

**License Agreement**  
(Not to be Recorded)

**YGNACIO VALLEY OVERCROSSING**

THIS AGREEMENT is made and entered into this 1<sup>st</sup> day of April, 1997, by and between the CONTRA COSTA COUNTY, political subdivision of the State of California, hereinafter called "COUNTY," and the CITY OF WALNUT CREEK, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

COUNTY owns and possesses fee title interest in certain real property known as the former Southern Pacific Right of Way in the City of Walnut Creek. COUNTY, for a good and valuable consideration but no further fee or charge, and in further consideration of the faithful performance and observance by CITY of all of the terms and conditions herein contained, does hereby grant to CITY a license for the construction, reconstruction, maintenance, removal and use of a bridge on a portion of said property for the passage of pedestrians and bicycles only, together with the necessary appurtenances thereto, hereinafter referred to as "the Bridge."

THE LICENSE above mentioned is granted by COUNTY and accepted by CITY upon the following terms and conditions and CITY does hereby agree with COUNTY as follows:

- 1. **Definitions.** As used in this License, "the Property" shall refer to that portion of the former Southern Pacific Right of Way located adjacent to Ygnacio Valley Road in the City of Walnut Creek, as shown on the map attached hereto as Exhibit "A."

As used in this License, "the Bridge" shall refer to the bridge structure, asphalt paths, shoulder, signs, drainage facilities, and barrier fencing or walls, as shown on Exhibit "A" attached hereto and incorporated herein by reference, which have been inspected by and received the approvals from COUNTY, described in Section 10 of this License.

- 2. **Title of County.** CITY hereby acknowledges the title of COUNTY in and to the Property and agrees never to assail or to resist said title. CITY agrees that it will not hereafter acquire any rights or interest in the property, nor does CITY have nor will it obtain any right or claim to the use of the Property beyond those specifically granted in this License. The installation or construction of any equipment, structures or fixtures by CITY pursuant to this License, including but not limited to the Bridge, shall not be construed to effect a conveyance of any property right to CITY.

- 3. **Term.** Unless suspended, revoked or partially revoked as hereinafter set forth, this License to construct, operate and maintain the Trail shall terminate twenty-five (25) years from the date hereof. By mutual written consent of the parties hereto, it may be extended for an additional twenty-five (25) year term. The term of this License shall commence upon execution of the License by both parties. Except as otherwise provided in Section 6 of this License, upon the expiration, revocation or termination of this License or any extension or renewal thereof, all improvements on the property, including but not limited to the Bridge, shall become the property of the COUNTY.

4. **Primary Use of Property.** The Property consists of a corridor which Licensor is in the process of developing for transportation, utility and other purposes. Underground utility facilities are already in place and it is anticipated that, in the future, a mass transportation system and additional utility facilities will be constructed or installed on the Property. Any and all rights granted or implied by this License shall be subordinated to the uses just mentioned, as well as to other uses of the Property made or permitted by COUNTY.

CITY acknowledges that the uses just described constitute the primary uses of the Property and that CITY's use of the Property pursuant to this License is secondary and subordinate to said primary use. CITY shall not, at any time, use or permit the public to use the Property in any manner that will materially interfere with or impair said primary use of the Property. All rights granted to CITY hereunder are subject to all existing and future rights, rights of way, reservations, franchises, and licenses in the Property, regardless of who holds the same, including COUNTY's right to use the Property for emergency or maintenance vehicle access or any other purpose.

5. **Suspension or Limitation of Use or Damage to Facilities.** COUNTY and its permittees shall have the right to suspend or to limit the use of the Property by CITY and the general public for a reasonable amount of time for protection of public safety, or for the construction, installation, operation, maintenance or repair of other facilities on the Property. Should such suspension or limitation be necessary, COUNTY shall provide CITY fifteen (15) days' prior notice in writing, except in cases of emergency maintenance or repairs.

Except as provided in Section 14 hereof, if the Bridge, or any portion thereof, is damaged or destroyed by the sole active negligence or sole willful misconduct of COUNTY, COUNTY shall repair the damage at its sole cost and expense or, at the discretion of and upon written notice from COUNTY, the damage shall be repaired by CITY and the reasonable cost of such repair shall be paid for by COUNTY. Under no circumstances shall COUNTY have any liability to CITY or to any other person or entity for consequential or special damages or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to any damage or the destruction of any portion of the Bridge. CITY hereby acknowledges that its sole remedy for any damage to or destruction of any portion of the Bridge, to the extent that COUNTY is otherwise so liable under this License, is to require COUNTY to repair or replace the damaged or destroyed portion of the Bridge or, at COUNTY's option, to reimburse CITY for CITY's reasonable costs and expenses in repairing or replacing the damaged or destroyed portion. CITY shall repair damage to or destruction of any portion of the Bridge resulting from all other causes at no cost to COUNTY.

6. **Revocation.** In the event, in the sole discretion of COUNTY, the primary use of the Property by COUNTY or COUNTY's permittees reasonably requires some permanent use of all or a portion or portions of the Property which, by nature thereof, precludes CITY's use thereof, COUNTY may, upon ninety days' prior notice, revoke this License. Upon revocation or termination, COUNTY shall have the right to retain the Bridge or, at COUNTY's discretion, to remove all or such portions of the Bridge or Bridge appurtenances as COUNTY may demand. In addition, CITY shall restore said real Property to as near original condition as possible if requested by COUNTY to do so. If CITY fails to remove said improvements within ninety (90) days after receipt of written notice from COUNTY to do so, said improvements may be removed by COUNTY at the CITY's expense which expense CITY agrees to pay COUNTY promptly upon demand.

7. **Maintenance and Litter.** CITY shall maintain the Property in a clean, safe and presentable condition, free from waste, litter and other items incidental to Trail use and left by parties other than COUNTY and its permittees. As used in this section, the term "litter" shall include, but not be limited to, paper, garbage, refuse, dead animals, trimmings, and other items that detract from the neat and tidy appearance of the Property. If CITY fails so to keep the Property then, after thirty (30) days' prior written notice specifying the needed work, COUNTY may perform or hire the necessary work at the reasonable expense of CITY, which expense CITY agrees to pay to COUNTY upon demand.

COUNTY agrees to maintain, at its expense, all drainage and cross culverts not part of the Bridge. CITY shall maintain at its sole expense the Bridge and appurtenant improvements, drainage facilities necessary for the Bridge, and all fencing and barricades installed by CITY at its sole expense. CITY shall promptly repair all damage to the Bridge and to the Property caused or contributed to by users of the Bridge. CITY shall also promptly clean, repaint, or remove any graffiti placed on the Bridge.

8. **Indemnification.** CITY shall indemnify, save, protect, defend, and hold harmless COUNTY, its boards, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorney's fees, arising out of or connected with CITY's operations and performance, and the presence or public use of the Property, under the terms of this License, save and except claims or litigation arising from the sole negligence or sole willful misconduct of COUNTY or its officers or employees.
9. **Insurance Requirements.** CITY shall take out and maintain during the life of this License all the insurance required by this section and shall submit certificates for review and approval by COUNTY. No construction on or use of the Property shall commence until such insurance has been approved by COUNTY. The certificates shall be on forms provided by COUNTY or the insurance carrier. Acceptance of the certificates shall not relieve CITY of any of the insurance requirements, nor decrease the liability of CITY. COUNTY reserves the right to require CITY to provide insurance policies for review by COUNTY.
- (a) **Worker's Compensation Insurance.** CITY shall take out and maintain Worker's Compensation and Employer's Liability Insurance for all of its employees on the Bridge. 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.
- (b) **Public Liability Insurance.** CITY shall take out and maintain Comprehensive Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this License. CITY shall require any subcontractor to provide evidence of the same liability insurance coverages. The amounts of insurance shall be not less than the following: Single Limit Coverage applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000 per occurrence.
- (c) **Endorsements.** The following endorsements must be indicated on the certificate:



- (1) Contra Costa County, its board, officers, agents and employees are additional insureds under the policy as to the work and operations being performed under this License;
  - (2) The coverage is primary and no other insurance carried by COUNTY will be called upon to contribute to a loss under this coverage;
  - (3) The policy covers blanket contractual liability;
  - (4) The policy limits of liability are provided on an occurrence basis;
  - (5) The policy covers broad form property damage liability;
  - (6) The policy covers personal injury as well as bodily injury liability;
  - (7) The policy covers explosion, collapse and underground hazards;
  - (8) The policy covers products and completed operations;
  - (9) The policy covers use of non-owned automobiles;
  - (10) The coverage shall not be canceled nor materially altered unless thirty (30) days written notice is given to COUNTY.
- (d) Failure of Coverage. Failure, inability, or refusal of CITY to take out and maintain during the entire term of this License any and all of the insurance as aforesaid shall at the option of COUNTY constitute a breach of this License and justify immediate termination of the same.
- (e) Self Insurance. CITY has the right and option to self-insure the requirements under this Section upon written notice to COUNTY that CITY assumes the obligations in the place and stead of any insurance carrier, any reference to failure of coverage notwithstanding. In the event that CITY elects to self-insure, CITY shall provide to COUNTY a certificate or other evidence of self-insurance acceptable to COUNTY.
10. **Approval and Inspection of Work.** CITY shall not perform any construction, reconstruction, remodeling, repair, removal, or other work within the Property without first obtaining COUNTY's approval in writing of said work. In seeking COUNTY's approval, CITY shall furnish to COUNTY a complete description and sketch of the work proposed to be performed. In performing work approved by COUNTY, CITY shall comply with all terms, conditions, and requirements imposed by COUNTY and not deviate in any material manner from the description and sketch approved by COUNTY, without first obtaining additional approval in writing from COUNTY.

Notwithstanding the foregoing, CITY shall not be required to obtain COUNTY's prior written approval for the performance of routine maintenance or emergency repairs. 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, 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, which repairs are necessary to protect the safety of the public and others. Except in the case of emergency or routine maintenance, CITY shall consult COUNTY at least seven (7) days before any major maintenance operations are performed by CITY. Work shall be done in such a manner that COUNTY shall at all times be able to use and gain access to its facilities.

All work performed by CITY under this section shall be subject to inspection by COUNTY.

11. **Assignment.** No rights of CITY hereunder shall be transferred or assigned unless the written consent of COUNTY is first secured. With that exception, this License 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.
12. **Abandonment by City.** If CITY shall, for a period of at least 120 consecutive days, fail to use or maintain the Bridge, then all rights of CITY in and to such portions not used or maintained shall immediately terminate, at COUNTY's sole discretion.
13. **Restricted Use.** The rights granted hereunder are for pedestrian and bicycle use only, except for motor-driven vehicles being used for construction, maintenance or repair. CITY shall install such barricades as are necessary to prevent unauthorized access by motor-driven vehicles and shall post signs at access points that such vehicles are prohibited.
14. **Assumption of Risk and Release.** CITY accepts this License with the full understanding that the Property is subject to sliding, erosion, subsidence and flooding. CITY agrees that COUNTY shall have no obligation to maintain the Property or repair any damage resulting from the condition of the Property, including but not limited to damage to the Bridge. COUNTY makes no warranty, express or implied as to any matter, including but not limited to the condition of the water, subsurface strata, ambient air, the soil, the geology of the soil, the condition of any improvements on the Property, the presence of known or unknown faults or any substance or material in, on, under, at or in the vicinity of the Property, or the suitability of the Property for the construction and use of the Bridge thereon contemplated by this License. CITY assumes all risks associated with the condition of the Property and expressly releases COUNTY from any and all damage or injury caused by or resulting from the condition of the Property. CITY further agrees that CITY shall never claim, have or assert any right or action against COUNTY for any loss, damage or other matter arising out of or resulting from any condition of the Property at the commencement, during the term, or following the termination of this License. In the event that damage to the Bridge results in whole or in part from any condition of the Property, CITY shall repair such damage and shall perform such maintenance or repair as CITY may deem necessary for the proper and safe operation of the Bridge.
15. **Pollution.** CITY, at its expense, shall comply with all applicable laws, regulations, rules, and others, with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of COUNTY.

No hazardous materials shall be handled by CITY at any time upon the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Property

caused by CITY's employees, contractors and agents, CITY, at its expense, shall be obligated to clean all the property affected thereby, whether owned or controlled by COUNTY or any third person, to the satisfaction of COUNTY (insofar as the property owned or controlled by COUNTY is concerned) and any governmental body having jurisdiction thereover.

To the extent permitted by law, CITY shall indemnify, hold harmless, and defend COUNTY and such holders of user rights against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, and attorneys' fees) incurred by COUNTY and such other users as a result of CITY's breach of this section or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense is proximately caused solely by the active negligence of COUNTY.

CITY shall pay all amounts due COUNTY under this section within ten (10) days after any such amounts become due.

16. **Encroachment Permits.** COUNTY shall have the sole right to grant encroachment permits or rights of entry within the Property. Notification of encroachment permits granted and plans approved by COUNTY will be forwarded to CITY. COUNTY shall consult with CITY on safety requirements for future utilities and if CITY has not responded within 15 working days, then it is presumed CITY is in concurrence.

CITY shall obtain permits from all other agencies as required for construction of the Bridge.

17. **Modification.** This License shall be subject to modification or amendment only by the written, mutual consent of both parties.
18. **Notices.** All notices, requests, and communications required or permitted hereunder shall be in writing and shall be sufficiently deemed to have been given and received upon personal delivery by messenger one business day following delivery by overnight courier or telecopier (provided that a transmission report is generated which reflects accurate transmission of the notice and a copy of the notice is mailed on the same day as the telecopy transmission) or, if mailed upon the first to occur of actual receipt or three (3) business days after being placed in the United States mail, postage prepaid, registered or certified mail, with return receipt requested, addressed to the above parties as follows:

If to the COUNTY:

CONTRA COSTA COUNTY  
Attn: Real Property Division  
255 Glacier Drive  
Martinez, CA 94553  
Telephone: (510) 313-2220  
Facsimile: (510) 313-2333

If to the CITY:

CITY OF WALNUT CREEK  
Attn: Community Development Director  
P.O. Box 8039  
1666 North Main Street  
Walnut Creek, CA 94596  
Telephone: (510) 943-5834  
Facsimile: (510) 256-3500

19. Entire Agreement.

It is understood that this document contains the entire agreement between the parties hereto and all prior understandings or agreements, oral or written, of whatsoever nature regarding the rights hereby granted are superseded by this License and are hereby abrogated and nullified.

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

**Contra Costa County**

**City of Walnut Creek**

By Mark D. Bl  
Chair, Board of Supervisors

By Kathy Hicks  
Mayor, City of Walnut Creek

Attest: April 15, 1997  
Phil Batchelor  
Clerk of the Board of Supervisors  
and County Administrator

Attest:  
City Clerk

By Shirley Casillon

By Barbara M. Pivonia

Approved as to form:

Approved as to form:

Victor J. Westman  
County Counsel

City Attorney

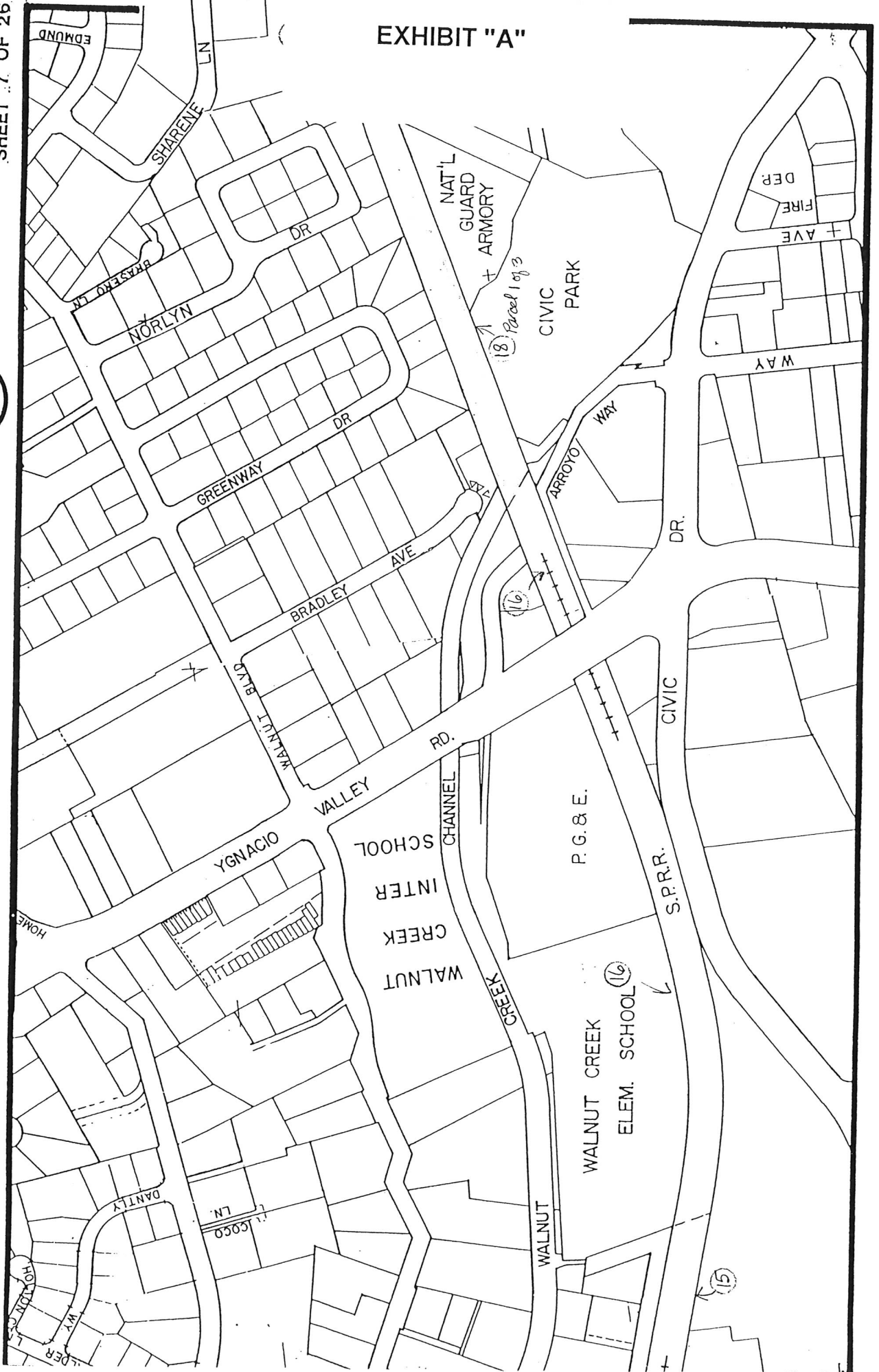
By [Signature]  
Deputy

By Thomas Abo

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February 18, 1997



EXHIBIT "A"





TO: BOARD OF SUPERVISORS

FROM: J. MICHAEL WALFORD, PUBLIC WORKS DIRECTOR

DATE: APRIL 15, 1997

SUBJECT: LICENSE AGREEMENT FOR THE YGNACIO VALLEY OVERCROSSING  
WALNUT CREEK AREA  
Project No.: W.O. 5575 Task: ACQ Account: 3540

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

I. Recommended Action:

**APPROVE** License Agreement with the City of Walnut Creek and **AUTHORIZE** the Board Chair to execute said agreement on behalf of the County

II. Financial Impact:

None

Continued on Attachment: X SIGNATURE: *J. Michael Walford*

   RECOMMENDATION OF COUNTY ADMINISTRATOR  
   RECOMMENDATION OF BOARD COMMITTEE  
   APPROVE    OTHER

SIGNATURE(S):

ACTION OF BOARD ON April 15, 1997 APPROVED AS RECOMMENDED  OTHER   

VOLE OF SUPERVISORS  
 UNANIMOUS (ABSENT           )  
 AYES:            NOES:             
 ABSENT:            ABSTAIN:           

NW:gpp  
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 Orig. Div: Public Works (R/P)  
 Contact: Nancy Wenninger (313-2227)  
 cc: County Administrator  
 P. W. Accounting

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.  
 ATTESTED: April 15, 1997  
 PHIL BATCHELOR, Clerk of the board of Supervisors and County Administrator

By *Shirley Casillas* Deputy             
*pw*

**III. Reasons for Recommendations and Background:**

By License effective October 14, 1986, the County and the East Bay Regional Park District agreed on terms and conditions by which the Park District could construct, maintain and operate a public trail for pedestrians and bicyclists within the former Southern Pacific railroad right of way. To date, nearly every segment of the Iron Horse Trail from Highway 4 to the Alameda County line has been constructed and is being heavily used. In busy central Walnut Creek, trail users must detour approximately 100 yards from the Trail to cross at the signalized intersection of Ygnacio Valley Road and Civic Drive, then travel back 100 yards to return to the trail. Some people are jaywalking to avoid the extra distance. In order to convey trail users safely across Ygnacio Valley Boulevard, the City of Walnut Creek has designed a pedestrian bridge to span the roadway. This License Agreement will permit the City to construct and maintain the bridge on the County's property.

**IV. Consequences of Negative Action:**

The City will be unable to construct the bridge to complete a vital link in the Iron Horse Trail and alleviate a dangerous situation for trail users.