

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (hereinafter "LICENSE"), is made and entered into this 27<sup>th</sup> day of June, 2012, by and between East Bay Regional Park District, a California special district (hereinafter "EBRPD") and the City of Pleasanton, a Municipal Corporation (hereinafter "City").

### RECITAL

- A. The City of Pleasanton owns real property in the County of Alameda, State of California, upon which the East Bay Regional Park District would like to construct the Iron Horse Trail;
- B. City is agreeable to such use by EBRPD on its Property and hereby grants a non-exclusive license for said use upon the following terms and conditions.

NOW, THEREFORE, BE IT MUTUALLY AGREED as follows:

1. Permitted Use. Subject to the terms of this License, EBRPD is permitted to construct, improve, maintain and operate improvements for the Iron Horse Trail on City-owned property delineated on Exhibit A (hereinafter "the Licensed Areas"), which is attached hereto and made a part hereof.
2. License Fee. This License shall not require payment of any rent or other charges to EBRPD by City for the use of the Licensed Areas for the purposes for which it is permitted.
3. Term of License
  - a. The term of this License shall be for twenty-five (25) years from the date of execution of this License with an option to EBRPD of renewal for additional periods of twenty-five (25) years thereafter upon application therefore accompanied by a showing of faithful exercise thereof according to the covenants herein; either this original License or any renewal thereof to be subject to termination under the covenants provided herein to govern such termination. Renewals shall be subject to updating the conditions on use of the Licensed Areas.
  - b. EBRPD's obligations under Section 7 ("Condition of the Licensed Areas Upon Termination"), Section 10 ("Indemnity") and Section 12 ("Waiver of Claims") shall survive the termination of this License.
4. Limitations
  - a. This License is granted solely for the purpose of authorizing EBRPD to provide recreational uses, more specifically the Iron Horse Trail, upon the Licensed Areas for general public use without discrimination as to place of national origin, ancestry, ethnicity, race, color, gender, age, marital status, pregnancy, sexual orientation (real or perceived), medical condition, physical or mental disability, or religion.

- b. This License is non-exclusive. City shall have all reasonable and necessary rights of entry to the Licensed Areas, including the right to alter, repair, maintain, or access other City-owned property or adjacent non-City property.
- c. EBRPD shall obtain and comply with all required permits, agreements and/or regulatory approvals relating to the improvement, maintenance or operation of the Licensed Areas for recreational or trail purpose including all federal, state, or local government requirements. This requirement includes compliance with CEQA as well as any necessary construction, building or use permits, including any progress inspections that may be required by any regulatory body.
- d. Prior to installation of any permanent facilities, landscape improvements, or trail, EBRPD shall submit plans and specifications for the proposed additions to City. The facility or improvements shall not be installed by EBRPD without securing the standard form encroachment permit from City which shall issue said permit at no cost to EBRPD. The issuance of said permit shall not be unreasonably withheld.
- e. Should City, in its sole discretion, reasonably determine that any of EBRPD's activities or improvements interfere with any City activities or operations, City may require EBRPD to eliminate said interference, by providing EBRPD with written notice of City's requirement and the reasons therefore. Within 30 days of its receipt of such notice, the Parties agree to meet in an effort to resolve the identified conflict in a manner that is satisfactory to both Parties. If no mutually satisfactory resolution is reached, EBRPD shall have 30 days after said meeting to proceed forthwith to remedy the problem, as directed by City. In the event EBRPD fails to remedy or correct the problem within such 30-day period, City may take such action as is reasonably necessary to remedy such interference at EBRPD's sole expense.
- f. EBRPD agrees to abide by any future rules and regulations applicable to the Licensed Areas which may be adopted by the City Council of the City of Pleasanton, provided said rules are consistent with the purposes for which this License has been granted. City shall provide to EBRPD copies of such new rules and regulations within fifteen (15) days from the date of adoption. In the event that City's rules and regulations conflict with EBRPD's Ordinance 38 which governs the general public's use of EBRPD's recreational facilities, the Parties agree to meet and discuss in an effort to resolve any such rule conflicts.
- g. EBRPD agrees to accept this license to the Licensed Areas on an "as-is" basis and City has no obligation to maintain or repair the Licensed Areas in a condition necessary to meet the requirements for public use for trail or recreational purposes during the term of this License.
- h. EBRPD shall be solely responsible for any damage or loss to EBRPD's improvements resulting from theft or vandalism or resulting from any other cause. City may, but shall not be responsible for, providing security for EBRPD's improvements. City shall not be responsible for any loss or damage suffered by EBRPD (including direct or indirect loss or damage, or incidental or consequential loss or damage) resulting from any damage to EBRPD's improvements or loss of use thereof suffered in connection with this License.

- i. **Suspension or Limitation of Use:** City shall have the right, without liability to EBRPD, to suspend any licensed uses temporarily or to limit this LICENSE and the use of the Licensed Areas by EBRPD during such periods of time as City determines that such suspension or limitation is necessary in the interest of public safety. City will provide notice of its determination to suspend or limit use to EBRPD pursuant to Section 13 of this License.
5. **Iron Horse Trail Maintenance and Operation**
  - a. EBRPD shall cause any recreational and trail improvements to be constructed, maintained and operated in an orderly, safe, and sanitary manner at all times including but not limited to: pathways for bicycle, pedestrian or equestrian uses, information & warning signs, landscaping and the maintenance, removal or replacement of trees.
  - b. The removal of waste, litter and other items from the Licensed Areas shall be the responsibility of the EBRPD, unless such waste or litter is caused by City or its employees or contractors in which situation City shall be responsible for removal.
6. **Violations of Permitted Use.** Should EBRPD, its employees, contractors, subcontractors, agents, or the general public construct, install, operate or maintain any recreational or trail improvements in violation of the terms of this License, or in violation of any of the approvals granted hereunder, City may direct EBRPD, at EBRPD's sole cost, to remove the improvements from the Licensed Areas or to take other remedial action, as City may, in its sole discretion, determine to be reasonably appropriate. EBRPD shall be afforded a period of thirty (30) days, within which to cure any such violations and comply with City's directive. In the event EBRPD fails to cure within the above stated period, City shall have the right to take any and all actions to remediate the Licensed Areas and EBRPD shall reimburse City for all costs associated therewith. City, as it reasonably determines, may extend the period as may be necessary to cure the default.
7. **Condition of the Licensed Areas Upon Termination.** Upon termination of this License, if requested by City, EBRPD at its sole cost and expense shall remove any improvements installed on the Licensed Areas and, to the extent requested by City, restore the Licensed Areas as nearly as possible to the condition in which it existed immediately prior to the date of execution of this License.
8. **Assignment.** EBRPD may assign all of its rights, duties and liabilities under this License to another public agency provided that such assignment is agreeable to City and provided further that such agency gives written notice to City that it accepts all of the rights, duties and liabilities imposed under this License.
9. **Acknowledgment of Title.** It is understood and agreed that EBRPD, by the acceptance of this License and by the use or occupancy of the Licensed Areas, has not acquired and shall not acquire hereafter any property rights or interest in or to the Licensed Areas through this License, and that EBRPD may use the Licensed Areas only as herein provided.
10. **Indemnity.** EBRPD shall indemnify, defend, reimburse and hold harmless City, its officers, agents and, employees (collectively, "Indemnitees") from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines,

liens, judgments, damages and liabilities of any kind (collectively, "Liabilities"), arising in any manner out of: (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Licensed Areas, or any part thereof, whether the person or property of EBRPD, its officers, agents, employees, contractors and subcontractors (collectively, "Agents"), its invitees, guests or business visitors or third persons (collectively, "Invitees"), relating in any manner to any use or activity under the License and modifications thereto; (b) any failure by EBRPD to faithfully observe or perform any of the terms, covenants or conditions of this License or (c) the use of the Licensed Areas or any activities conducted thereon by EBRPD, its Agents or Invitees. This provision applies except to the extent of Liabilities resulting directly from the sole negligence or willful misconduct of Indemnitees.

The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the Indemnitees. EBRPD shall have an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to EBRPD by City and continues at all times thereafter. EBRPD's obligations under this condition shall survive the expiration or termination of the License and modifications thereto.

11. Insurance Requirements. EBRPD shall carry public liability and property damage insurance or monetary coverage in an amount which will adequately protect City from all such liabilities or claims, such amount to be no less than \$2,000,000 each person and \$2,000,000 each occurrence for bodily injury or death and \$2,000,000 on each occurrence for property damage. These amounts shall be reviewed by the parties every five years, and increased by no less than the amount of increase in the Consumer Price Index for the Oakland – San Francisco SMSA. Policies for such insurance shall name the City of Pleasanton, its officers, agents and employees as additionally insured and copies thereof, certificates of payment of premiums thereon, or other proof of insurance or monetary coverage acceptable to City, shall be furnished City by EBRPD. It is agreed that such insurance or monetary coverage as is afforded by the policy to City, shall apply as primary insurance or monetary coverage. No other insurance or monetary coverage effected by City shall be called upon to contribute to a loss covered by the policy.

EBRPD has the right and option to self-insure the requirements under this Section 12 upon written notice to City that EBRPD assumes the obligations in the place and stead of any insurance carrier, any reference to failure to coverage notwithstanding. In the event that EBRPD elects to self-insure, EBRPD shall provide to City a certificate or other evidence of self-insurance acceptable to City.

12. Waiver of Claims. EBRPD fully releases, waives, and discharges forever any and all claims, demands, rights and cause of action against, and covenants not to sue Indemnitees under any present or future laws, statutes, or regulations for any claim or event relating to the condition of the Licensed Areas or EBRPD's use thereof.
13. Notice. Any demand or notice which either party shall be required, or may desire to make upon or give to the other shall be in writing and shall be delivered personally upon the other or be sent by prepaid certified mail to the respective parties as follows:

EBRPD: General Manager  
East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605

CITY: City Manager  
City of Pleasanton  
P.O. Box 520  
Pleasanton, CA 94588  
Copy to: Director of Community Services

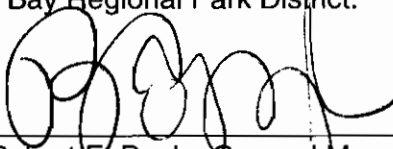
Either party may, from time to time, designate any other address for this purpose by written notice to the other party, given with 10 business day notice.

14. Miscellaneous

- a. This License Agreement constitutes the entire Agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this License Agreement must be in writing and executed by both parties.
- b. If any provision of this License is invalid or unenforceable with respect to any party, the remainder of this License or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this License shall be valid and enforceable to the fullest extents permitted by law.
- c. This License shall be governed by the laws of the State of California.

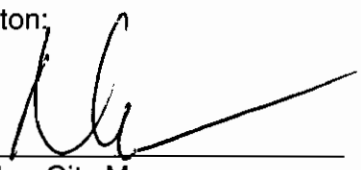
IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the dates appearing below their respective authorized signatures.

East Bay Regional Park District:

By:   
Robert E. Doyle, General Manager

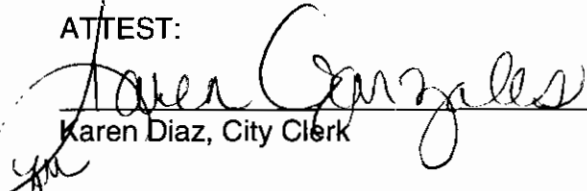
Date: 6/27/12

City of Pleasanton:

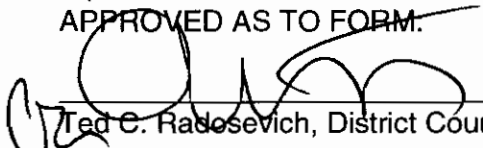
By:   
Nelson Fialho, City Manager

Date: 6/29/12

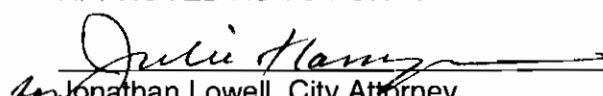
ATTEST:

  
Karen Diaz, City Clerk

APPROVED AS TO FORM:

  
Ted C. Radosevich, District Counsel

APPROVED AS TO FORM:

  
Jonathan Lowell, City Attorney



June 12, 2012  
BKF Job No.: 20115060-10

Exhibit "A".

**DESCRIPTION FOR:  
LICENSE AGREEMENT AREA**

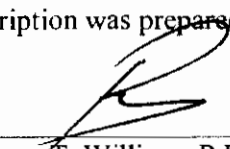
All that certain real property situate in the City of Pleasanton, County of Alameda, State of California, and described as follows:

**BEING** a portion of Parcel F as said parcel is shown on that certain map entitled "Parcel Map 3863", filed May 22, 1986, in Book 161 of Parcel Maps at Pages 15 through 30, inclusive, in the Office of the Recorder of Alameda County, said portion being more particularly described as follows:

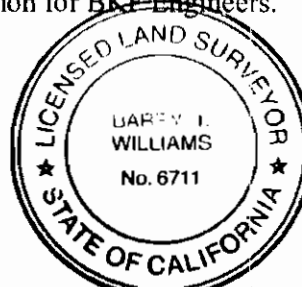
**COMMENCING** at the most northerly corner of said Parcel F on the northwesterly line thereof; **THENCE** along said northwesterly line South  $31^{\circ}46'06''$  West 48.76 feet, more or less, to the northeasterly line of the easement described in the Grant of Transit Way Easement recorded December 12, 1985, as Document Number 85-264890, Official Records of Alameda County and a point on a curve, concave northeasterly, having a radius of 1000.00 feet, from which the center bears North  $39^{\circ}39'53''$  East; **THENCE** along said northeasterly line and said curve through a central angle of  $04^{\circ}01'34''$ , an arc distance of 70.27 feet to the **POINT OF BEGINNING**; **THENCE** continuing along the last said line the following two (2) courses: 1) continuing along said curve through a central angle of  $04^{\circ}47'43''$ , an arc distance of 83.69 feet to the beginning of a reverse curve having a radius of 1050.00 feet; 2) along said reverse curve having a central angle of  $07^{\circ}10'20''$ , an arc distance of 131.44 feet; **THENCE** leaving said line North  $46^{\circ}25'55''$  West 25.40 feet; **THENCE** along a curve to the left having a radius 952.00 feet through a central angle of  $07^{\circ}25'11''$ , an arc distance of 123.28 feet to the beginning of a compound curve having a radius of 122.00 feet; **THENCE** along said compound curve through a central angle of  $27^{\circ}21'41''$ , an arc distance of 58.26 feet to the beginning of a compound curve having a radius of 302.00 feet; **THENCE** along said compound curve through a central angle of  $02^{\circ}18'02''$ , an arc distance of 12.13 feet to the **POINT OF BEGINNING**. Containing an area of 2,058 square feet, more or less.

A plat showing the above described license agreement area is attached hereto and made a part hereof as Exhibit "A".

This description was prepared from record information for BKF Engineers.

By:   
Barry T. Williams P.L.S. No. 6711

Dated: 6-12-12



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