



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
January 21, 2009**

**TO:** Hon. Mayor Schroder and City Councilmembers  
**FROM:** Veronica A. F. Nebb, Sr. Assistant City Attorney  
**SUBJECT:** East Bay Regional Park District First Amendment to License Agreement  
**DATE:** January 13, 2009

**RECOMMENDATION:**

Adopt Resolution Rescinding Resolution No. 098-08, approving the East Bay Regional Park District and City of Martinez revised First Amendment to License Agreement to Extend the 1983 License Agreement with East Bay Regional Parks District to Construct, Maintain and Operate a Portion of the California State Riding and Hiking Trail and Authorizing the City Manager to Execute Same.

**BACKGROUND:**

In 1983, the City of Martinez (City) and the East Bay Regional Park District (District) entered into a License Agreement whereby the City granted to the District a twenty five (25) year License Agreement for the purpose of licensing a portion of City property located along the State Riding and Hiking Trail in the City for the purposes of the District operating and maintaining the trail. The original License Agreement was due to expire in 2008 and the District desired to extend the License Agreement for an additional twenty five (25) year period to December 7, 2033. This extension was previously approved by the Council by the approval of a First Amendment to License Agreement at your December 3, 2008 meeting.

Subsequent to your approval, and prior to the approval of the First Amendment by the District, it was noted that the language in the First Amendment relating to sidewalk maintenance needed to be clarified so that it would be clear that in the area of the trail where sidewalk has replaced the trail, the sidewalk would be maintained in a manner consistent with state law and City policy and practice in the discretion of the City. Accordingly, a revised version of the First Amendment to License Agreement is before you.

**ACTION:**

Motion to adopt a Resolution Rescinding Resolution No. 098-08, approving the East Bay Regional Park District and City of Martinez revised First Amendment to extend the License Agreement, and authorize the City Manager to sign agreement.

Attachments

1. East Bay Regional Park District and City of Martinez First Amendment to License Agreement.
2. Resolution Rescinding Resolution #098-08.
3. Original 1983 License Agreement.

**APPROVED BY:**



City Manager

**EAST BAY REGIONAL PARK DISTRICT AND  
CITY OF MARTINEZ  
FIRST AMENDMENT TO LICENSE AGREEMENT**

- A. **Effective Date and Parties:** Effective December 3, 2008, the EAST BAY REGIONAL PARK DISTRICT, a California special district, organized and existing under the laws of the State of California, hereinafter called "**PARKS**," and the CITY OF MARTINEZ, a public corporation, organized and existing under the laws of the State of California, hereinafter called "CITY", mutually agree as follows:
- B. **Purpose:** On December 7, 1983, **PARKS** and CITY entered into a twenty-five (25) year License Agreement for the purpose of licensing a portion of **CITY's** property, together with the necessary appurtenances thereto, all hereinafter referred to as the "Premises," and located along the State Riding and Hiking Trail in the City of Martinez, California. The license area is as depicted in Exhibit "A".
- C. **Amendment to Agreement:** The License Agreement shall be amended as follows:
- 1) CITY agrees to extend the term of the License to PARKS for the Premises for a period of twenty-five (25) years, ending on December 7, **2033**.
  - 2) In the portions of the California State Riding and Hiking Trail where sidewalk improvements have replaced the original trail, Parks shall have no obligation to maintain the sidewalk, curb or gutter improvements. In accordance with California Streets and Highways Code Section 5610, said sidewalk improvements are to be maintained by the adjacent property owner. City will, in the exercise of its sole judgment, cause to be maintained, the sidewalk improvements in a manner generally consistent with its City sidewalk improvement maintenance policies and/or practices.
- D. **Effect:** Except as modified by this Amendment, the License Agreement dated December 7, 1983, shall remain in full force and effect.

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

**PARKS**

**EAST BAY REGIONAL PARK DISTRICT  
a California special district**

\_\_\_\_\_  
General Manager

Approved as to form:

By \_\_\_\_\_  
District Counsel

**CITY**

**CITY OF MARTINEZ  
a public corporation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
City Attorney

RESOLUTION NO. -09

RESCINDING RESOLUTION 08-98, APPROVING THE EAST BAY REGIONAL PARK DISTRICT AND CITY OF MARTINEZ FIRST AMENDMENT TO LICENSE AGREEMENT TO EXTEND THE 1983 LICENSE AGREEMENT WITH EAST BAY REGIONAL PARKS DISTRICT TO CONSTRUCT, MAINTAIN, AND OPERATE A PORTION OF THE CALIFORNIA STATE RIDING AND HIKING TRAIL AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME

**WHEREAS,** the City of Martinez (hereafter "City") entered into a 25-year License Agreement with East Bay Regional Parks District(hereafter "District"), for the purposes of allowing District to construct, maintain, and operate a portion of the California State Riding and Hiking Trail; and

**WHEREAS,** the Agreement provides for a 25-year extension to the license term upon the mutual consent of the parties; and

**WHEREAS,** City and District wish to amend said Agreement to extend the term for an additional 25 years.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Martinez hereby rescinds Resolution #098-08 and Approves the East Bay Regional Park District and City of Martinez First Amendment to License Agreement to Extend the 1983 License Agreement with East Bay Regional Parks District to Construct, Maintain and Operate a Portion of the California State Riding and Hiking Trail and Authorizes the City Manager to Execute said agreement as set forth in Exhibit A Attached hereto.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 21st day of January, 2009 by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

113 025/2008

LICENSE

(Not to be Recorded)

THIS AGREEMENT, made and entered into this 7th day of December, 1983, by and between CITY OF MARTINEZ, a public corporation, organized and existing under the laws of the State of California, hereinafter called Licensor, and EAST BAY REGIONAL PARK DISTRICT, a California special district organized and existing under the laws of the State of California, hereinafter called Licensee.

W I T N E S S E T H:

THAT LICENSOR, for a good and valuable consideration of \$10.00 receipt of which Licensor acknowledges and in further consideration of the faithful performance and observance by Licensee of all of the covenants and agreements herein contained, does hereby give, subject to all of the terms and conditions hereof to Licensee, a license for the construction, reconstruction, maintenance, removal, and use of a trail for the passage of pedestrians, equestrians and bicycles only, together with the necessary appurtenances thereto, all hereinafter referred to as the "trail", and located within the area indicated in blue on the drawing marked Exhibit "A", attached hereto and made a part hereof.

bs  
25  
2008

THE LICENSE above mentioned is granted by Licensor and accepted by Licensee upon the following terms and conditions and Licensee does hereby covenant with Licensor as follows:

1. Title. Licensee hereby acknowledges the title of Licensor in and to the real property above described and agrees never to assail or to resist such title. Said real property comprises public trails and open space located in the City of Martinez, Contra Costa County, State of California.

2. Term. Unless suspended or partially revoked as hereinafter set forth, this license to construct, operate and maintain a trail to be used by the general public shall terminate twenty-five (25) years from the date hereof. By mutual consent of the parties hereto, it may be extended for an additional twenty-five (25) year term.

Licensee shall have the right to terminate this License at any time upon one year's prior written notice. In the event of such early termination, or upon expiration of the term hereof, all improvements and facilities in the project area affixed to the land shall become the property of Licensor and all improvements and facilities which are not affixed to the land which were installed by Licensee shall be removed by Licensee.

3. Licensor Paramount. Licensor and Licensee acknowledge that the primary use of the property of Licensor is for trails and open space purposes and the use of the license area pursuant to this agreement is secondary and subordinate to said primary use. Licensee shall not, at any time, use or permit the public to use the licensed area in any manner that will materially interfere with or impair said primary use. Licensor shall have the right temporarily to suspend or to limit the use of the licensed

area by Licensee and the general public during such periods of time as Licensor determines that such suspension or limitation is necessary in the interest of public safety. Should such suspension or limitation be necessary, Licensor shall provide to Licensee thirty (30) days' previous notice in writing, except in cases of emergency repairs. Upon completion of any work by Licensor within the area identified as trail, Licensor shall restore the ground surface to its pre-existing grade and any facilities or improvements installed by Licensee including, but not limited to paving, landscaping, bridges or drainage structures, to their original condition.

4. Revocation. In the event Licensor's primary use of the real property reasonably requires some permanent use of a segment or segments of the real property which, by the nature thereof, precludes Licensee's use thereof, Licensor may, upon six months' prior notice, revoke this license as to the area reasonably required for such permanent primary use. Licensor shall supply Licensee with a map or drawing indentifying the area(s) as to which this license is so revoked. In the event of such revocation, Licensor will make every reasonable effort to provide an alternative trail route upon the property.

5. Maintenance. Upon completion of any of its works hereunder, Licensee shall maintain said trail in a clean and presentable condition, free from waste, and if Licensee fails so to keep said real property then, after thirty days prior written notice of the need therefor and upon Licensee's failure to perform the needed work, Licensor may perform the necessary work at the expense of Licensee, which expense Licensee agrees to pay to Licensor upon demand.

6. Indemnification. Each party agrees to indemnify, protect, and hold the other harmless from and against any and all claims, loss, expense (including attorneys' fees), causes of action and liability for damage to or loss of property, to whomsoever belonging, including property of the parties, and for injury to or death of any person, including employees, agents and contractors of the parties, to the extent same results from the negligent act or omission of the indemnitor. Such indemnification shall extend to the councilpersons, directors, officers, employees, agents and contractors of each of the parties.

7. Public Liability Insurance. Promptly after execution of this license, Licensee at its expense shall take out and maintain during the life of this license, such Public Liability Insurance as shall protect Licensor as an additional insured from claims which may arise in connection with operations under this license by Licensee, permittee, or user of Licensee or any person employed by Licensee performing operations for it. Said liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all operations under this license, use of owned or non-owned automobiles, products and completed operations. Said policy or policies shall cover as primary insurance and shall be endorsed to provide that other insurance maintained by Licensor shall not be called on to contribute to a loss covered by said policy or policies, and that Licensor will be notified at least thirty (30) days prior to any proposed cancellation or change in any of said policies.

The amounts of insurance so provided by Licensee shall not be less than the following:

Single Limit Coverage applying to Bodily and Personal Injury Liability and Property Damage or a combination . . . . . \$ 5,000,000

In order to effect the required coverage, the policy or policies must contain the following additional endorsements:

- a. Wherever the word "accident" appears in the policy or endorsement it shall be changed to "occurrence";
- b. Definition of "bodily injuries" shall be expanded to include mental injury and personal injury endorsement (including Invasion of Rights of Privacy) shall be attached;
- c. The policy must cover contractual liabilities relating to personal injuries of employees; exclusion of contract liabilities as to bodily injuries, personal injuries and property damage to and of employees must be eliminated from the basic policy and endorsements; and
- d. BROAD FORM, either domestic or Lloyd's form, property damage liability must be afforded.

Copies of Certificates. Copies of Certificates of Insurance shall be furnished to Licensor upon request. Thirty (30) days' notice of any change or cancellation of coverage shall be provided to Licensor.

Failure of Coverage. Failure, inability or refusal of Licensee to take out and maintain during the entire term of this license any or all of the insurance as aforesaid shall at the option of Licensor constitute an immediate breach of this license.

The Licensor and Licensee have the right and option to self-insure the requirements under this section upon written notice to the other party that they assume the obligation in the place and stead of any insurance carrier, any references to failure of coverage notwithstanding.

8. Re-Entry. Except in case of ordinary maintenance and emergency repairs, Licensee shall give to Licensor at least ten (10) days' notice in writing before entering upon the real property hereinabove described for the purposes of constructing, reconstructing, repairing or removing the trail or performing any work on or in connection with the trail or the operation thereof, and Licensee agrees to pay to Licensor upon demand the reasonable cost and expense incurred by Licensor in the maintenance of an inspector on said real property during said construction, reconstruction, repair or removal or the performance of said work.

9. In the event either party shall bring suit to compel performance of or to recover for breach of any covenant, agreement or condition herein contained, the prevailing party agrees to pay reasonable attorney's fees in addition to the amount of the judgment and costs.

10. All rights herein given to Licensee are subject to all existing rights, rights of way, reservations and easements by whomsoever held in and to said real property.

11. Assignment. No rights of Licensee hereunder shall be transferred or assigned unless the written consent of Licensor is first secured, provided that Licensee may assign its rights hereunder to any successor public agency. With that exception, this agreement and each and all of the covenants herein contained shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

12. Non-Motorized Use. The rights herein given are for the use of pedestrians, equestrians, and bicycles only and no type of motor driven vehicle shall be permitted on the trail, except those of the Licensee being used for maintenance, patrol or public safety measures. Licensee shall install such barricades as are necessary to discourage unauthorized access to motor driven vehicles and shall post signs at points of entry to the trail that such vehicles are prohibited. Licensee agrees to devote the same standards and level of public safety patrol and use to the regional trail within the License area as it is able to and does from time to time devote to its other regional recreation trails throughout its District.

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

14. Licensee agrees that it has not acquired nor will it hereafter acquire any rights or interest in said real property, nor does Licensee have nor will it obtain any right or claim to the use of said real property beyond those specifically given in this agreement.

15. (a) Licensee may perform grading work, install bridge foundations and bridge structure, install culverts where necessary for the crossing of drainage ditches, install a pathway, install and relocate fencing, trim trees, and utilize a portion of Licensor's property for a temporary construction area upon obtaining prior written permission from Licensor.

(b) Licensee may provide landscaping for the trail area providing that plant material used be limited to species approved by Licensor. Additional species or plans for irrigation systems shall require prior written consent from Licensor.

(c) Prior to the commencement of any of the work mentioned hereinabove, Licensee shall present its construction plans to Licensor for review and approval. Licensor agrees to review said plans within thirty (30) days and provide written approval or disapproval within that time. If Licensor does not provide written approval within thirty (30) days, it shall be conclusively deemed that approval to proceed has been given.

(d) Licensee to obtain all necessary permits and make all necessary reports.

16. Signs. Licensee shall install appropriate signs designating permitted uses by the general public, regulations governing such use, and specifically prohibiting operation of unauthorized motor vehicles.

17. Duty to Keep Clean. Licensee agrees to maintain the trail in a neat and clean condition and reasonably free from weeds. All weed abatement on the property covered by this license shall be made at the expense of Licensee.

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

"LICENSOR"

"LICENSEE"

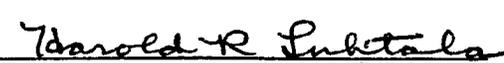
CITY OF MARTINEZ

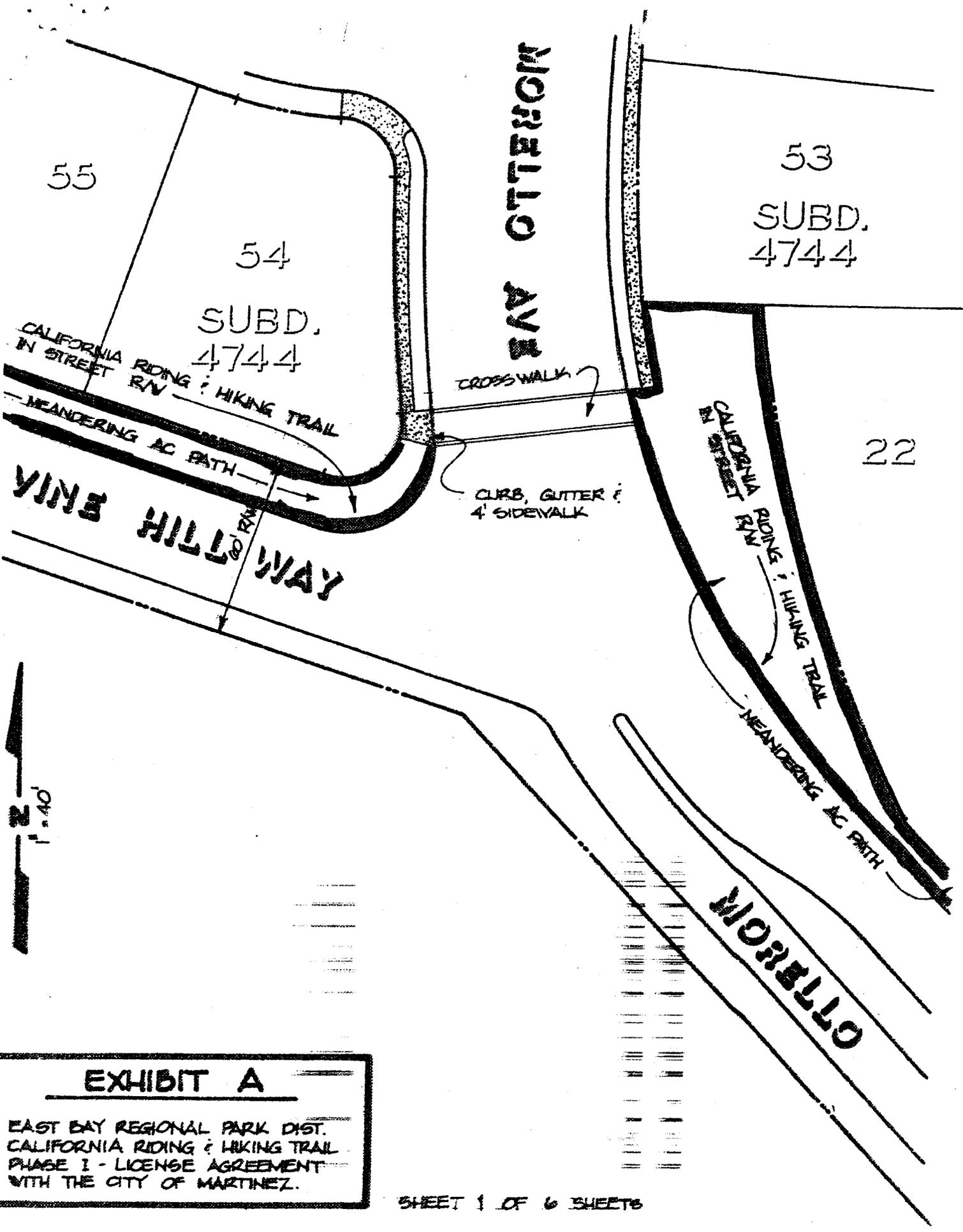
EAST BAY REGIONAL PARK DISTRICT

By 

By   
President

By   
Deputy

By   
Secretary



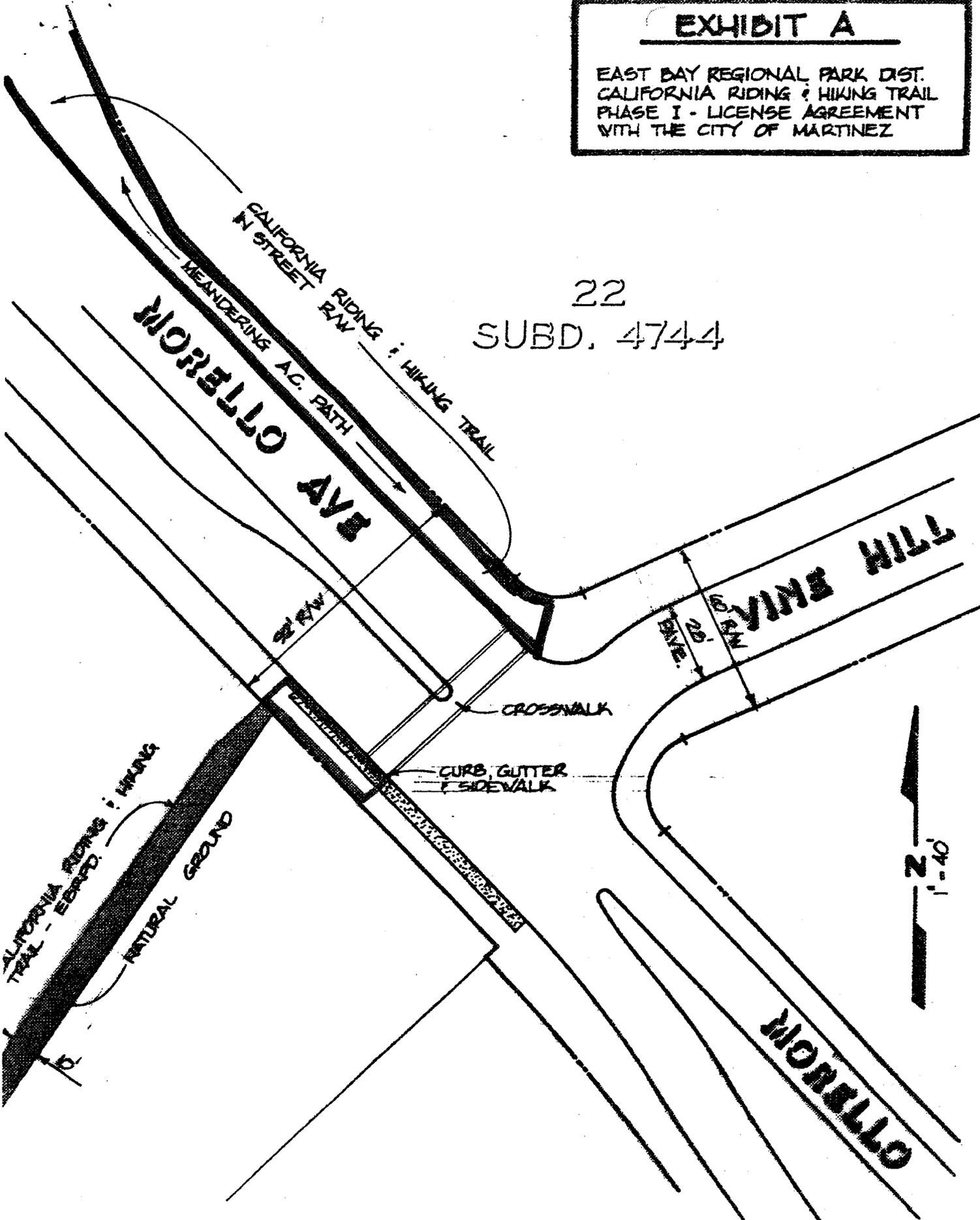
**EXHIBIT A**

EAST BAY REGIONAL PARK DIST.  
CALIFORNIA RIDING & HIKING TRAIL  
PHASE I - LICENSE AGREEMENT  
WITH THE CITY OF MARTINEZ.

**EXHIBIT A**

EAST BAY REGIONAL PARK DIST.  
CALIFORNIA RIDING & HIKING TRAIL  
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WITH THE CITY OF MARTINEZ

22  
SUBD. 4744



**OPEN SPACE**

PARCEL A  
SUBD. 5738

CALIFORNIA RIDING & HIKING TRAIL

④

180

181



CROSSWALK

**STONECREEK**

188

187

SUBD. 5738

40'  
CURB

10' RW

10'

10'

**MACALYBY**

**OPEN SPACE**

PARCEL B OF  
SUBD. 5738

**OPEN SPACE**

SUBD. 5139

⑥

**EXHIBIT A**

EAST BAY REGIONAL PARK DIST.  
CALIFORNIA RIDING & HIKING TRAIL  
PHASE I - LICENSE AGREEMENT  
WITH THE CITY OF MARTINEZ



110  
SUBD. 5127

ELDERWOOD

4' WIDE SIDEWALK BOTH  
SIDES OF STREET

OPEN SPACE

PARCEL A OF  
SUBD. 5127

OPEN SPACE

PARCEL B OF  
SUBD. 5127

60' R/W

40'  
CURB  
LINE

MARTINEZ  
CITY LIMITS

CALIFORNIA RIDING &  
HIKING TRAIL - EBRPD

PLEASANT HILL  
CITY LIMITS

36  
SUBD. 3556

ELDERWOOD

EXHIBIT A

EAST BAY REGIONAL PARK DIST.  
CALIFORNIA RIDING & HIKING TRAIL  
PHASE I - LICENSE AGREEMENT  
WITH THE CITY OF MARTINEZ

HIDDEN LAKES  
OPEN SPACE  
CITY OF MARTINEZ



**MORELLO**

EBRD RONG : HIKING TRAIL  
BL STREET RW

7' RW MARKS

CROSSWALK

CURB : GUTTER  
4' SIDEWALK

OPEN SPACE

PARCEL A  
SUBD. 5127

**CHILPAN  
CINCO**

8' RW

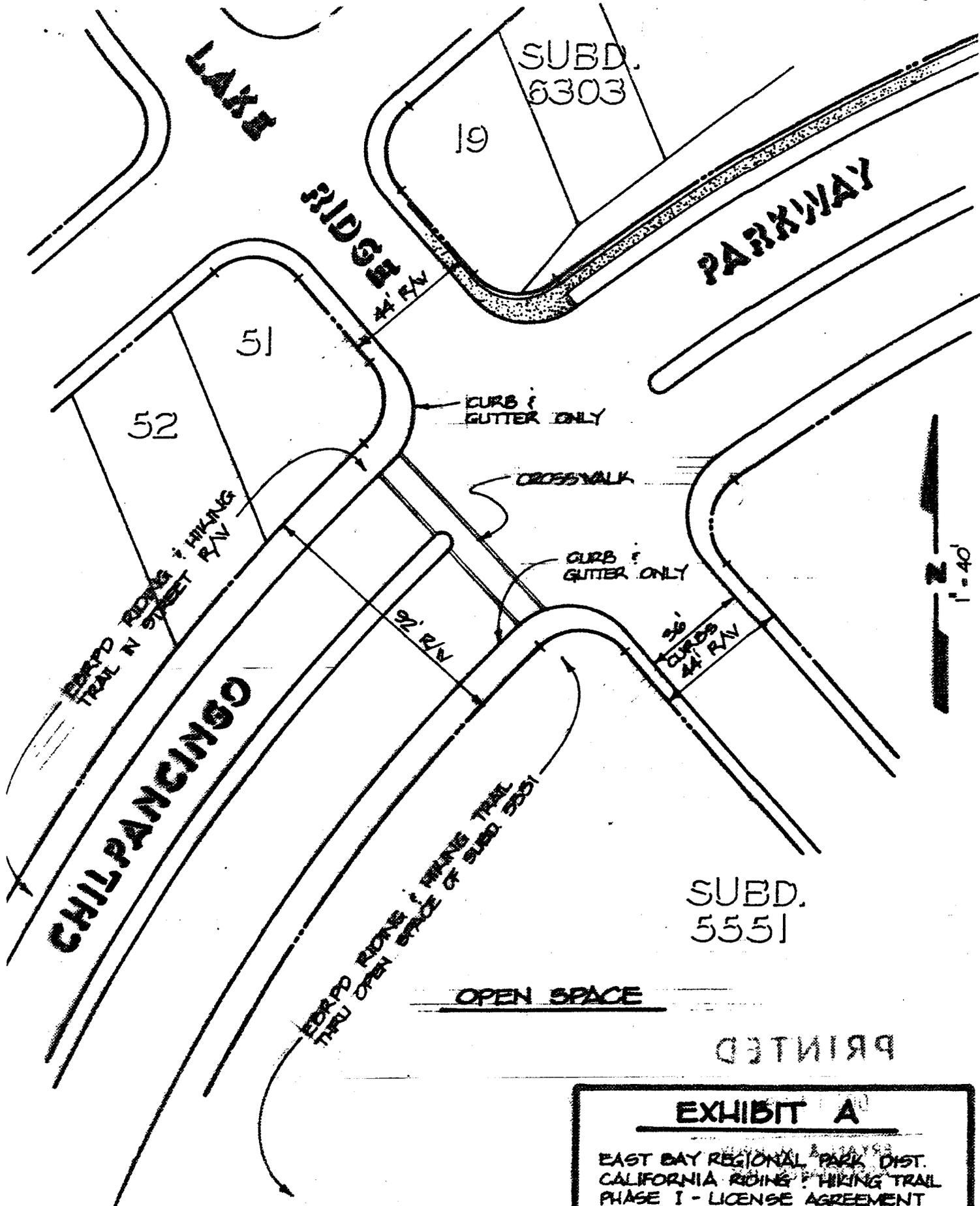
TOWNHOUSE  
DEVELOPMENT

EBRD RONG : HIKING TRAIL  
THRU OPEN SPACE OF SUBD. 5127

**MORELLO  
AVE**

EXHIBIT A

EAST BAY REGIONAL PARK DIST.  
CALIFORNIA RIDING & HIKING TRAIL  
PHASE I - LICENSE AGREEMENT  
WITH THE CITY OF MARTINEZ.



PRINTED

**EXHIBIT A**

EAST BAY REGIONAL PARK DIST.  
 CALIFORNIA RIDING & HIKING TRAIL  
 PHASE I - LICENSE AGREEMENT  
 WITH THE CITY OF MARTINEZ.