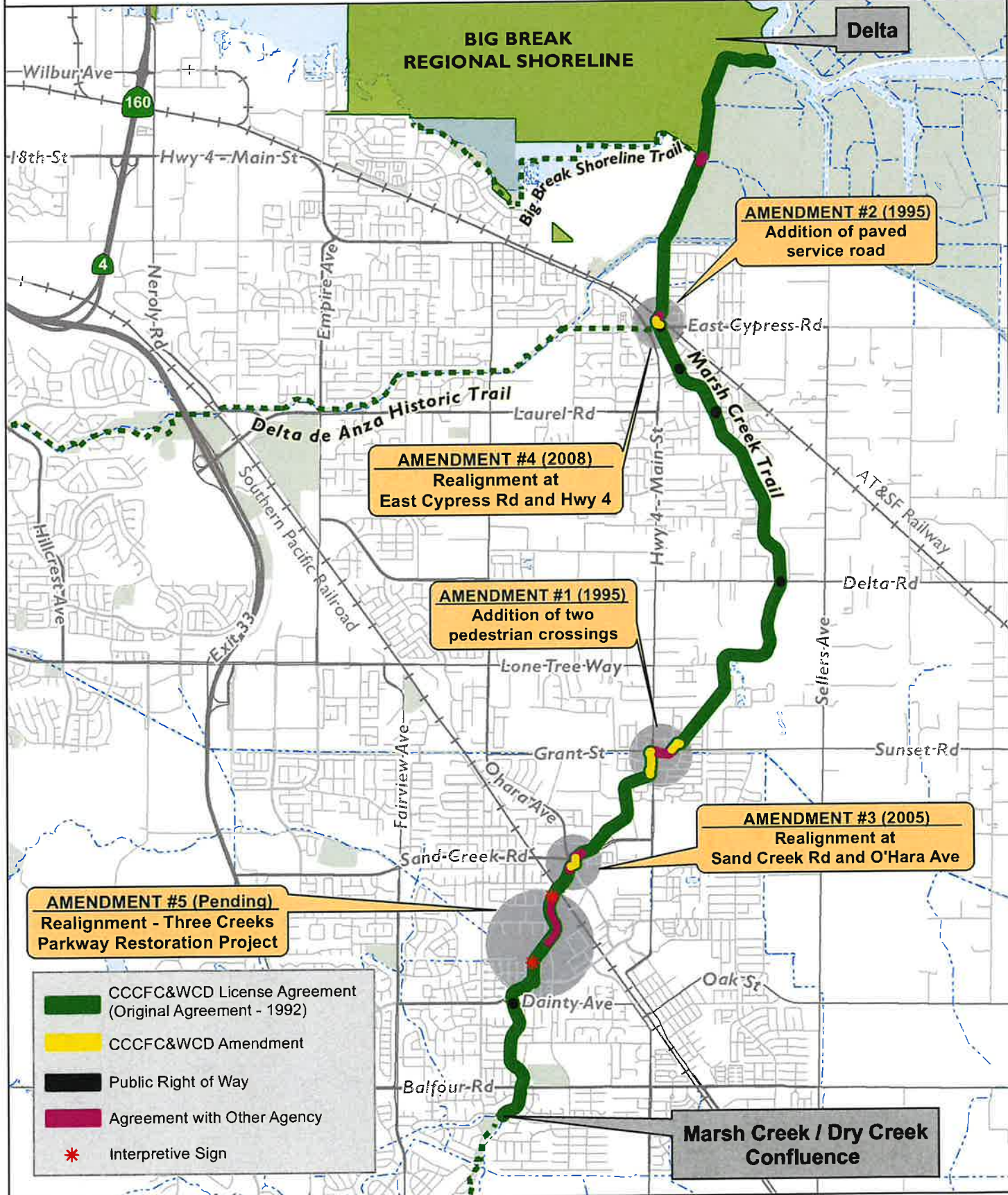
By: _____
Jason Rosenberg
District Counsel

By: _____
Jewel Lopez
Senior Real Property Agent

By: _____
Jessica L. Dillingham
Principal Real Property Agent

Approved as to form:
Mary Ann McNett Mason, County Counsel

By: _____
Stephen M. Siptroth
Deputy County Counsel



AMENDMENT #5 (Pending)
Realignment - Three Creeks Parkway Restoration Project

AMENDMENT #4 (2008)
Realignment at East Cypress Rd and Hwy 4

AMENDMENT #1 (1995)
Addition of two pedestrian crossings

AMENDMENT #3 (2005)
Realignment at Sand Creek Rd and O'Hara Ave

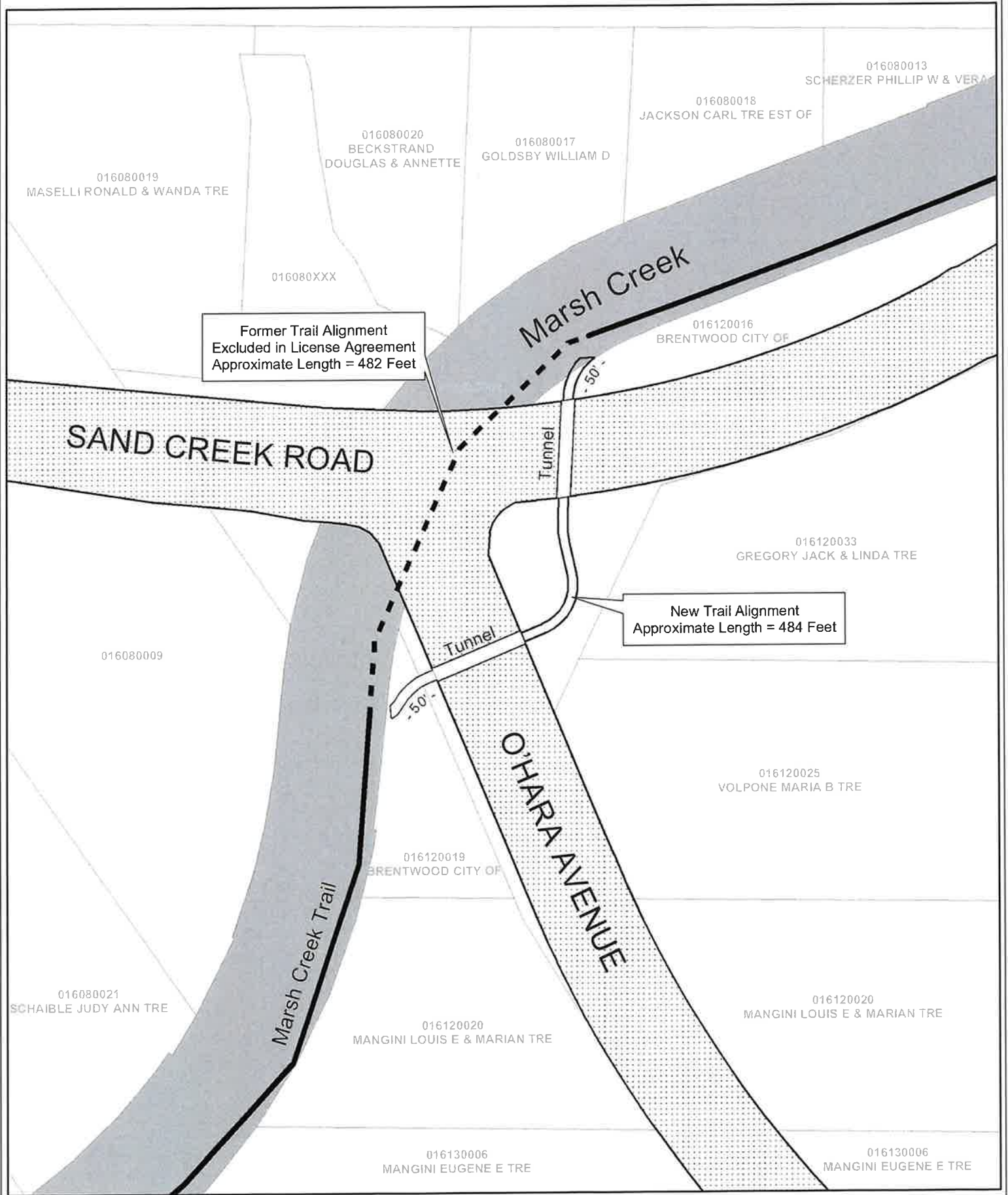
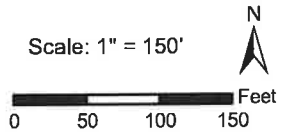
AMENDMENT #2 (1995)
Addition of paved service road

- CCCFC&WCD License Agreement (Original Agreement - 1992)
- CCCFC&WCD Amendment
- Public Right of Way
- Agreement with Other Agency
- * Interpretive Sign

Marsh Creek / Dry Creek Confluence

Contra Costa County Flood Control and Water Conservation District Exhibit D - Third Amendment

Environmental Review & GIS Applications
\\bstone\mxd\projects\trails\marshcreektrail
vccfowcd_excluded.mxd
May 10, 2004





MARSH CREEK TRAIL
Contra Costa County Flood Control and
Water Conservation District
License Amendment

Environmental Review & GIS Applications
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October 22, 2007

Exhibit E - Fourth Amendment



0 50 100 150 Feet



Exhibit F
Marsh Creek Recreational Trail
Three Creeks Parkway Restoration Project
CCCFC&WCD Levee Realignment



- Trail License from CCCFC&WCD (To Be Removed)
- EVMA Only from CCCFC&WCD
- EVMA & Trail Maintenance from CCCFC&WCD
- Recreational Trail
- Railroad Lines
- CCCFC&WCD Property
- City of Brentwood Property
- * Interpretive Sign
- Trail Relocated onto City of Brentwood Property

