


# Livermore Area Recreation and Park District

## Staff Report

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TO: Chair Furst and Board of Directors

FROM: Mathew Fuzie, General Manager 

PREPARED BY: Patricia Lord, Assistant General Manager

DATE: September 11, 2019

SUBJECT: Recreational Trail Use License Agreement between LARPD and Zone 7 Water Agency

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**RECOMMENDATION:** That the Board of Directors adopt Resolution No. \_\_\_\_ approving the Recreational Trail Use License Agreement with Zone 7 Water Agency for the Patterson Ranch Trail Project, No. 719.

**BACKGROUND:** The Board approved the Patterson Ranch Trail Project, No. 719, also known as Zone 7 Trail Project with an approved total project budget of \$117,000 in FY 2018-2019. The funding was for installation of access gates and to conduct the IS/MND in compliance with California Environmental Quality Act (CEQA). The project scope includes building a three to five foot wide multi-use looped trail with each end of the trail on LARPD property with the majority of the trail going through the Patterson Ranch property, now owned by Zone 7. The proposed trail begins roughly 0.2 miles south of the Veteran's Affairs Hospital, winds through the Zone 7 property for approximately 1.97 miles, and terminates approximately 0.7 miles southwest of the hospital.

On June 26, 2019 the Board of Directors adopted a Resolution certifying the Final Initial Study and Mitigated Declaration; adopting the Mitigation Monitoring and Reporting Program and Findings; adopting the Zone 7 Trail project, and authorizing the General Manager to enter into an agreement with Zone 7 Water Agency for the Project.

A Draft Recreational Trail Use License Agreement was approved by the Zone 7 Water Agency at their August 21, 2019 Board meeting. At the August 28, 2019 LARPD Board Meeting, staff were directed to add clarifying language to the Draft Agreement. Attached is a copy of the amended Draft Recreation Trail Use License Agreement.

**ATTACHMENTS:** Draft Recreational Trail Use License Agreement

## **RECREATIONAL TRAIL USE LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (hereinafter "LICENSE"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Zone 7 of Alameda County Flood Control and Water Conservation District, a body corporate and politic ("ZONE 7 or ZONE 7 WATER AGENCY") and the Livermore Area Recreation and Park District, a California special district ("LARPD").

### RECITALS

- A. Both parties are authorized by the acts governing them to plan, improve, maintain and operate facilities and parks for public recreation; and
- B. LARPD has indicated its desire to construct and maintain public recreational trail improvements for the passage of pedestrians and equestrians within Zone 7-owned property as part of LARPD's planned "Trail" with the official trail name to be authorized by the LARPD Board of Directors; and
- C. Prior to LARPD's construction of the planned Trail, it will be required to perform the appropriate level of environmental review as required pursuant to the California Environmental Quality Act ("CEQA"); and
- D. ZONE 7 is agreeable to such use and environmental review by LARPD on specific portions of Zone 7-owned property ("LICENSED AREAS") and hereby grants a non-exclusive LICENSE for said use upon the following terms and conditions.

NOW, THEREFORE, BE IT MUTUALLY AGREED as follows:

1. Grant. During the term of this LICENSE, ZONE 7 issues a non-exclusive license to LARPD to allow LARPD to use the LICENSED AREAS for the Permitted Use defined below.
2. Permitted Use. Subject to the terms of this LICENSE, LARPD is permitted to conduct the required CEQA environmental review, construct, improve, maintain, repair and operate the LICENSED AREAS for public recreational trail purposes for the passage of pedestrians and equestrians. [Although the license agreement allows the passage of pedestrians and equestrians, it is not a condition that LARPD has to allow equestrians. It is LARPD's decision if and when LARPD allows the use of this trail for equestrians. If LARPD decides to allow equestrians in](#)

future, LARPD will inform Zone 7 but it will not require amending the license agreement. If LARPD decides in future to allow other uses not listed here, such as bicycling on the trail, that are covered under the environmental evaluation under CEQA for the project, the licensed agreement will need to be amended at that time.

3. Licensed Areas. The LICENSED AREAS are identified in Exhibit A (Location Map) and more particularly described below and delineated in Exhibits B which are attached hereto and made a part hereof

Portions of Parcels 99-525-2 and 99-550-2-3 along the LARPD trail shown in Exhibit B.

4. Additional Licensed Areas. Additional LICENSED AREAS, as mutually agreed upon by LARPD and ZONE 7, may be added by written amendment to this LICENSE.

5. License Fee. This LICENSE shall not require payment of any rent or other charges to ZONE 7 by LARPD for the use of the LICENSED AREAS for the purposes for which it is permitted.

6. Term of License.

- a. The term of this LICENSE shall be for twenty-five (25) years from the date of execution of this LICENSE with an option to LARPD of renewal for additional periods of twenty-five (25) years thereafter upon application to Zone 7 accompanied by a showing of faithful exercise to the covenants herein; either this original LICENSE or any renewal thereof shall be subject to termination as provided herein. Renewals of this LICENSE may be subject to updating the conditions on use of the LICENSED AREAS.
- b. ZONE 7, in its sole discretion, may terminate this LICENSE upon ninety (90) day notice should it be determined that a conflict with the use that is not able to be remedied per Section 7.f. has arisen or ZONE 7 decides to transfer ownership of the subject property associated with Licensed Areas.
- c. LARPD's obligations under Section 13 ("Indemnity") and Section 14 ("Waiver of Claims") shall survive the termination of this LICENSE.

7. Limitations.

- a. This LICENSE is granted solely for the purpose of authorizing LARPD to provide recreational trail uses at the LICENSED AREAS for general public use without discrimination as to place of national origin, ancestry, ethnicity, race, color, gender, age, marital status, pregnancy, sexual

orientation (real or perceived), medical condition, physical or mental disability, or religion.

- b. It is understood and agreed by LARPD that the primary purposes for which ZONE 7 has acquired and owns the LICENSED AREAS is for flood control, water management, and watershed management and that operations in furtherance of said purposes must take precedence over any and all other uses of the subject LICENSED AREAS. Watershed management activities may include but not limited to cattle grazing and any other use granted by Zone 7.
- c. ZONE 7 and the property lessees shall have all reasonable and necessary rights of entry to the subject LICENSED AREAS, including the right to alteration or repair and maintenance and operation for flood control, water management, and watershed management purposes. Use of the LICENSED AREAS by LARPD or the public in general, shall be at all times subject to the primary use of the aforesaid LICENSED AREAS for flood control, water management, and watershed management purposes and is subject to any other use granted by ZONE 7.
- d. LARPD shall obtain and comply with all required permits, agreements and/or regulatory approvals relating to the improvement, maintenance or operation of the LICENSED AREAS for recreational trail purposes including all federal, state, or local government requirements. This requirement includes compliance with CEQA, any required mitigation, as well as any necessary construction, building or use permits, including any progress inspections that may be required by any regulatory body.
- e. Prior to installation of any permanent facilities or landscape improvements or other trail improvement, LARPD shall submit plans and specifications and any related approvals required in 7.d. to ZONE 7 for review. The facility or improvements shall not be installed by LARPD without first obtaining written approval from ZONE 7's General Manager. Written approval shall not be unreasonably withheld and said approval shall be given unless ZONE 7, in its sole discretion, determines that such structures, facilities or improvements would interfere with the primary use of said areas for flood control, water management, and watershed management purposes.
- f. Should ZONE 7, in its sole discretion, reasonably determine that any of LARPD's activities or improvements, interfere with any ZONE 7 activities or operations, ZONE 7 may require LARPD to eliminate said interference, by providing LARPD with written notice of ZONE 7's requirement and the reasons therefore. Within 30 days of its receipt of such notice, the

Parties agree to meet in an effort to resolve the identified conflict in a manner that is satisfactory to both Parties. If no mutually satisfactory resolution is reached, LARPD shall have 30 days after said meeting to remedy the problem, as directed by ZONE 7. In the event LARPD fails to remedy or correct the problem within such thirty-day period, ZONE 7 may take such action as is reasonably necessary to remedy such interference at LARPD's sole expense.

- g. LARPD agrees to abide by any future LICENSED AREAS Rules and Regulations which may be adopted by ZONE 7's Board of Directors so long as said rules are consistent with the purposes for which this LICENSE has been granted. In the event that ZONE 7's Rules and Regulations conflict with LARPD's Ordinance 8, which governs the general public's use of LARPD's recreational facilities, LARPD may enforce Ordinance 8 unless ZONE 7 has given notice pursuant to section 7.f.
- h. LARPD agrees to accept this LICENSE to the LICENSED AREAS on an "as-is" basis, and ZONE 7 has no obligation for maintenance or repair of LICENSED AREAS during the term of this LICENSE, excepting only such damage caused to LARPD's improvements as a result of the sole active negligence or willful misconduct of ZONE 7 and/or its contractors when such actions were not necessary for the use of the property for flood control, water management, and watershed management purposes.
- i. LARPD shall be solely responsible for any damage or loss to LARPD's improvements resulting from theft or vandalism or resulting from any other cause. ZONE 7 shall not provide security for LARPD's improvements nor LICENSED AREA in general. ZONE 7 shall not be responsible for any loss or damage suffered by LARPD (including direct or indirect loss or damage, or incidental or consequential loss or damage) resulting from any damage to LARPD's improvements or loss of use thereof suffered in connection with this LICENSE, excepting only damage caused to LARPD's improvements as a result of the sole active negligence or willful misconduct of ZONE 7 and/or its contractors when such actions were not necessary for the use of the property for flood control, water management, and watershed management purposes.
- j. Suspension or Limitation of Use: ZONE 7 shall have the right, without liability to LARPD, to suspend any licensed uses temporarily or to limit this LICENSE and the use of the LICENSED AREAS by LARPD during such periods of time as ZONE 7 determines that such suspension or limitation is necessary in the interest of public safety, national security, or the operation or maintenance of its flood control, water management, and watershed management facilities. Zone 7 will provide notice of its

determination to suspend or limit use to LARPD either pursuant to Section 18 of this License Agreement or via electronic mail. Termination of this agreement is further defined in Section 6.

8. Trail Maintenance and Operation.

- a. LARPD shall cause any public recreational trail improvements to be constructed, maintained and operated in an orderly, safe, and sanitary manner at all times. Said public recreational trail improvements may include but are not limited to: pathways, bollards, benches, information & warning signs, fire prevention signs, no camping signs, landscaping, mowing & tree care along trail corridor, fences, gates, and any other improvements necessary to ensure trail users stay on the trail within LICENSESED AREAS and to keep the trail users out of streams and other water bodies on the property.
- b. The removal of litter, debris, and items which may have been introduced by users, from the LICENSED AREAS shall be the responsibility of LARPD at LARPD's sole cost. LARPD shall also be responsible, at its own cost, for activities necessary for the operation and maintenance of the trail and its corridors including but not limited to fire protection and response plan, vegetation management, removal of downed branches and trees, rodent and pest control, and repair damages including vandalism caused by the trail users to Zone 7 and its lessees' property.
- c. The LICENSED AREAS may be subject to damages such as landslides, erosion, subsidence, flooding, overgrown vegetation, overgrown trees, dead trees and other damages. As long as these damages do not interfere with flood control, water management, and watershed management activities, Zone 7 may not repair these damages. In the event that LARPD's use of the LICENSED AREAS is impacted by such damages, LARPD shall perform such repair at its own cost for proper and safe operation of the LICENSED AREAS. LARPD shall be responsible for closing the trail if needed and repairing the damages at LARPD's sole cost in a timely manner to make the trail safe for the users.
- d. In the performance of routine and/or emergency repair activities ZONE 7 will exercise reasonable care to avoid removal or damage to existing LARPD installed structures and improvements and LARPD, at its sole cost, shall be responsible for any reinstallation, repair or reconstruction work, excepting ZONE 7 shall be responsible for damage caused to LARPD's improvements as a result of ZONE 7 and/or its contractors' sole active negligence or willful misconduct.



- e. LARPD agrees to give ZONE 7 reasonable notice of its major maintenance activities that may conflict with ZONE 7's and the property lessees' operation and maintenance of its facilities, unless immediate action is necessary to preserve public safety, in which case notice of LARPD's activity shall be provided to Zone 7 as soon as practical. Major maintenance activities include but are not limited to work on any permanent structure, facility and/or significant vegetation work that may conflict with ZONE 7's environmental stewardship or operation and maintenance of its flood control, water management, and watershed management facilities.
  - f. LARPD shall adopt such rules and regulations as it deems necessary to facilitate the orderly and safe operation and control of the use of the LICENSED AREAS by the public for recreational trail purposes. If any such rule or regulation is contrary to the primary interest of flood control, water management, and watershed management including but not limited to cattle grazing, or is deemed by ZONE 7 to be adverse to its interest, ZONE 7 may give 60 days' notice of such fact to LARPD and LARPD shall change such rule or regulation in conformance with ZONE 7's request. The Parties agree to meet and discuss in an effort to resolve any such rule conflicts prior to notice being given by ZONE 7.
9. Other Leases for the Property. ZONE 7 has an existing Agricultural Grazing Lease for use of the subject property that includes the LICENSED AREAS. In future Zone 7 may amend the existing lease or enter into a new grazing lease or execute other lease agreements for the use of the property including LICENSED AREAS for other purposes, including but not limited to communication towers. LARPD acknowledges the existing Agricultural Grazing Lease Agreement and the potential for future lease agreements for the use of the subject property and agrees to coordinate any issues which may be in conflict between LARPD and the lessees.
10. Violations of Permitted Use. Should LARPD, its employees, contractors, subcontractors, agents, or the general public construct, install, operate or maintain any recreational trail improvements in violation of the terms of this LICENSE, or in violation of any of the approvals granted hereunder, ZONE 7 may direct LARPD, at LARPD's sole cost, to remove the improvements from the LICENSED AREAS or to take other remedial action, as ZONE 7 may, in its sole discretion, determine to be reasonably appropriate. LARPD shall be afforded a period of thirty (30) days within which to commence the cure of any such violations and comply with ZONE 7's directive. In the event LARPD fails to cure within the above stated period or immediate action is necessary to preserve public safety, ZONE 7 shall have the right to take any and all actions to remediate the LICENSED AREAS and LARPD shall reimburse ZONE 7 for all costs

associated therewith. Zone 7, as it reasonably determines, may extend the period as may be necessary to cure the default, provided that LARPD has commenced the cure within the thirty (30) day period.

11. Assignment. LARPD may assign all of its rights, duties and liabilities under this LICENSE to another public agency provided that such assignment is agreeable to ZONE 7 and provided further that such agency gives written notice to ZONE 7 that it accepts all of the rights, duties and liabilities imposed upon LARPD under this LICENSE.
12. Acknowledgment of Title. It is understood and agreed that LARPD, by the acceptance of this LICENSE and by the use or occupancy of said LICENSED AREAS, has not acquired and shall not acquire hereafter any property rights or interest in or to said LICENSED AREAS through this LICENSE, and that LARPD may use the LICENSED AREAS only as herein provided. ZONE 7 shall retain the right to sell or change areas, but in the event that LARPD is damaged by such action, LARPD shall be compensated for any damage to facilities which it has installed based on an agreed upon value.
13. Indemnity. LARPD shall defend, indemnify and hold harmless, ZONE 7 , Alameda County Flood Control and Water Conservation District, the County of Alameda, (ZONE 7 et.al) their directors, officers, employees, lessees and authorized volunteers from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damage and liabilities of any kind (collectively, "Liabilities"), arising in any manner out of: (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the LICENSED AREAS, or any part thereof, whether the person or property of LARPD, its officers, agents, employees, contractors and subcontractors (collectively, "Agents"), its invitees, guests or business visitors or third persons (collectively, "Invitees"), relating in any manner to any use or activity under the LICENSE and modifications thereto; (b) any failure by LARPD to faithfully observe or perform any of the terms, covenants or conditions of this LICENSE; or (c) the use of the LICENSED AREAS or any activities conducted thereon by LARPD, its Agents or Invitees. This provision applies except to the extent of Liabilities resulting directly from the sole negligence or willful misconduct of Indemnitees.

The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the Indemnitees, including, without limitation, damages for decrease in the value of the LICENSED AREAS and claims for damage or decreases in the value of adjoining property. LARPD shall have an immediate and independent obligation to defend ZONE 7 from any claim which actually or potentially falls within this indemnity provision even if such allegation



is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to LARPD by ZONE 7 and continues at all times thereafter. LARPD's obligations under this Section shall survive the expiration or termination of the LICENSE and modifications thereto.

14. Insurance Requirements. LARPD shall carry public liability and property damage insurance or monetary coverage in an amount which will adequately protect ZONE 7 from all such liabilities or claims, such amount to be no less than \$2,000,000 each person and \$2,000,000 each occurrence for bodily injury or death and \$5,000,000 on each occurrence for property damage. These amounts shall be reviewed by the parties every five years, and increased by no less than the amount of increase in the Consumer Price Index for the Oakland – San Francisco SMSA for the reporting period prior to the adjustment. Policies for such insurance shall name ZONE 7 of Alameda County Flood Control and Water Conservation District, Alameda County Flood Control and Water Conservation District, the County of Alameda, their officers, agents, leasees, and employees as additionally insured and copies thereof, certificates of payment of premiums thereon, or other proof of insurance or monetary coverage acceptable to ZONE 7, shall be furnished to ZONE 7 by LARPD. It is agreed that such insurance or monetary coverage as is afforded by the policy to ZONE 7 shall apply as primary insurance or monetary coverage. No other insurance or monetary coverage obtained by ZONE 7 shall be called upon to contribute to a loss covered by the policy.

LARPD has the right and option to self-insure the requirements under this Section 14 upon written notice to ZONE 7 that LARPD assumes the obligations in the place and stead of any insurance carrier, any reference to failure to coverage notwithstanding. In the event that LARPD elects to self-insure, LARPD shall provide to ZONE 7 a certificate or other evidence of self-insurance acceptable to ZONE 7.

15. Waiver of Claims. LARPD fully releases, waives, and discharges forever any and all claims, demands, rights and cause of action against, and covenants not to sue Indemnities, under any present or future laws, statutes, or regulations: (a) for any claim or event relating to the condition of the LICENSED AREAS or LARPD's use thereof; or (b) in the event that ZONE 7 exercises its right to suspend or terminate the LICENSE pursuant to Section 6 and 7.j.
16. Duties of ZONE 7. ZONE 7 agrees to give LARPD reasonable notice of flood control, water management, and watershed management related operations and maintenance activities which would affect recreational trail facilities or trail operations of LARPD and keep LARPD informed of any conditions which might result from such operations and maintenance activities. ZONE 7 further agrees to furnish any plans for improvements to the LICENSED AREAS to the LARPD for

review and comments. ZONE 7 will maintain the LICENSED AREAS to the extent necessary for flood control, water management and watershed management purposes. Repairs to flood, water management, and watershed management facilities/structures shall be the responsibility of ZONE 7 except when such repairs arise from damage caused to these facilities/structures by LARPD, its officers, agents, employees, contractors and subcontractors, its invitees, guests or business visitors or third persons. Such ZONE 7 responsibilities shall not relieve the LARPD from its Liabilities as described in Section 13.

17. Property Taxes. Pursuant to California Revenue and Taxation Code Section 107.6, notice is hereby given that LARPD is responsible for any possessory interest taxes that may be imposed as a result of, or related to, this LICENSE.

18. Notice. Any demand or notice which either party shall be required, or may desire to make upon or give to the other shall be in writing and shall be delivered personally upon the other or be sent by prepaid certified mail to the respective parties as follows:

ZONE 7: General Manager  
Zone 7, Alameda County Flood Control  
And Water Conservation District  
100 North Canyons Parkway  
Livermore, CA 94551

LARPD: General Manager  
Livermore Area Recreation and Park District  
4444 East Avenue  
Livermore, CA 94550

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

19. Miscellaneous.

a. This LICENSE constitutes the entire LICENSE and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this LICENSE must be in writing and executed by both parties.

b. If any provision of this LICENSE is invalid or unenforceable with respect to any party, the remainder of this LICENSE or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this LICENSE shall be valid and enforceable to the fullest extents permitted by law.

c. This LICENSE shall be governed by the laws of the State of California.

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

**ZONE 7:**

**LARPD:**

Zone 7 of Alameda County Flood Control Livermore Area Recreation and Park District and Water Conservation District

By: \_\_\_\_\_  
Valerie Pryor, General Manager

By: \_\_\_\_\_  
Mathew Fuzie, General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_  
Rod A. Attebery, General Counsel