FLOOD CONTROL AGENDA ITEM NO. _____June 5, 2018

Flood Control & Water Conservation DISTRICT

Daniel Woldesenbet, Ph.D., P.E., Director

399 Elmhurst Street • Hayward, CA 94544 • (510) 670-5480 • www.acpwa.org

May 22, 2018

The Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

Dear Board Members:

SUBJECT: MISSION CREEK RESTORATION BETWEEN UNION PACIFIC RAILROAD AND LEMOS LANE, IN FREMONT, ALAMEDA COUNTY (PROJECT) - APPROVE A COOPERATIVE AGREEMENT WITH THE CITY OF FREMONT AND BRILRAND CORPORATION, INC., AND APPROVE A REAL PROPERTY LICENSE AGREEMENT WITH THE CITY OF FREMONT

RECOMMENDATION:

A. Approve a Cooperative Agreement with the City of Fremont (City) and the Brilrand Corporation, Inc. (Principal: Kijoung Ruy; Location: Fremont) (Operator) for the City to reimburse the Flood Control & Water Conservation District (District) in the total amount of $269,820 for the construction of the City's public pathway improvements, and $35,000 of the total amount will reimburse the Operator for impacts to the City golf course facilities resulting from construction, upon acceptance of the completed work between all parties; and

B. Approve a Real Property License Agreement with the City to allow public and golf course use of the District owned bridge across Mission Creek and within District storm drain easements, for the period to commence upon approval of the Agreement with a duration of 20 years, and for the District to receive $1 each year of the Real Property License Agreement.

DISCUSSION/SUMMARY:

The Alameda County Flood Control and Water Conservation District (District) owns and maintains Line L (also known as Mission Creek) as part of the Flood Control Zone 6 flood control systems in the City of Fremont. In March 2016, your Board authorized the Flood Control District to award the contract and perform the work for FC 6-142, the Mission Creek (Line L) Restoration between Union Pacific Railroad (UPRR) and Lemos Lane project in Fremont, Alameda County, California.

In 2017, the District completed construction of the creek restoration and flood control improvements along Mission Creek between Union Pacific Railroad (UPRR) and Lemos Lane, to increase conveyance capacity of the creek and enhancing the creek riparian habitats within the project limits. The upper portion of Project passes through the City's Gomes Park and the lower portion of the Project passes through a golf course operated by Brilrand Corporation, Inc. on City property. The project includes widening the channel through the City golf course and portion of the Gomes Park, removing and replacing two existing bridges, and creating earth containment berms within Gomes Park.

The City constructed a controlled pedestrian/bicycle crossing at UPRR just upstream of Lake Elizabeth in 2015. The City also had plans to construct a multi-use pathway from the UPRR crossing to Lemos Lane through the golf course and Gomes Park alongside Mission Creek. To eliminate construction conflicts between the District and City projects, the District and the City mutually agreed to have the City's pathway improvements incorporated into the District project. The City agrees to reimburse the District in the amount of $269,820 for the construction of the requested pathway improvements as detailed in the Cooperative Agreement.

During construction of the Project, some of the golf course operations (watering schedules and quantity) and existing facilities (a tee box, irrigation components, and areas of turf) were determined to require additional modifications to accommodate the design of the Mission Creek project improvements. Due to the specialized nature of the modifications, the Operator and the District agreed that the Operator should make the required modifications upon completion of Project construction and that the District would reimburse the Operator for modification costs in a total amount of $35,000. The amount represents a mutually-agreed upon full and final accord and satisfaction for all construction-related impacts to the Operator's golf course.

The Real Property License Agreement with the City will allow public and golf course continued use of the District owned bridge across Mission Creek within the golf course and within District storm drain easements, as detailed in the License Agreement.

SELECTION CRITERIA PROCESS:

Not Applicable.

FINANCING:

There will be no increase in net County Cost as a result of this action.

Yours truly,

DocuSigned by:
FD817EF5B3ED467...

Daniel Woldesenbet, Ph.D., P.E.
Director of Public Works

Attachment

C: Susan Muranishi, County Administrator
Clerk of the Board
Kathy H. Lee, Deputy District Counsel
Steve Manning, Auditor-Controller
Stephane Chan, County Administrator's Office

DW/MT/im

18-0223

6/5/18 #45
File 30148

COOPERATIVE AGREEMENT

MISSION CREEK (LINE L) RESTORATION

BETWEEN UNION PACIFIC RAILROAD AND LEMOS LANE,

in FREMONT, ALAMEDA COUNTY, CALIFORNIA, ZONE NO. 6 PROJECT

This Cooperative Agreement (Agreement) is made this 5th day of June, ~~2017~~ 2018, by and between the Alameda County Flood Control and Water Conservation District, hereinafter referred to as "District", the City of Fremont, hereinafter referred to as "City", and Brilrand Golf Corporation, hereinafter referred to as "Operator", collectively referred to as "Parties", who hereby agree as follows:

A. Purposes

1. Mission Creek bisects the City golf course and flows from east to west to Lake Elizabeth within an existing flood control drainage easement owned and maintained by the District (the "District Easement"). In 1998, the City developed its property adjacent to Union Pacific Railroad (UPRR), upstream of Lake Elizabeth, for golf and public access trail purposes (known as the Fremont Park Golf Club and referred to herein as the "Golf Course") and the Golf Course is currently run by Operator. At that time, District informed the City that Mission Creek has inadequate capacity to contain and convey 100-year storm flows and that the District anticipated making future improvements to increase its capacity to convey 100-year design flows, which improvement serves flood control purposes in the public interest. The City and the District agreed that, while the Golf Course, including the timber bridge spanning Mission Creek would be constructed, the following items would be incorporated into a future Cooperative Agreement:

   (a) The timber bridge constructed as part of the Golf Course project ("Golf Course Bridge") was owned and maintained by the Operator, for the sole purpose of allowing golfers to cross over the creek. The timber bridge shall be removed to accommodate future Mission Creek channel improvements.

   (b) The existing easement lines on both sides of Mission Creek shall be widened to accommodate the future channel improvements. The estimated widened easement width was 120 feet.

   (c) City intends to construct a new public access trail along Mission Creek within the existing District Easement and within the Golf Course.

2. This agreement covers the Mission Creek Restoration Project ("Project"). The proposed improvement limits will be from UPRR to Lemos Lane, with improvements bisecting the Golf Course property as previously planned, including widening the channel, constructing multi-use access paths and replacing the existing Golf Course Bridge with a District-owned vehicle rated steel bridge ("District Bridge"). In Gomes Park, the District will replace the existing City improvements including the existing timber pedestrian bridge over Mission Creek, which connects Gomes Elementary School and Gomes Park, to provide sufficient clearance between the 100-year design water surface and the bottom of the new bridge. The District Bridge, which replaces the Golf Course Bridge, shall be constructed for maintenance access to the District's facilities, and it shall serve the primary and paramount purpose of flood control. The City intends to cooperate in good faith on a License Agreement or other mutually-agreeable form of agreement with

C-2018-54

District, which agreement shall provide terms for the public use of and access to the District Bridge.

3. The District has completed final plans, specifications, and estimates for the construction of the Project. The City and District have executed a property entry agreement, the City has issued encroachment permits, and the District has commenced construction of the project. The City and the District will finalize the revised District right-of-way and easements within the entire District project limits, and shall enter into an agreement to cover the grant of additional easement, which additional easement shall be granted by City at no cost to District. The following Exhibits are attached hereto and incorporated by reference:

   (a) Exhibit "A" - Scope of Project

   (b) Exhibit "B" – City Improvement Costs

   (c) Exhibit "C" – Figure of City Improvements

   (d) Exhibits "D1" – "D10" Legal descriptions of easements

4. Operator Rights and Obligations. In order to facilitate Operator's understanding of this Agreement, the following is a general summary of its rights and obligations hereunder:

   As more particularly described in this Agreement, the Operator shall
   (a) Cooperate with the District in resolving construction issues,
   (b) Release the District and City from any liability or responsibility for repair of construction-related impacts to golf course facilities, including restoration of the Golf Course "Back 4 Tee" area;
   (c) Defend, indemnify and hold harmless the City and District from claims, including loss of income or profit, relating to the flooding of Mission Creek and/or components of the Project accepted as part of the golf course.
   (d) Cooperate with respect to any auxiliary agreements or permits for improvements within the District's easement area.

   In return, and as more particularly described herein, the District shall:
   (a) Cooperate with the Operator in resolving construction issues,
   (b) Compensate the Operator for construction-related impacts to golf course facilities, including restoration of the Golf Course "Back 4 Tee" area to its condition prior to commencement of the Project, and
   (c) Include a provision in its construction contract requiring its general contractor and subcontractor(s) to (i) defend, indemnify and hold harmless the Operator for damages it suffers due to work by said contractors and (ii) name Operator as an additional insured.

B. Scope of Project

The District is improving Mission Creek between the Union Pacific Railroad (UPRR) and Lemos Lane, in the City of Fremont. The primary objectives of the Project are to increase flood conveyance in the flood control channel, stabilize eroded slopes using biotechnical bank stabilization control methods, improve riparian habitat function, remove exotic plant species and revegetate with native species. The Project would include widening the creek channel where feasible, meandering portions of the existing creek channel, creating low flow channels,

removing and replacing existing culverts, removing and replacing pedestrian bridges and paths, replacing gabion embankment slopes with vertical retaining walls, and constructing berms and bank stabilization infrastructure. These improvements would improve flood conveyance and contain the 100-year design flow where feasible. Exhibit "A" outlines the scope of Project responsibilities for the District, the City and the Operator.

Either Operator or City shall seek an encroachment permit from District in advance of constructing any future improvements – *i.e.* those not in existence as of the effective date of this cooperative agreement – within the District's easement area, as expanded ("Easement Area"), to ensure that such future improvements do not conflict with the flood control purpose of the District's easements.

C. Compensation

Notwithstanding anything to the contrary in this Agreement, City shall pay District for the items requested by City as set forth in Exhibit "A" (Item Nos. 500-504) (the "City Work") a total amount of not to exceed $269,820.00. This amount shall include all costs, up to the "not to exceed amount," incurred by the District in the performance of the City Work, including: furnishing all labor (including supervision), materials (including the costs of any and all applicable taxes, patent rights, royalties, licenses, and permits), equipment, tools, utilities (including water, sanitary facilities, electricity, fuel, light, heat, and telephone), transportation, and services necessary to complete the City Work (including costs to protect the City Work), and all damages to the City Work prior to acceptance of this work by the City.

The District shall pay the Operator a total amount of $35,000. The amount is consideration for the Operator's covenants herein and represents a mutually-agreed upon full and final accord and satisfaction for all construction-related impacts to the Operator's golf course facilities, including restoration of the "Back 4 Tee" and all other claims relating to the District Project.

D. Indemnity Provisions

1. Nothing in this Agreement shall limit or release Operator from any obligations to indemnify, defend and hold harmless the City under the terms of its lease agreement with the City ("Golf Facility Lease").

2. The obligations of Operator under this Agreement (and future agreements specifically contemplated under this Agreement) that are ongoing and survive termination, such as the obligations and requirements for future encroachment permits, ongoing maintenance responsibility, and indemnification, are intended to bind all successors-in-interest to and assigns of the Operator. City shall impose the same obligations by lease on future operators or else the obligations will be imposed on the City directly.

3. The Operator agrees to release, defend, indemnify and hold harmless the City (with legal counsel reasonably acceptable to the City), its Council members, its predecessors, successors, assignees, agents, departments, officials, representatives, employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively "City Indemnitees") from any and all claims, loss, damage, or injury, by whomever asserted, where such claims, loss, damage, or injury relates to the use of the recreational areas described in the Golf Course Facility Lease, and including, to the extent proximately caused by the existence of said recreational areas or by Operator's

maintenance or operation of the same, loss of income and loss of profit which arises directly or indirectly from the overtopping of the Mission Creek (Zone 6, Line L) which bisects said property, to convey flood waters, including silt and debris, except those arising by reason of the sole negligence or willful misconduct of the City Indemnitees.

4. The Operator agrees to release, defend, indemnify, and hold harmless the District (with legal counsel reasonably acceptable to the District), the County of Alameda, their Boards of Supervisors, their predecessors, successors, assignees, agents, departments, officials, representatives, employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively "District Indemnitees") from any and all claims, loss, damage, or injury, by whomever asserted, where such claims, loss, damage, or injury relates to the use of the recreational areas described in the Golf Course Facility Lease, and including, to the extent proximately caused by the existence of said recreational areas or by Operator's maintenance or operation of the same, loss of income and loss of profit which arises directly or indirectly from the overtopping of the Mission Creek (Zone 6, Line L) which bisects said property, to convey flood waters, including silt and debris, except those arising by reason of the sole negligence or willful misconduct of the District Indemnitees.

5. The City agrees to defend, indemnify, and hold harmless the District (with legal counsel reasonably acceptable to the District), the County of Alameda, their Boards of Supervisors, their predecessors, successors, assignees, agents, departments, officials, representatives, employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively "District Indemnitees") from any and all acts, claims, liabilities and losses by whomever asserted arising out of City's performance under this Agreement except those arising by reason of the sole negligence or willful misconduct of the District Indemnitees.

6. The District agrees to defend, indemnify, and hold harmless the City (with legal counsel reasonably acceptable to the City), its Council members, its predecessors, successors, assignees, agents, departments, officials, representatives, employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively "City Indemnitees") from any and all acts, claims, liabilities and losses by whomever asserted arising out of District's performance under this Agreement except those arising by reason of the sole negligence or willful misconduct of the City Indemnitees.

   District shall include a provision in its construction contract with the general contractor and its subcontractor(s) on the Project requiring the general contractor and its subcontractor(s) to defend, indemnify and hold harmless the City (with legal counsel reasonably acceptable to the City), to the fullest extent permitted by law, for damages resulting from the work of the general contractor and its subcontractors excluding indemnity for the sole negligence or willful misconduct of City. District shall also include a provision in the construction contract with the general contractor and its subcontractor(s) on the project requiring the general contractor to name the City as an additional insured on its Commercial General Liability (CGL) insurance coverage as specified in the property entry agreement between the City and the District.

   District shall include a provision in its construction contract with the general contractor and its subcontractor(s) on the Project requiring the general contractor and its subcontractor(s) to defend, indemnify and hold harmless the Operator (with legal counsel reasonably acceptable to the Operator), to the fullest extent permitted by law, for

damages resulting from the work of the general contractor and its subcontractors excluding indemnity for the sole negligence or willful misconduct of Operator. District shall also include a provision in the construction contract with the general contractor and its subcontractor(s) on the project requiring the general contractor to name the Operator as an additional insured on its Commercial General Liability (CGL) insurance coverage.

7. District agrees to maintain responsibility for the Mission Creek Improvements, provided, however, that Operator shall accept all responsibility and liability for the operation, maintenance, and reconstruction of all recreational facilities within the Easement Area, and provided that all claims, loss, damage, or injuries arising out of any recreational facility within the Easement Area or condition of the land relating to a recreational facility or recreational use of the land shall be included in the Operator's obligations to indemnify the District and City, which indemnity is described herein. Operator and City agree to release District and hold it harmless from any claims, loss, damage, or injury suffered by Operator or City arising from the failure of the creek.

E. Employer/Employee Relationship

No relationship of employer and employee is created by this Agreement, it being understood that City and District shall act hereunder independently of one another; and that personnel employed or contracted by the District shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, Social Security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind; District shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, Federal and State income taxes, and in connection therewith District shall defend, indemnify and hold City harmless (with legal counsel reasonably acceptable to the City) from any and all liability which District may incur because of District's failure to pay such taxes; that District does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of City is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the agency concerned.

F. Amendments

If, during the term of this Agreement it becomes necessary to amend or add to the terms and conditions of this Agreement, such amendments or additions shall be approved by the governing boards of City (if necessary) and District. However, any specific interpretations of the provisions of this Agreement may be made by and between City and District by means of a memorandum of understanding jointly executed by the Directors of Public Works of City and District, or by equivalent officials, and such memorandum or memoranda shall be deemed incorporated herein and be deemed of equal force and effect with any of the terms and conditions contained herein.

G. Conformity With Law and Safety

District, City and Operator shall each observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over the scope of services or any part hereof, including all provisions of the California Occupational Safety and Health Act, and all federal, state, municipal and local safety regulations. All services performed by each party to this Agreement must be in accordance with these laws, ordinances, codes, and regulations.

H. Term of Agreement; Dispute Resolution

The parties in this Agreement agree to work together in the spirit of cooperation and good faith and shall use their best efforts to accomplish the particular obligations set forth herein. Whenever mutual agreement is provided for in this Agreement, no party shall unreasonably withhold their approval.

In the event of any disagreement concerning the interpretation or implementation of this Agreement, the parties shall make good faith efforts to resolve their differences, which efforts may include utilizing non-binding arbitration, with costs to be borne equally by the three contracting parties. Each party shall bear its own attorneys' fees and costs.

This Agreement shall terminate when the District has accepted the project as complete, has received full reimbursement from the City for the construction and construction engineering of the City portion of improvements, the City has accepted its portion of the improvements as complete, the District has paid Operator pursuant to Section C, and upon final execution of right-of-way and easement modifications. The obligations of this Agreement, which by their nature would continue beyond the termination of the Agreement, including without limitation, the obligations regarding indemnification (Section D), shall survive termination.

I. Insurance/Self Insurance

District and City are self-insured as to any questions under this Agreement. No policies or bonds are required of either party as to any provisions of this Agreement.

J. Workers Compensation

District is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at District's own cost and expense and further, neither District nor its carrier shall be entitled to recover from City or Operator any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

City is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at City's own cost and expense and further, neither City nor its carrier shall be entitled to recover from District or Operator any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

Operator is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at Operator's own cost and expense and further, neither Operator nor its carrier shall be entitled to recover from District or City any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

K. Choice of Law

This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

L. Notices

All notices required under this Agreement must be in writing, and may be given either personally or by registered or certified mail (return receipt requested), or by facsimile. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other person or address in substitution of the address to which such notice shall be given. Such notices shall be given to the parties at their address set forth below:

District

Daniel Woldesenbet, Ph.D., P.E.
General Manager
399 Elmhurst Street
Hayward, CA 94544

City of Fremont

Suzanne Wolf
Director of Community Services
3300 Capitol Ave., Bldg. B
Fremont, CA 94537-5006

Operator

Kijoung Ruy
39751 Stevenson Place
Fremont, CA 94539

M. Conflicts

If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

N. Counterparts

This Agreement may be executed in any number of original counterpart signature pages, and each counterpart signature page shall be attached to and incorporated in the original Agreement.

O. Miscellaneous Provisions

This Agreement, together with other agreements specifically described or contemplated herein, represents the complete understanding of the parties with reference to the subject matter hereof. If any clause of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement will continue in force to the extent reasonably necessary to give effect to the parties' intent in entering into this Agreement. There are no intended third-party beneficiaries contemplated by the parties in entering into this Agreement.

Execution

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

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT,

By:_____
President, Board of Supervisors
WILMA CHAN

Date: JUN 1 8 2018

CITY OF FREMONT,
a municipal corporation

By:_____
Deputy City Manager

Date: 5/15/18

Approved as to form:
Donna Ziegler, County Counsel

By:_____
Deputy County Counsel

Approved as to form:

By:_____
Deputy City Attorney

BRILRAND GOLF CORPORATION
39751 Stevenson Place, Fremont, CA 94539

By:_____
Principal, Kijoung Ruy

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or, if acting on behalf of an entity, the entity upon behalf of which he/she acted, executed this Agreement.

Exhibit A - Scope of Project

District agrees to the following:

1. The District shall prepare the contract plans, specifications and estimates for the Project.
2. The District shall include language in the construction contract document to require the contractor and sub-contractor(s) to name City of Fremont and Brilrand Golf Corporation as additional insured as specified in the Agreement.
3. The District shall be responsible for the advertisement of the Project for bids, evaluate bid results, award of a construction contract to the lowest responsible bidder, and provide surveying, construction testing and inspection, and contract administration. Nothing in the Agreement shall be interpreted to require the District Board of Supervisors to authorize a construction agreement or to require District to construct the Project in the absence of such a construction agreement. The progress of the Project may be delayed as a result of unreasonable and unacceptable high bids. If this situation occurs, the District will inform the City of a decision to reject all bids and re-advertise the project at a later date deemed reasonable to the District. The City shall not lay claim against the District if the Project schedule is delayed.
4. The District shall fund the technical analysis, soil studies, design and engineering costs for the project elements benefiting the District. The design and engineering cost which shall be borne by the District shall include the channel grading, construction of the vertical reinforced concrete channel walls, construction of perimeter berms, fencing and guard railings, and re-vegetation.
5. The District shall fund the actual construction cost for the following portion of the Project, estimated to total $8,750,000: clearing and grubbing, removal of existing trees and shrubs, construction of the vertical reinforced concrete channel walls, construction of perimeter berms, fencing and guard railings, and re-vegetation, underlying aggregate base and sub grade section for the affected pathways, replacement in-kind of affected pathway surfaces, application of anti-graffiti coating, modifications and improvements to the Gomes Park irrigation system, modifications to the Golf Course irrigation system, revegetation of project area, and all costs related to mobilization, demobilization, project site preparation and final clean up.
6. The District will incorporate the City's desired pathway improvements into the District project. A preliminary Engineer's Estimate for the City's responsibilities is included as Exhibit B for reference. Exhibit C shows a figure of the City's pathway improvements.
7. The District has executed a Right-of-Entry Agreement with the City for construction work within City properties.
8. The District has applied for a City encroachment permit for construction work within City street Right-of-Way, and the City has issued said permit.
9. The District shall conduct a joint site walk through with City staff at the completion of the Project, and identify punch list items, if any, related to the construction work performed.
10. The District shall prepare plat and description documentation for the revisions of the Flood Control right-of-way and easement boundaries as shown in Exhibit D.

11. The District shall prepare plat and description documentation for the revision and realignment of the Alameda County Water District(ACWD) water utility easement within Gomes Park, upon approval of construction plans by ACWD and upon receipt of all regulatory permits required for the replacement of the ACWD 12 inch water main.
12. The District shall cooperate with the Operator in resolving any potential construction issues.
13. The District shall facilitate coordination with the City Public Works Inspector(s) for regular review of construction progress including but not limited to, submittal review, finish grading, landscape materials, consistency with plans and specifications, punch list review, and design modifications. Design modifications must be approved in writing by the City. City inspector shall coordinate all correspondence through the District inspector. A regular weekly project meeting with the City, the District and the Contractor shall be held at the site, or District Construction Inspection offices at 951 Turner Court, Room 301, Hayward, 94545. The District shall reimburse the City for City inspection costs through the Encroachment Permit issued to the District.
14. The District shall facilitate and expedite issuance of a License Agreement or other form of mutually-agreeable agreement that will allow public and golf course access to the District Bridge and appurtenant pathways to the bridge.

City agrees to the following:

1. The City shall be fully responsible for funding all costs associated with the following City owned improvements and as shown in Exhibit B, not to exceed the amounts specified in Section 3 below and in Exhibit B:
    a. Removal and disposal of the existing timber bridge, including abutments, within the golf course (Item No. 500)
    b. Contribution towards construction of the new pre-fabricated single span vehicular/pedestrian bridge, including abutments, within the City golf course in an amount proportional to the estimated original construction cost for the existing bridge with piers (Item No. 501)
    c. Construction of a new concrete multi-use pathway on the northerly side of Mission Creek within the City golf course between Union Pacific Railroad and the new pre-fabricated vehicular/pedestrian bridge (difference between the cost of an aggregate base path and concrete to be paid by City) (Item No. 502)
    d. Construction of a new concrete multi-use pathway on the southerly side of Mission Creek within the golf course between the new pre-fabricated vehicular/pedestrian bridge to the downstream end of the new rectangular channel (difference between the cost of an aggregate base path and concrete to be paid by City) (Item No. 503)
2. Construction of the new concrete bike/pedestrian pathway within Gomes Park from the playground to Lemos Lane (concrete cost to be paid by City) (Item No. 504)
3. Upon City's acceptance of the construction work, the District has no obligation for future maintenance, performance or repair of City owned improvements. It is agreed and understood that the District Bridge is not a City owned improvement.

4. The City shall provide funding to the District, based on the final progress payment to the Contractor, for the following Items of the Project in the amounts as shown below and in Exhibit B, and any Construction Change Order(s) associated with the construction of City owned improvements approved by the City and contract administration/ construction engineering services as set forth in Exhibit B:
   a. Item No 500: Golf Course Bridge Demolition and Offhaul - $42,000.00
   b. Item No. 501: Golf Course Bridge and Abutments - City contributes estimated original cost for existing bridge towards total bridge cost - $50,000.00 (total cost $125,000.00)
   c. Item No. 502: Reach 1, North Path, Concrete - $49,890.00.
   d. Item No. 503: Reach 1, South Path, Concrete - $23,320.00.
   e. Item No. 504: Reach 3, South Playground Path, Concrete - $59,640.00
5. The estimated construction costs based on the Preliminary Engineer's Estimate (Exhibit B) are $224,850.00.
6. Subject to Council approval, the City shall secure and budget necessary funds in the City's budget to reimburse the District for all costs involved in the City owned improvements. The City should include an additional 10% ($22,485.00) contingency fund in anticipation of unforeseen construction changes. The City shall reimburse the District within forty-five (45) calendar days, for the construction costs, along with construction engineering and contract administration costs of 10% ($22,485.00) of construction costs associated with City improvements, upon receipt of District's request for reimbursement. The total City construction cost is therefore $269,820.00 ($224,850 for construction, plus $22,485 for construction engineering and contract administration, plus $22,485 for unforeseen construction changes).
7. The City shall conduct a joint site walk-through with the District staff at the completion of the City owned improvements, and identify punch list items, if any, related to the construction work performed.
8. The City shall facilitate and expedite the revisions of the District right-of-way and easement boundaries. City shall promptly grant the right-of-way and easements to the District at no cost following execution of this Agreement through an agreement between the City and the District and approval of the Planning Commission and City Council if necessary.
9. The City will facilitate and expedite the execution of a License Agreement or other form of mutually-agreeable agreement that will allow public and golf course access to the District's bridge and appurtenant pathways to the bridge.

Operator agrees to the following:

1. The Operator shall cooperate with the District in resolving any potential construction issues.
2. The Operator agrees to accept all responsibilities and liabilities for the operation, maintenance and restoration of all of the recreational areas, as described in the Golf Facility Lease between the City and Operator, including but not limited to the golf course, and all landscaping, and golf carts/players, including on the District Bridge and within District right-

of-way and easements. Operator agrees that if it restores the "Back 4 Tee" area, work shall not commence until all work for the project has been completed and accepted by the District and the City.

Alameda County Flood Control and Water Conservation District
Mission Creek (Line L) Restoration Cooperative Agreement City Improvement Costs
Exhibit B

Date: April 25, 2016

Project: ***Mission Creek (Line L) Restoration Between Union Pacific Railroad and Lemos Lane in Fremont, Alameda County, California, Zone No. 6 Project***

Spec. No. FC 6-142
WO No. F06C71

Chk:

Item No.		Description	Estimate of Quantity Net	Adjusted	Call	Unit	Unit Cost	Cost
500		Golf Course Bridge Demolition and Offhaul	100%		100%	Lump Sum	$ 42,000.00	$ 42,000.00
501		Golf Course Bridge and Abutments-City contributes estimated original cost for existing bridge towards total bridge cost ($50,000 out of $125,000)	100%		100%	Lump Sum	$ 50,000.00	$ 50,000.00
502		Reach 1, North Path, Concrete	4,989		4,989	Square Foot	$ 10.00	$ 49,890.00
503		Reach 1, South Path, Concrete	2,332		2,332	Square Foot	$ 10.00	$ 23,320.00
504	*	Reach 3, South Playground Path, Concrete	4,970		4,970	Square Foot	$ 12.00	$ 59,640.00
							Sub-Total:	**$ 224,850.00**
							10% Contingency	**$ 22,485.00**
							Contract Administration and Construction Engineering Services (10%)	**$ 22,485.00**
							Total	**$ 269,820.00**

*Includes pathway base material

EXHIBIT C

1 OF 1

FC 8-142

F06C71

COUNTY OF ALAMEDA ✡ PUBLIC WORKS AGENCY

ZONE NO. 6 PROJECT
IMPROVEMENTS OF LINE L
CITY OF FREMONT
CITY-DESIRED PATHWAY
IMPROVEMENTS

MAY 2016

1"=100'

REVISIONS

NO.	DESCRIPTION	BY	DATE	APPV'D
1				
2				
3				
4				
5				
6				

EXHIBIT "A"

COUNTY OF ALAMEDA DESCRIPTION

ZONE 6 LINE L

GRANT OF STORM DRAIN EASEMENT

MAP: RB-105 **DESC. NO. 8306**
APN: 525-001-020-02 (Por.), 525-131-09 (Por.), **DATE: 08/05/2016**

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

PARCEL 1

Being a portion of the lands of the City of Fremont as described in that certain Corporation Grant Deed recorded July 8, 1974 at Reel 3723 Image 381 (Series 74-88138), official records of Alameda County, more particularly described as follows;

BEGINNING at the intersection of the northerly line of the Alameda County Flood Control and Water Conservation District right of way recorded at Reel 1324 Image 110, Series No. AW155835, records of Alameda County, with the easterly boundary line of the existing right of way of the Southern Pacific Railroad Company, 70 feet wide, as shown on Parcel Map 7173, filed August 7, 1997 in Book 232 of Maps at pages 36-37, said map being a re-subdivision of Parcel "A" of Parcel Map 626, filed May 25, 1971 in Book 69 of Maps at page 61, records of Alameda County;
thence along said easterly line of the Southern Pacific Railroad Company right of way,
North 07° 26' 58" West, (the bearing of said line being taken as North 07° 26' 58" West for the purpose of this description), 35.38 feet;
thence leaving said easterly of line of the Southern Pacific Railroad Company, North 82° 13' 08" East, 459.80 feet;
thence North 77° 17' 02" East, 65.67 feet;
thence North 03° 46' 18" West, 57.96 feet;
thence North 86° 13' 42" East, 48.83 feet to the westerly line of the lands of the Alameda County Flood Control and Water Conservation District as described in that certain Grant Deed recorded September 6, 1968 at Reel 2251 Image 963, Series No. BA 99353, official records of Alameda County;
thence along said line, South 03° 46' 18" East, 86.12 feet to the aforementioned northerly right of way line of the Alameda County Flood Control and Water Conservation District (AW155835);
thence along said line the following two courses:

1. South 77° 17' 02" West, 110.69 feet;
2. South 82° 13' 08" West, 461.89 feet to the **POINT OF BEGINNING**

Containing 22,945 square feet, more or less

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors' Act

Michael Rubner.
County Surveyor



By: _____
Albert Jordan
Professional Land Surveyor
LS 6623 Reg. Expires 12/31/2017

Date: August 10, 2016

EXHIBIT "A"

COUNTY OF ALAMEDA DESCRIPTION

ZONE 6 LINE L

GRANT OF ACCESS EASEMENT

MAP: RB-105 **DESC. NO. 8307**
APN: 525-131-09 (Por.) **DATE: 08/05/2016**

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

Being a portion of the lands of the City of Fremont as described in that certain Grant Deed recorded February 25, 1969, at Reel 2352 Image 454 (Series 69-20899), official records of Alameda County, more particularly described as follows;

COMMENCING at the intersection of the southerly line of the Alameda County Flood Control and Water Conservation District right of way recorded May 16, 1977 at Reel 4861 Image 33, Series No. 77-93824, records of Alameda County, with the easterly boundary line of the existing right of way of the Western Pacific Railway Company, 80 feet wide, said point being also the northwest corner of "Lot A" as shown on Tract 2825, filed September 19, 1968 in Book 59 of Maps at pages 15-19, records of Alameda County;
thence along said southerly line of the Alameda County Flood Control and Water Conservation District right of way (Series No. 77-93824), being also the northerly line of said "Lot A",
North 81° 16' 54" East, (the bearing of said line being taken as North 81° 16' 54" East for the purpose of this description), 30.32 feet to the **ACTUAL POINT OF BEGINNING**;
thence continuing along said line, North 81° 16' 54" East, 821.91 feet to a point on the northwesterly line of the lands of the City of Fremont as described in that certain Grant Deed recorded September 1, 1966 at Reel 1834 Image 776, Series No. AY104035, records of Alameda County, being also the easterly line of the aforementioned "Lot A" (59 Maps 15-19);
thence along said line, South 46° 06' 50" West, 14.19 feet;
thence leaving said line, South 81° 10' 14" West, 801.35 feet;
thence South 63° 29' 43" West, 43.34 feet to the aforementioned easterly boundary line of the existing right of way of the Western Pacific Railway Company (80 feet wide);
thence along said line North 03° 46' 18" west, 13.01 feet;
thence leaving said line, North 63° 30' 09" East, 32.74 feet to the **ACTUAL POINT OF BEGINNING**

Containing 7,719 square feet, more or less.

END OF DESCRIPTION

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors' Act

Michael Rubner.
County Surveyor



By: Albert Jordan
Albert Jordan
Professional Land Surveyor
LS 6623 Reg. Expires 12/31/2017

Date: August 10, 2016

EXHIBIT "A"

COUNTY OF ALAMEDA DESCRIPTION

ZONE 6 LINE L

GRANT OF SLOPE EASEMENT

MAP: RB-105 **DESC. NO. 8308**
APN: 525-131-09 (Por.) **DATE: 08/05/2016**

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

Being a portion of the lands of the City of Fremont as described in that certain Grant Deed recorded February 25, 1969, at Reel 2352 Image 454 (Series 69-20899), official records of Alameda County, more particularly described as follows;

COMMENCING at the southeast corner of "Lot A" of Tract 2825, filed September 19, 1968 in Book 59 of Maps at pages 15 through 19, records of Alameda County, being a point distant along the exterior boundary line of said Tract 2825, North 43° 53' 10" West, (the bearing of said line being taken as North 43° 53' 10" West for the purpose of this description), 170.80 feet from the centerline of Lemos Lane as shown on Sheet 2 of said map (59 Maps 15-19); thence along the southwesterly boundary line of said "Lot A", North 42° 08' 10" West, 100.80 feet to the **ACTUAL POINT OF BEGINNING;**
thence continuing along said southwesterly boundary line of "Lot A", and its direct projection northwesterly, North 42° 08' 10" West, 202.93 feet to a point on the northeast line of Lot 8, Block 1 of the aforesaid Tract 2825 (59 Maps 16-19), said northeast line being a common line with the aforementioned southwesterly boundary line of "Lot A";
thence along said line of Lot 8, and along said southwesterly boundary line of "Lot A", North 47° 51' 50" East, 18.63 feet to the northeast corner of said Lot 8;
thence continuing along said boundary line of "Lot A" the following two courses:

1. North 42° 08' 10" West, 244.00 feet;
2. North 32° 45' 00" West, 61.82 feet;

thence leaving said southwesterly boundary line, North 47° 51' 50" East, 27.72 feet to the northeasterly boundary line of said "Lot A";
thence along said northeasterly boundary line South 43° 53' 10" East, 508.16 feet;
thence leaving said line South 47° 51' 50" West, 71.96 feet to the **ACTUAL POINT OF BEGINNING**

Containing 26,617 square feet, more or less

END OF DESCRIPTION

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors' Act

Michael Rubner.
County Surveyor



By: Albert Jordan

Albert Jordan
Professional Land Surveyor
LS 6623 Reg. Expires 12/31/2017

Date: August 10, 2016

EXHIBIT "A"

COUNTY OF ALAMEDA DESCRIPTION

ZONE 6 LINE L

GRANT OF BASIN AND SLOPE EASEMENT

MAP: RB-105 **DESC. NO. 8309**
APN: 525-105-001-04 (Por.), 525-105-045 (Por.) **DATE: 08/05/2016**

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

Being a portion of the lands of the City of Fremont as described in that certain Grant Deed recorded September 1, 1966, at Reel 1834 Image 776 (Series AY-104035), official records of Alameda County, more particularly described as follows;

PARCEL-1

BEGINNING at the southwest corner of deed PARCEL 1 of the above referenced lands of the City of Fremont (Series AY-104035), said point being an angle point in the easterly exterior boundary line of "Lot A" of Tract 2825, filed September 19, 1968 in Book 59 of Maps at pages 15 through 19, records of Alameda County, and being the southwesterly terminus of that certain course shown as "North 46° 06' 50" East, 161.69 feet" on said map (59 Maps 15-19);
thence along said easterly exterior boundary line, and along the westerly line of the lands of the City of Fremont (Series AY-104035), North 46° 06' 50" East, (the bearing of said line being taken as North 46° 06' 50" East for the purpose of this description), 161.69 feet to a point on the southwesterly line of the lands of Alameda County Flood Control and Water Conservation District as described in that certain Executor's Deed recorded December 21, 1964 at Reel 1396 Image 191, Series No. AW203321, official records of Alameda County;
thence along said line the following three courses:

1. North 81° 14' 16" East, 15.04 feet;
2. Easterly and southeasterly along a tangent curve to the right, with radius of 68.00 feet, through a central angle of 48° 24' 34", an arc length of 57.45 feet;
3. South 50° 21' 10" East, 910.83 feet to the northwesterly right of way line of Lemos Lane as shown on the aforementioned Tract 2825 (59 Maps 15-19);

thence along said line, South 46° 00' 05" West, 305.02 feet to a point on the southeasterly projection of the aforementioned easterly boundary line of "Lot A" (59 Maps 15-19);
thence along said easterly boundary line of said "Lot A" and its southeasterly projection, North 43° 53' 10" west, 962.24 feet to the **POINT OF BEGINNING**;

Containing 240,427 square feet, more or less

PARCEL-2

BEGINNING at the intersection of the westerly line of deed PARCEL 2 of the above referenced lands of the City of Fremont (Series AY-104035) with the northeasterly line of the lands of Alameda County Flood Control and Water Conservation District as described in that certain Deed recorded July 24, 1964 at Reel 1267 Image 510, Series No. AW118875, official records of Alameda County, said point being also a point on the southwesterly projection of the exterior boundary line of Tract 2756, filed July 11, 1966, in Book 53 of Maps at pages 13 through 16, records of Alameda County;
thence along said exterior boundary line of Tract 2756 (53 Maps 13-16) and its southwesterly projection, and along said westerly line of deed PARCEL 2 (Series AY-104035),
North 46° 06' 50" East, 194.29 feet to the northeasterly line of said deed PARCEL 2 (Series AY-104035);
thence along said northeasterly line, South 43° 53' 10" East, 961.38 feet to the northwesterly right of way line of Lemos Lane;
thence along said line South 46° 00' 05" West, 85.31 feet to the aforementioned northeasterly line of the lands of Alameda County Flood Control and Water Conservation District (Series No. AW118875);
thence along said line North 50° 21' 10" West, 967.70 feet to the **POINT OF BEGINNING**

Containing 134,417 square feet, more or less

END OF DESCRIPTION

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors' Act

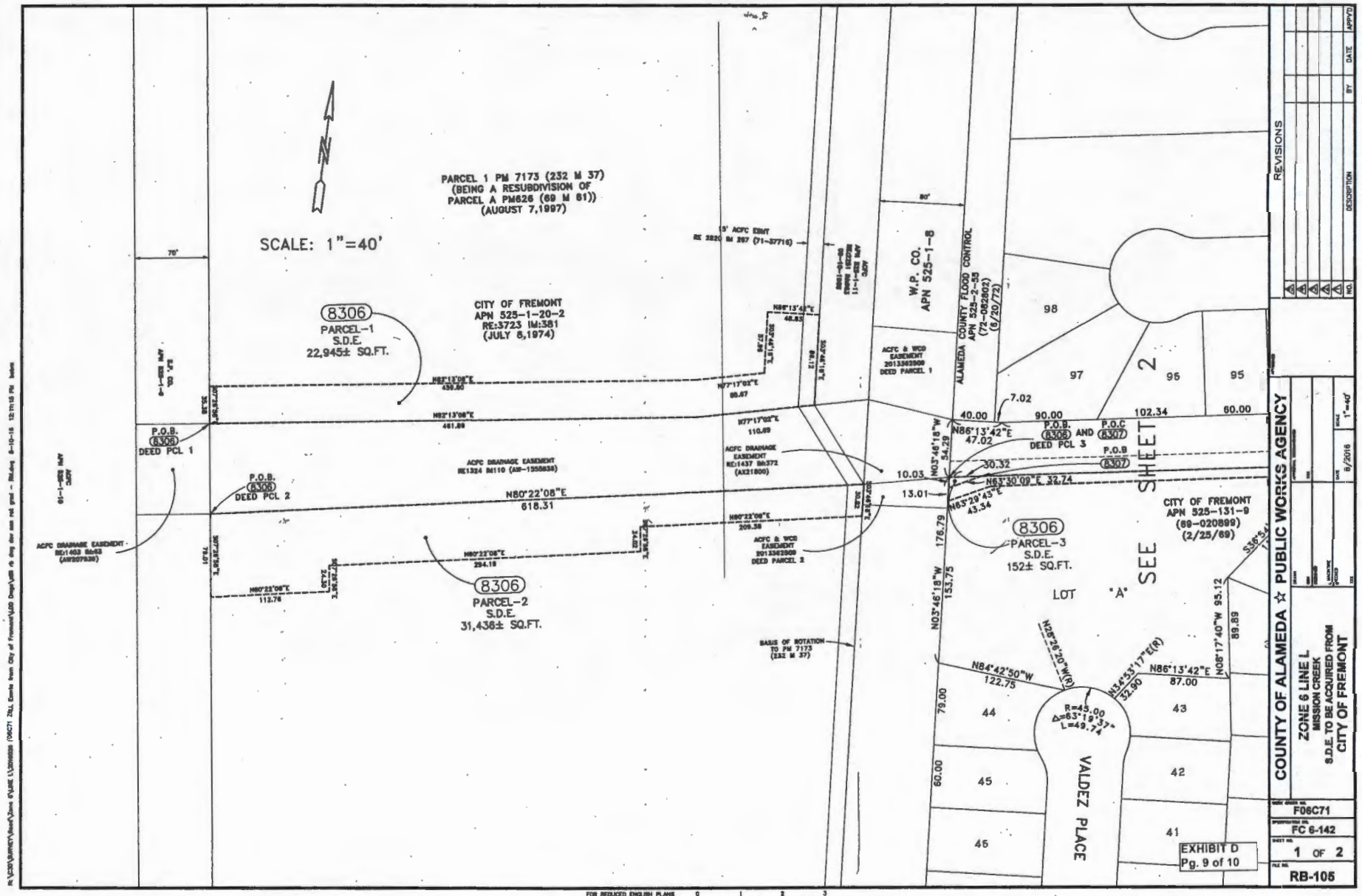
Michael Rubner.
County Surveyor

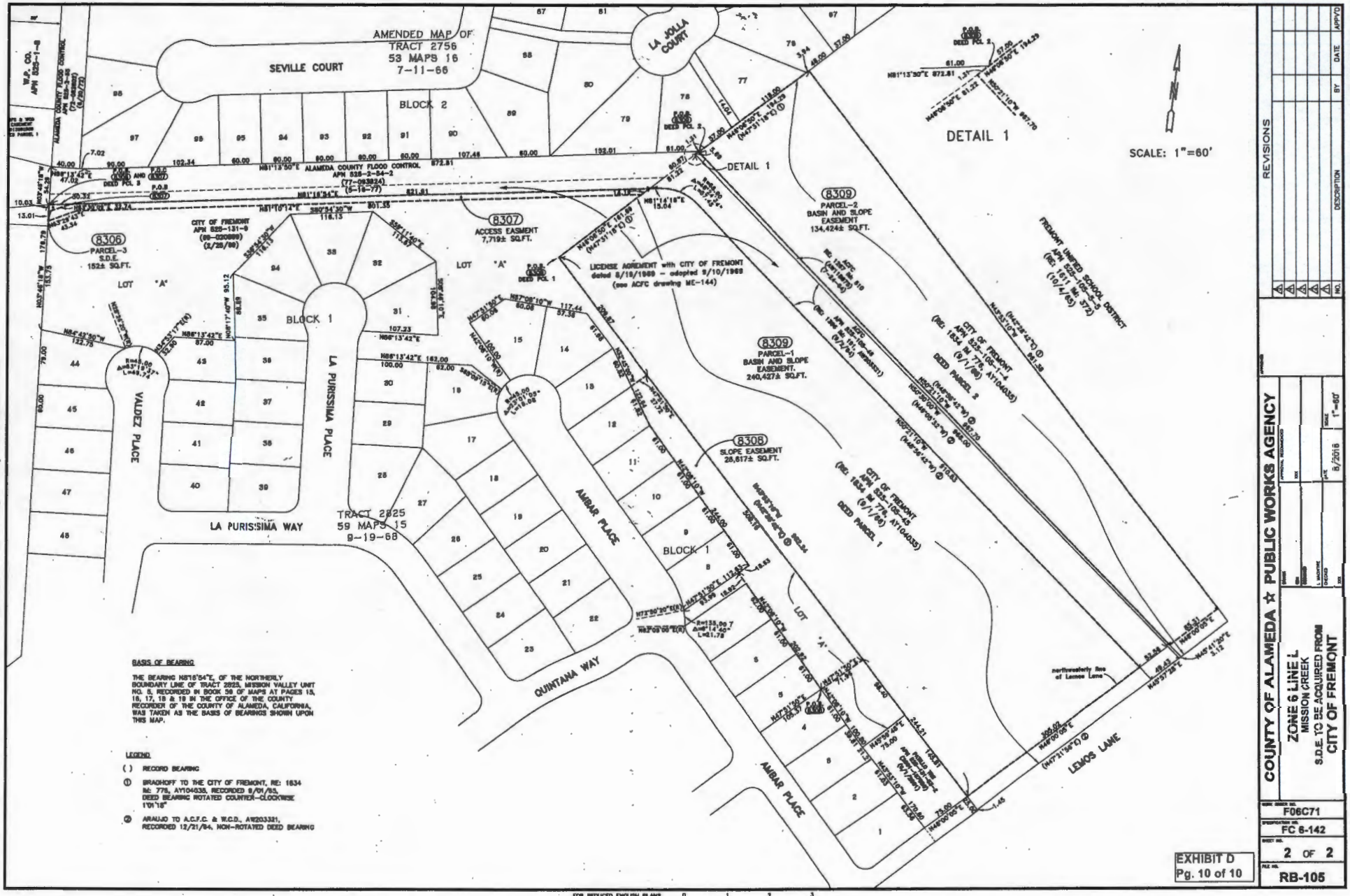
LICENSED LAND SURVEYOR
ALBERT JORDAN
NO. 6623
STATE OF CALIFORNIA

By: Albert Jordan

Albert Jordan
Professional Land Surveyor
LS 6623 Reg. Expires 12/31/2017

Date: August 10, 2016


SCALE: 1"=40'
PARCEL 1 PM 7173 (232 M 37)
(BEING A RESUBDIVISION OF
PARCEL A PM626 (69 M 61))
(AUGUST 7,1997)
CITY OF FREMONT
APN 525-1-20-2
RE:3723 IM:381
(JULY 8,1974)
8306
PARCEL-1
S.D.E.
22,945± SQ.FT.
8306
PARCEL-2
S.D.E.
31,438± SQ.FT.
8306
PARCEL-3
S.D.E.
152± SQ.FT.
P.O.B.
8306
DEED PCL 1
P.O.B.
8306
DEED PCL 2
P.O.B.
8306
AND
P.O.C
8307
DEED PCL 3
P.O.B
8307
N82°13'08"E
481.89
N80°22'08"E
618.31
N80°22'08"E
294.19
N80°22'08"E
112.76
N82°13'08"E
450.80
N77°17'02"E
110.69
N77°17'02"E
88.67
N86°13'42"E
48.83
N86°13'42"E
47.02
N63°30'09"E 32.74
N63°29'43"E
43.34
N03°46'18"W
54.29
N03°46'18"W
133.75
N03°46'18"W
176.79
N08°17'40"W 95.12
N84°42'50"W
122.75
N86°13'42"E
87.00
N25°26'20"W(R)
N34°53'17"E(R)
32.90
R=45.00
Δ=63°19'37"
L=49.74
VALDEZ PLACE
LOT "A"
SEE SHEET 2
CITY OF FREMONT
APN 525-131-9
(89-020899)
(2/25/69)
W.P. CO.
APN 525-1-8
ALAMEDA COUNTY FLOOD CONTROL
APN 525-2-55
(72-082802)
(6/20/72)
ACFC & WCD
EASEMENT
2013362900
DEED PARCEL 1
ACFC & WCD
EASEMENT
2013362900
DEED PARCEL 2
ACFC DRAINAGE EASEMENT
RE:1437 IM:372
(AX21800)
ACFC DRAINAGE EASEMENT
RE1324 IM110 (AR--1356838)
ACFC DRAINAGE EASEMENT
RE:1403 IM:63
(AW207939)
BASIS OF ROTATION
TO PM 7173
(232 M 37)
40.00
7.02
90.00
102.34
60.00
10.03
13.01
30.32
70'
80'
98
97
96
95
45
44
43
42
41
46
79.00
60.00
89.89
REVISIONS
COUNTY OF ALAMEDA ☆ PUBLIC WORKS AGENCY
ZONE 6 LINE L
MISSION CREEK
S.D.E. TO BE ACQUIRED FROM
CITY OF FREMONT
F06C71
FC 6-142
1 OF 2
RB-105
EXHIBIT D
Pg. 9 of 10
8/2016
1"=40'


AMENDED MAP OF
TRACT 2756
53 MAPS 16
7-11-66
SEVILLE COURT
LA JOLLA COURT
BLOCK 2
BLOCK 1
DETAIL 1
SCALE: 1"=60'
8306
PARCEL-3
S.D.E.
152± SQ.FT.
8307
ACCESS EASEMENT
7,719± SQ.FT.
8308
SLOPE EASEMENT
28,617± SQ.FT.
8309
PARCEL-1
BASIN AND SLOPE
EASEMENT.
240,427± SQ.FT.
8309
PARCEL-2
BASIN AND SLOPE
EASEMENT
134,424± SQ.FT.
LICENSE AGREEMENT with CITY OF FREMONT
dated 8/19/1968 - adopted 9/10/1968
(see ACFC drawing ME-144)
CITY OF FREMONT
APN 525-131-9
(66-220869)
(2/25/66)
ALAMEDA COUNTY FLOOD CONTROL
APN 525-2-54-2
(77-093824)
(5-16-77)
FREMONT UNIFIED SCHOOL DISTRICT
APN 525-1611-105-4-3
(85-1611 - Mp 372)
(10/4/85)
CITY OF FREMONT
APN 525-1634-1-4
(No. 1634 M 778, AY1104035)
(9/1/88)
DEED PARCEL 2
CITY OF FREMONT
APN 525-1634-105-45
(No. 1634 M 778, AY1104035)
(9/1/88)
DEED PARCEL 1
W.P. CO.
APN 525-1-8
VALDEZ PLACE
LA PURISSIMA PLACE
LA PURISSIMA WAY
AMBAR PLACE
QUINTANA WAY
LEMOS LANE
TRACT 2825
59 MAPS 15
9-19-68
northeasterly line of Lemos Lane
BASIS OF BEARING
THE BEARING N81°16'54"E, OF THE NORTHERLY BOUNDARY LINE OF TRACT 2923, MISSION VALLEY UNIT NO. 5, RECORDED IN BOOK 56 OF MAPS AT PAGES 15, 16, 17, 18 & 19 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ALAMEDA, CALIFORNIA, WAS TAKEN AS THE BASIS OF BEARINGS SHOWN UPON THIS MAP.
LEGEND
( ) RECORD BEARING
① BRADHOFF TO THE CITY OF FREMONT, RE: 1634 M: 778, AY104035, RECORDED 9/01/88, DEED BEARING ROTATED COUNTER-CLOCKWISE 1°01'16"
② ARAUJO TO A.C.F.C. & W.C.D., AW203321, RECORDED 12/21/84, NON-ROTATED DEED BEARING
EXHIBIT D
Pg. 10 of 10
REVISIONS
NO. DESCRIPTION BY DATE APP'VD
COUNTY OF ALAMEDA ☆ PUBLIC WORKS AGENCY
ZONE 6 LINE L
MISSION CREEK
S.D.E. TO BE ACQUIRED FROM
CITY OF FREMONT
DESIGNED
DRAWN
TRACED
CHECKED
DATE 8/2016
SCALE 1"=60'
F06C71
FC 6-142
SHEET NO. 2 OF 2
RB-105
FOR REDUCED ENGLISH PLANS ORIGINAL SCALE IS IN INCHES
0 1 2 3

18-0224

REAL PROPERTY LICENSE AGREEMENT

BETWEEN

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

AND

CITY OF FREMONT

THIS LICENSE AGREEMENT ("Agreement") made and entered into this 5th day of June, 2018, by and between the ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("District"), and the CITY OF FREMONT ("City"), a municipal corporation, (collectively, the "Parties," or individually, either "Party"),

WITNESSETH:

WHEREAS, in 1998 City developed its property adjacent to Union Pacific Railroad and upstream of Lake Elizabeth for golf course (the "Golf Course") and public access trail services; and

WHEREAS, City leases the Golf Course to a private golf course operator ("Operator"); and

WHEREAS, Mission Creek bisects the Golf Course and flows from east to west to Lake Elizabeth within an existing flood control drainage easement owned and maintained by District ("District Easement"), which easement is more particularly depicted on **Exhibit A** hereto; and

WHEREAS, City owns the underlying fee interest in the District Easement, in addition to the land on either side of the District Easement; and

WHEREAS, at the time the Golf Course was constructed, a timber bridge was built across Mission Creek within the District Easement, which allowed golfers and pedestrians to cross the creek; and

WHEREAS, pursuant to a cooperative agreement between the Parties memorialized on _____, 2018, by execution of a "Cooperative Agreement Mission Creek (Line L) Restoration Between Union Pacific Railroad and Lemos Lane, in Fremont, Alameda County, California, Zone No. 6 Project" (the "Cooperative Agreement"), Mission Creek was widened to accommodate floodwaters, multi-use access paths were constructed on either side of the creek, and the existing timber bridge was removed and replaced with a vehicle rated steel bridge (the "Bridge"); and

WHEREAS, the Bridge, which is depicted on the diagram attached hereto as **Exhibit B**, is intended to be primarily for the construction and maintenance of flood control; water conservation, or related projects, including use by trucks and other equipment of the District or its employees, contractors, and agents; and

WHEREAS, City is a public entity, the timber bridge was integral for park use, and it is in the public interest that said Bridge be used, so far as possible, for public access and recreation, so long as such use does not conflict with the paramount flood control purposes of the Bridge; and

WHEREAS, the Cooperative Agreement contemplated that the Parties would negotiate and execute this Agreement, which is intended to describe the rights and duties of the Parties with respect to the Bridge.

NOW, THEREFORE, BE IT MUTUALLY AGREED that for and in consideration of the covenants hereinafter contained and the mutual benefits to be derived by both Parties, District hereby confers upon City

C-2018-53

the license and privilege to use the Bridge, subject to District's paramount right of possession and use for flood control purposes. City accepts said license and responsibility, both Parties agreeing to the following conditions:

1. **Real Property.** The license conferred by this Agreement shall apply to that real property improvement hereinabove described as the Bridge. This license is nonassignable and nontransferable; provided that the license is intended to be used by members of the public accessing the Bridge for recreational purposes, including the Operator, its employees, customers, and its other guests or invitees.

2. **Compliance with Other Laws.** Both Parties shall comply with all applicable federal, state, and local laws in connection with their use or possession of the Bridge.

3. **Nature of Use.**

(a) Operator's employees, customers, and other guests or invitees may use the Bridge in connection with the use or maintenance of the Golf Course. District acknowledges that this use may involve the Bridge being travelled by golf carts, lawn mowers, or similar small, motorized equipment.

(b) Members of the public may access the Bridge for recreational purposes, including walking, hiking, jogging, bicycling, or similar non-motorized means of conveyance.

(c) City shall be solely responsible for ensuring safe and appropriate use of the Bridge under this Agreement and for reasonable regulations and controls to ensure such safe and appropriate use.

(d) On oral or written notice to District to confirm that said use shall not interfere unreasonably with District's use of the Bridge, the employees, agents, or contractors of City and Operator may, consistent with the size and capacity of the Bridge, cause trucks or other motor vehicles or heavy equipment, to operate or travel upon the Bridge for purposes reasonably related to Operator's and City's operations.

(e) City's law enforcement and parks personnel may use the Bridge for patrol purposes, and may make reasonable use of motorized vehicles in connection therewith without prior notice to the District; provided that on reasonable notice, and after a reasonable attempt to meet and confer in good faith to minimize impacts on City operations, District may restrict such use in connection with District's operations.

(f) Subject to the use of the Bridge for Golf Course operations as described in this Section 3, and provided that nothing contained herein shall be construed to prohibit City from charging user or parking fees in connection with its recreational facilities, City shall not conduct or permit to be conducted upon the Bridge any commercial activity or other enterprise for monetary profit.

4. **Maintenance Obligations.**

(a) District shall maintain the Bridge, provided that:

i. City shall be responsible for all litter control and graffiti abatement on the Bridge;

ii. City may install appropriate informational and warning signs upon the Bridge, and shall be responsible for the maintenance of those signs; and

iii. City shall repair, at its own expense, any damage to the Bridge directly caused by City employees, agents, or contractors; the Operator or its employees, customers, or other invitees or guests; or any member of the public accessing the Bridge for recreational purposes.

(b) If District determines that City is in default of its maintenance obligations as set forth above in Subsection (a) of this Section 4, then District may provide written notice to City to cure the default. If reasonable efforts to cure said default are not commenced within fifteen (15) days of notice, then District shall have the right, but not the duty, to cure the default, whereupon the District may invoice the City reasonable costs incurred in curing said default, and which costs the District shall pay within a reasonable period of time. In cases of emergency, District may dispense with notice and an opportunity for City to cure the default.

(c) Plans by City to perform, or allow to be performed, any maintenance, repair, or construction work to occur on or in connection with the Bridge that will physically alter it, including to restore it to a former condition, shall require the advance written approval of the District, which approval shall not be unreasonably withheld. If there is any reasonable likelihood that maintenance, repairs, or construction on or in connection with the Bridge by or on behalf of the District will interfere with the use rights herein conferred upon City, Operator, and the public, then City's consent to such maintenance, repair, or construction shall be required, which consent shall not be unreasonably withheld. Either Party may dispense with these requirements in cases of emergency.

(d) City shall not be responsible for damage to District's facilities caused by acts of nature, and neither shall District be responsible for any damage caused to City's recreational facilities by the same; provided that nothing contained herein shall relieve either Party of any otherwise existing liability in proportion to the extent to which that Party's unreasonable acts or omissions exacerbate or contribute to any damage caused to said facilities by any act of nature. As used herein, the term "acts of nature" includes human conduct beyond the reasonable control of either Party, such as warfare or domestic insurrection.

(e) City shall be responsible for all utilities necessary (e.g. lighting) for City's use of the Bridge, including installation costs and fees or charges for use of those utilities by City.

5. **Term.** This Agreement shall become effective immediately upon execution by both Parties. The term of this Agreement shall be for twenty (20) years. In consideration of an option fee of $1.00, City shall have the option to renew this Agreement for an additional twenty (20) years, which option may be exercised in writing at any time in the year prior to the termination of the Agreement. Notwithstanding the foregoing, this Agreement shall terminate early if any of the following events occur:

(a) The parties agree, or a court of competent jurisdiction determines, that the purposes for which the license hereby conferred is granted cease to exist, for example, if the Bridge is entirely destroyed in a natural disaster and the Parties agree that it should not be reconstructed, or if City disposes of its fee interest underlying the flood control channel and on either side of the Bridge;

(b) The flood control, water conservation, or drainage purposes for which the Bridge exists necessitate early termination of this Agreement; provided that District first constructs a replacement bridge suitable to provide access for golf and other recreational purposes or, in case of emergency, provides reasonably prompt notice of the necessity to terminate the Agreement, compensates City for City's initial contribution of $50,000 toward the construction of the Bridge less 2.5% depreciation per year, and does not withhold unreasonably consent to City to construct a replacement bridge; or

(c) Any breach of any conditions of this Agreement by City for at least 30 days shall, at the option of District terminate the privileges of the City, provided that District provides written notice to cure such breach, and within ninety (90) days following such written notice City fails to cure the breach or, if the nature of the breach is such that it cannot reasonably be entirely cured within such time, if within such ninety (90) day period City fails to institute and thereafter diligently pursue action to cure the breach.

(d) The failure or omission of District to terminate this Agreement for any violation of any of its terms, conditions or covenants, shall in no way be deemed to be a consent by District to such violation and shall in no way bar, stop or prevent District from terminating this Agreement thereafter, either for such or for any subsequent violation of any such term, condition or covenant. The acceptance of payments hereunder shall not be, or be construed to be, a waiver of any breach of any term, covenant or condition of this Agreement.

If this Agreement is terminated, City shall restore the property to a condition equivalent to the condition at the commencement of this license, all City signs, improvements, or facilities affixed to the Bridge shall be removed by City within ninety (90) days following such termination, and any such signs, improvements, or facilities not removed by City shall either become the property of District or shall be removed by District at City's expense.

6. **Consideration.** This Agreement implements provisions of the Cooperative Agreement that City contribute $50,000.00 to the cost of construction of the Bridge. City shall pay to District the sum of One Dollar ($1.00) per year for the use of the Bridge for the purposes for which this license is granted.

7. **Non-Discrimination.** Neither Party shall discriminate against any person relating to the performance under this Agreement because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or gender.

8. **Indemnification and Insurance.**

(a) Each Party shall hold harmless, defend, and indemnify the other Party and its elected officials, officers, employees, volunteers, and agents from any and all claims or liabilities caused by the indemnifying Party's performance of, or failure to perform, any term, condition, right, or privilege referred to herein.

(b) City shall hold harmless, defend, and indemnify District and its elected officials, officers, employees, volunteers, and agents from any and all claims or liabilities arising out of a recreational use of the Bridge by any person, except for claims or liabilities arising out of District's sole or gross negligence or willful misconduct.

(c) Except for claims or liabilities arising out of City's sole or gross negligence or willful misconduct, District shall hold harmless, defend, and indemnify City and its elected officials, officers, employees, volunteers, and agents from any and all claims or liabilities arising out of District's maintenance or use of the Bridge.

(d) Each Party shall, at all times during the term of this license, maintain in force adequate insurance policies and bonds as deemed necessary by that Party, to cover any and all claims herein. Both Parties further have the right and option to provide such insurance through self-insurance.

(e) The indemnification provisions included in this Section 8 shall survive the termination of this Agreement.

9. **District Paramount.**

(a) City acknowledges the title of District in and to the Bridge, and agrees never to assail or to resist said title.

(b) City acknowledges that the primary use of the Bridge is for the purposes of flood control, water conservation, drainage, and related maintenance thereof. City shall not use, or permit any use, of the Bridge in any manner that would materially impair said primary use by District. As such,

(i) District shall have the right to suspend temporarily or to limit the use of the Bridge by City and the public during such period of time as District determines that such suspension or limitation is necessary in the interest of public safety or for the construction, operation, or maintenance of any of its facilities; provided that, should such suspension or limitation be necessary, except in cases of emergency, District shall provide City with thirty (30) days' prior notice in writing; and

(ii) In the event that District's use of the Bridge reasonably requires some permanent use of any segment or segments of the Bridge which, by nature thereof, precludes recreational use of such segment or segments, District may, upon sixty (60) days' prior notice, revoke this license to the area reasonably required for such permanent primary use; provided that: District shall supply City with a map or drawing identifying the area(s) as to which this license is revoked; and District shall make reasonable efforts to accommodate the continued use of the Bridge for purposes specified above in Subsections (a), (b), or (e) of Section 3.

10. **Notice.** All notices to be given hereunder shall be in writing and shall be deemed given when deposited in the United States mail, postage prepaid, certified return receipt requested, or registered, addressed as follows, or to such other address as from time to time may be designated by a Party by written notice to the other Party:

To: City	City of Fremont 3300 Capitol Avenue Fremont, CA 94538 Attn: Community Services Director
To: District	Alameda County Flood Control and Water Conservation District 399 Elmhurst Street Hayward, CA 94544 Attn: Director of Public Works

11. **Attorneys' Fees.** If either Party initiates a judicial proceeding to enforce its rights under this Agreement, the prevailing party may recover its expenses (including reasonable attorneys' fees) incurred in connection with the proceeding, including any appeal, from the losing Party.

12. **Severability.** If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental objects and purposes of this Agreement are preserved, the remainder of this Agreement shall remain operative and binding on the Parties.

13. **Integration.** This Agreement, including its exhibits, contains the entire agreement between the Parties relating to the Parties' rights and obligations with respect to the Bridge, and supersedes any and all prior agreements, understandings, representations, and statements between the Parties, whether oral or written.

14. **Governing Law, Venue, and Forum.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Notwithstanding Code of Civil Procedure section 394, any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

15. **Third Party Beneficiaries.** Except as provided herein, there are no third party beneficiaries of this Agreement intended by the Parties.

16. **Construction.** Headings and subheadings are for ease of reference only, and will not affect the interpretation of this Agreement. This Agreement represents the contributions of both parties, each of whom is represented by competent counsel, so that the rule stated in Civil Code section 1654 that a contract be construed against its drafter shall have no application to the interpretation of the Agreement.

17. **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

18. **Relocation Assistance.** City is not eligible for benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and any subsequent amendments thereto or any that may occur during the term of the Agreement.

19. **Encumbrances.** City shall not encumber the licensed premises in any manner whatsoever.

20. **Hazardous Materials.** Hazardous materials are those substances listed in California Code of Regulations, Title 22, Section 66261.126, Appendix X, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of Article 11 of the above Code, as well as any other substance which poses a hazard to health or environment.

City shall not use, create, store or allow any such substances as part of the use under this Agreement.

In no case shall City cause or allow the deposit or disposal of any such substance as part of the use under this Agreement.

Breach of any of these covenants, terms and conditions shall give District authority to immediately terminate this Agreement. It is the intent of the parties hereto that the City shall be responsible for and bear the entire cost of removal and disposal of hazardous materials or waste introduced as a result of City's use of the Bridge. The City shall also be responsible for any cleanup and decontamination on or off the Bridge necessitated by such materials or waste.

City shall further hold District, and any officer or employee, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the premises during the City's period of use and possession.

21. **Surrender And Holding Over.** City covenants that at the termination of this Agreement, City will quit and surrender said subject real property in good state and condition.

22. **Amendments.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

23. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of District and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

CITY

BY: _____
Deputy City Manager

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

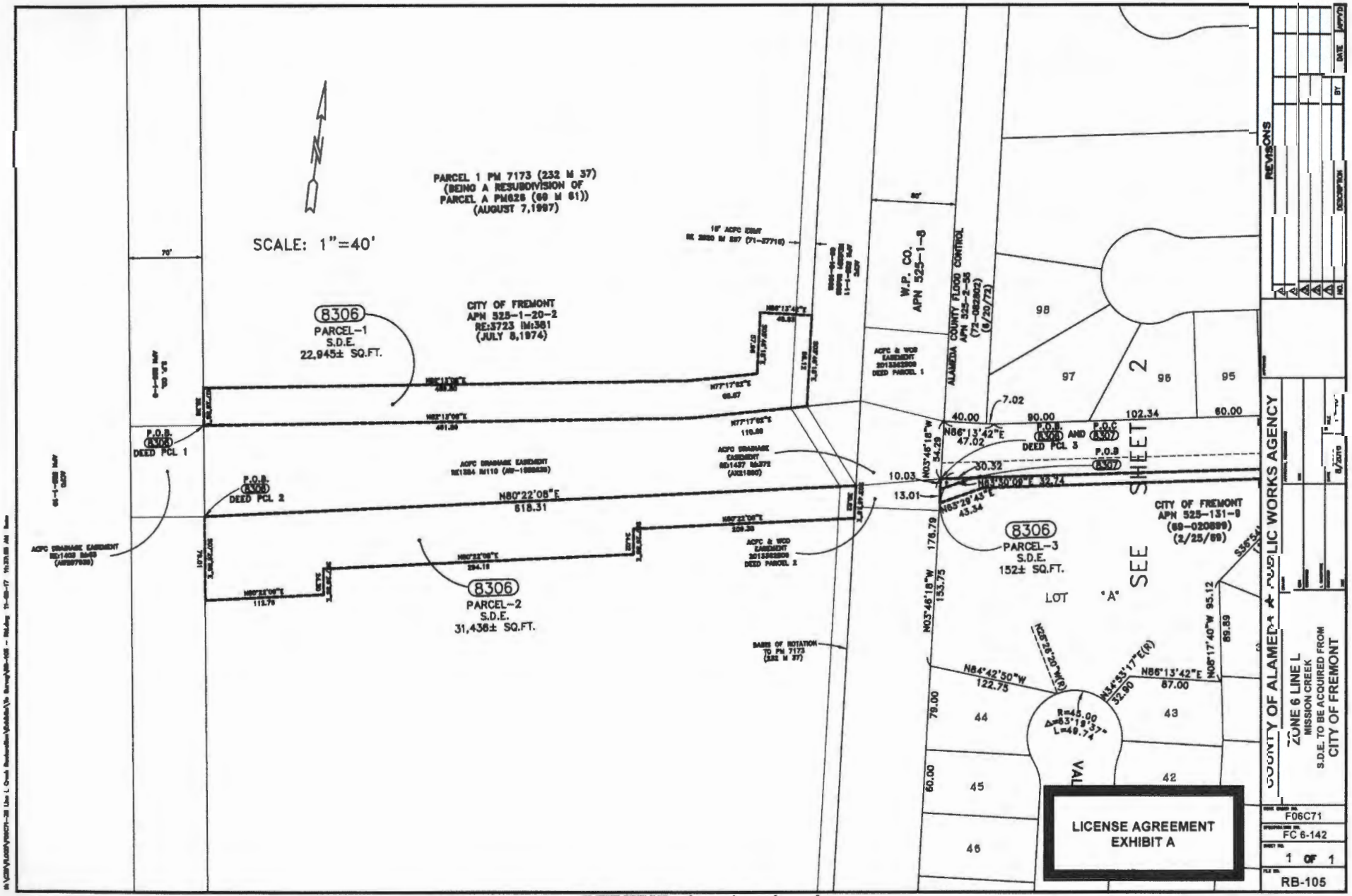
DISTRICT

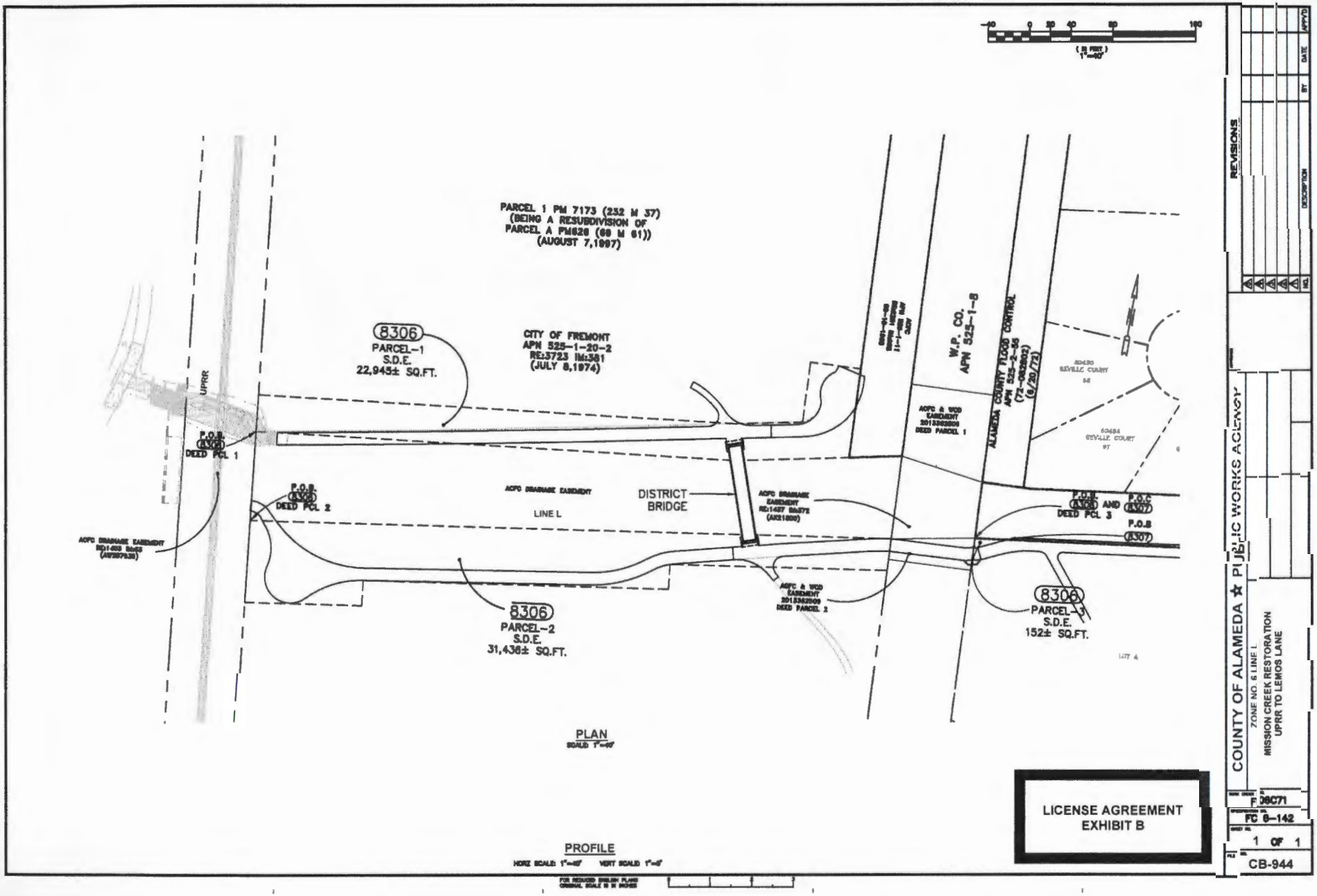
BY: _____
President, Board of Supervisors
WILMA CHAN

ATTEST: _____ Deputy
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
Donna R. Ziegler, County Counsel

By: _____
Kathy Lee, Deputy County Counsel


SCALE: 1"=40'
PARCEL 1 PM 7173 (232 M 37)
(BEING A RESUBDIVISION OF
PARCEL A PM628 (69 M 61))
(AUGUST 7,1987)
8306
PARCEL-1
S.D.E.
22,945± SQ.FT.
CITY OF FREMONT
APN 525-1-20-2
RE:3723 IM:381
(JULY 8,1974)
P.O.B.
DEED PCL 1
P.O.B.
DEED PCL 2
N80°22'08"E
518.31
8306
PARCEL-2
S.D.E.
31,436± SQ.FT.
W.P. CO.
APN 525-1-8
ALAMEDA COUNTY FLOOD CONTROL
APN 525-2-35
(72-082802)
(6/20/72)
P.O.B.
DEED PCL 3
AND
P.O.C
N86°13'42"E
47.02
8306
PARCEL-3
S.D.E.
152± SQ.FT.
CITY OF FREMONT
APN 525-131-9
(69-020899)
(2/25/69)
LOT "A"
SEE SHEET 2
N84°42'30"W
122.75
N86°13'42"E
87.00
R=45.00
Δ=83°19'37"
L=65.74
LICENSE AGREEMENT
EXHIBIT A
COUNTY OF ALAMEDA PUBLIC WORKS AGENCY
ZONE 6 LINE L
MISSION CREEK
S.D.E. TO BE ACQUIRED FROM
CITY OF FREMONT
REVISIONS
F06C71
FC 6-142
1 OF 1
RB-105


PARCEL 1 PM 7173 (232 M 37)
(BEING A RESUBDIVISION OF
PARCEL A PM628 (69 M 61))
(AUGUST 7,1997)
8306
PARCEL–1
S.D.E.
22,945± SQ.FT.
CITY OF FREMONT
APN 525–1–20–2
RE:3723 IM:381
(JULY 8,1974)
UPRR
P.O.B.
(8306)
DEED PCL 1
P.O.B.
(8306)
DEED PCL 2
ACFC DRAINAGE EASEMENT
LINE L
DISTRICT
BRIDGE
ACFC DRAINAGE
EASEMENT
RE:14477 BK:272
(AX21600)
ACFC DRAINAGE EASEMENT
RE:1403 BK:63
(AW287620)
W.P. CO.
APN 525–1–8
ALAMEDA COUNTY FLOOD CONTROL
APN 525–2–56
(72–063602)
(6/20/72)
ACFC & WCD
EASEMENT
2012342000
DEED PARCEL 1
ACFC & WCD
EASEMENT
2012342000
DEED PARCEL 2
60430
SEVILLE COURT
60484
SEVILLE COURT
P.O.B.
(8306)
DEED PCL 3
AND
P.O.C.
(8307)
P.O.B.
(8307)
8306
PARCEL–3
S.D.E.
152± SQ.FT.
8306
PARCEL–2
S.D.E.
31,436± SQ.FT.
LOT 4
PLAN
SCALE 1"=40'
PROFILE
HORZ SCALE 1"=40' VERT SCALE 1"=8'
FOR REDUCED ENGLISH PLANS
ORIGINAL SCALE IS IN INCHES
0 1 2
-10 0 20 40 80 160
(IN FEET)
1"=40'
REVISIONS
NO.
DESCRIPTION
BY
DATE
APP'D
CONSTRUCTION
MAINTENANCE
REAL ESTATE
REVISED BY
DATE
SURVEY
TRAFFIC
ENVIRONMENTAL
REVISED BY
DATE
COUNTY OF ALAMEDA ☆ PUBLIC WORKS AGENCY
ZONE NO. 6 LINE L
MISSION CREEK RESTORATION
UPRR TO LEMOS LANE
LICENSE AGREEMENT
EXHIBIT B
F 08C71
FC 6-142
1 OF 1
CB-944