

September 3, 2008

Agenda Item VII

Mountains Recreation and Conservation Authority

AGREEMENT NO. _____
BALLONA CREEK BETWEEN
NATIONAL BLVD. TO BALLONA
WETLANDS NORTH OF PACIFIC
AVENUE
FILE WITH PARCEL _____
THOMAS GUIDE 632 J7 & 702 C1-B2
ASSESSOR'S PARCEL NOS. (Portions):

SECOND DISTRICT

USE AGREEMENT

This Use Agreement, entered into on _____ 2008, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter referred to as DISTRICT),

and

MOUNTAINS RECREATION & CONSERVATION AUTHORITY, a joint powers authority of the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Semi Recreation and Park District (hereinafter referred to as MRCA).

W I T N E S S

WHEREAS, the DISTRICT owns fee and easement interests over portions of Ballona Creek from south of National Blvd. in the City of Culver City and extending southerly to the Ballona Wetlands north of Pacific Avenue, in the City of Los Angeles, (hereinafter referred to as PREMISES); and

WHEREAS, the MRCA proposes to use the PREMISES to install certain recreation-related improvements and maintain them along only those portions of the PREMISES improved by the MRCA in connection with the MRCA's project known as the Ballona Creek Trail and Bike Path Project which include, but are not limited to

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interpretive signs, decorative gates, fences, native plant landscaping, irrigation, seating, drinking fountains, bike racks, directional signs, and community bulletin boards (hereinafter referred to as the PROJECT IMPROVEMENTS); and

WHEREAS, the DISTRICT, while performing the primary function of flood control, watershed management, and water conservation, is willing to cooperate where feasible with the MRCA in the development of the PROJECT IMPROVEMENTS along portions of the PREMISES improved by the MRCA; and

WHEREAS, the DISTRICT and the MRCA desire to enter into this Use Agreement to establish the construction, operation, maintenance, and financial obligations of each party.

NOW, THEREFORE, in consideration of the promises and faithful performance by MRCA and DISTRICT of mutual covenants herein contained, for the period of time herein set forth, the DISTRICT and MRCA hereto mutually agree as follows:

SECTION I

MRCA AGREES:

1. To bear all costs to prepare plans and specifications and to construct the PROJECT IMPROVEMENTS along portions of the PREMISES and all other costs of any nature whatsoever which are necessary for the MRCA's use of the PREMISES.
2. To obtain approval of the plans and specifications for construction of any

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PROJECT IMPROVEMENTS, which is expected to be done in various phases, in the form of a no-fee permit from DISTRICT's Construction Division, Subdivisions and Permits Unit, prior to any construction. A copy of this Use Agreement will be incorporated and made part of the permit conditions. MRCA shall also secure DISTRICT'S prior written approval as set forth herein, should the need arise to make any substantial changes to the approved plans and specifications.

3. Bear all costs for the installation, operation, and maintenance of the PROJECT IMPROVEMENTS including but not limited to, landscaping and its irrigation system constructed or placed on the PREMISES by MRCA.
4. To provide DISTRICT with approved As-Built plans.
5. To keep, inspect, and maintain the PROJECT IMPROVEMENTS along only those portions of the PREMISES improved by the MRCA in a safe, clean, and orderly condition at all times and not permit rubbish, tin cans, bottles, garbage, etc., to accumulate at any time, nor to commit, suffer, or permit any waste PROJECT IMPROVEMENTS along only those portions of the PREMISES improved by the MRCA or any acts to be done in violation of any laws or ordinances.
6. To remove graffiti from the PROJECT IMPROVEMENTS along only those portions of the PREMISES improved by the MRCA any time MRCA discovers graffiti or are notified by DISTRICT. It must be removed within

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the following guidelines:

- Remove vulgar graffiti (i.e., profane, obscene, or racist) within 24 hours, Monday through Friday.
 - Remove other graffiti within 72 hours, Monday through Friday.
7. If property of DISTRICT is damaged by MRCA or any person entering only the portions of the PREMISES improved by the MRCA with the consent of the MRCA, either expressed or implied, MRCA shall replace or repair the damaged property within a reasonable time to the satisfaction of the DISTRICT or compensate the DISTRICT for the damage within ninety (120) days of billing.
8. All PROJECT IMPROVEMENTS installed will be subject to removal by MRCA at DISTRICT's request, and cost for removal and restoration of portions of the PREMISES improved by the MRCA shall be borne by MRCA. At the expiration or sooner termination of the Permit or Use Agreement, MRCA shall, at its own expense, restore the portions of the PREMISES improved by the MRCA to the satisfaction of DISTRICT, to a condition similar or better to that which existed on the Commencement Date (defined in Section III, subsection nine) reasonable wear and tear excepted. If MRCA fails to remove the Improvements and restore the portions of the PREMISES improved by the MRCA within thirty (30) days after receipt of notice by DISTRICT, DISTRICT may remove the PROJECT IMPROVEMENTS itself and MRCA agrees to reimburse

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DISTRICT for any and all expenses incurred within thirty (30) days of billing.

9. To close all gates and take all actions necessary to render only those portions of the PREMISES improved by the MRCA inaccessible to public access in the event MRCA abandons its operation and maintenance of the PROJECT IMPROVEMENTS, or during periods of precipitation, inclement weather, or when notified by the DISTRICT.
10. In accordance with Government Code Section 895.4, DISTRICT and MRCA agree to apportion responsibility and indemnification notwithstanding any other provision of law as follows:
 - MRCA agrees to indemnify, defend, and hold harmless DISTRICT, its governing board, officers, employees, engineers, contractors or agents against any claims of any nature whatsoever, arising from or in connection with the construction, reconstruction, maintenance, operation, or removal of any improvements constructed or maintained by MRCA on the PREMISES in or arising from any and all uses of the PREMISES by MRCA.
 - DISTRICT shall not be liable for any loss occurring due to the operation of the PROJECT IMPROVEMENTS on the PREMISES; injury, loss, death to any person whomsoever; any damage or destruction to the PROJECT IMPROVEMENTS and PREMISES, at

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any time, occasioned by or arising out of, indirectly, solely, or contributorily by: (a) any act, activity or omission of MRCA or anyone holding under MRCA; (b) the occupancy or use of the PROJECT IMPROVEMENTS and PREMISES or any part thereof, by or under MRCA; and/or (c) any state or condition of the PROJECT IMPROVEMENTS and PREMISES or any part thereof.

- MRCA waives all right to damages and releases DISTRICT of all liability for any loss, costs, or expenses MRCA may sustain as a result of damage to or destruction of MRCA's PROJECT IMPROVEMENTS on the PREMISES attributable to DISTRICT's flood control, water conservation function, or flooding caused by inadequacy or failure of DISTRICT's facilities.
- Each party agrees to include the other within the protection of any indemnification clause contained in any contract relating to the PROJECT IMPROVEMENTS and use of the PREMISES.

11. Without limiting MRCA's indemnification of the DISTRICT, parties acknowledge that the MRCA has obtained Comprehensive General Liability and Worker's Compensation. As minimum, MRCA shall procure maintain, in full force and effect during the term use of the PREMISES, coverage in the amounts equivalent to the following commercial insurance coverage:

- Comprehensive General Liability Insurance and property damage.

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TENANT shall procure General Aggregate Coverage not less than FIVE MILLION DOLLARS (\$5,000,000) annually and ONE MILLION DOLLARS (\$1,000,000) coverage per occurrence.

- Automobile Liability Insurance. MRCA shall procure such policy with coverage not less than ONE MILLION DOLLARS (\$1,000,000) per accident.
- Worker's Compensation Insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the DISTRICT and MRCA against any loss, claim or damage arising from any injuries or occupation diseases occurring to any worker employed by or any person retained by MRCA in the course of carrying out the work or services contemplated in this Use Agreement.
- The County of Los Angeles and Los Angeles County Flood Control District, its governing board, officers, agents, contractors, and employees shall be named as Additional Insured on all policies of liability insurance. MRCA shall furnish to DISTRICT a Certificate of Insurance evidencing MRCA's insurance coverage no later than (10) working days after execution of the Use Agreement, but before MRCA takes possession of the PREMISES. Upon renewal of said policy, MRCA shall furnish to DISTRICT a Certificate evidencing MRCA'S continued insurance coverage as required herein.

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- The DISTRICT may accept, should MRCA elect to provide, a Certificate of Self-Insurance. The limits of such self-insurance coverage shall meet or exceed those stated herein.
12. This Use Agreement is valid only to the extent of DISTRICT jurisdiction. Acquisition of permits required by other affected agencies and consent of underlying fee owner(s) of DISTRICT easement lands are the responsibility of the MRCA. Nothing contained in this Use Agreement shall be construed as a relinquishment of any rights now held by the DISTRICT.

DISTRICT AGREES:

1. To review the project plans and specifications for the construction of any PROJECT IMPROVEMENTS, which is expected to be done in various phases, in the form of a no-fee permit from DISTRICT's Construction Division, Subdivisions and Permits Unit, and notify MRCA of its approval.
2. To grant MRCA permission to use PREMISES for purposes stated herein.
3. To inspect only those portions of the PREMISES improved by the MRCA for compliance with approved plans and specifications.

SECTION III

IT IS MUTUALLY UNDERSTOOD AND AGREED:

1. MRCA and DISTRICT shall have no financial obligation to each other except as expressly provided in this Use Agreement or any Permit issued.
2. MRCA's use of the PREMISES shall be subordinate to the primary uses and purposes by DISTRICT for flood control, water conservation, watershed management, utility, and transportation, shall at no time interfere with DISTRICT's use of the PREMISES for such purposes. The DISTRICT reserves the right to cancel this Use Agreement or any Permit issued should the DISTRICT, in its opinion, develop a substantial

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incompatibility between the MRCA's permitted use herein and DISTRICT's uses for flood control water conservation, watershed management, utility, or transportation purposes, arising from any cause whatsoever. Said use shall be terminated thirty (30) days after notification in writing by the DISTRICT's Chief Engineer. MRCA also agrees to perform any required modifications or to relocate or remove any of its PROJECT IMPROVEMENTS within the PREMISES upon written receipt of notice from DISTRICT if in the sole opinion of the DISTRICT it is determined that MRCA's PROJECT IMPROVEMENTS interfere with the DISTRICT's primary function of flood control, waster conservation, and watershed management purposes.

3. Except as to fuels, lubricants and products associated with motorized vehicles, equipment, gardening or maintenance-related substances, or all of the above, MRCA shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the PREMISES without the prior written consent of the DISTRICT. In the event of spillage, leakage or escape of any hazardous substance onto the PREMISES, MRCA shall immediately notify DISTRICT by calling (800) 675-4357. If the spillage, leakage or escape was caused by MRCA, MRCA shall promptly remove any such substance from the PREMISES to the DISTRICT's satisfaction. In addition to removing any of MRCA's hazardous substances, MRCA shall be liable for and reimburse DISTRICT for any and all cost and expenses that DISTRICT may incur or suffer.

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Such responsibility shall include cost or expenses as DISTRICT may incur by reason of Federal, State, local or other authoritative agency's laws and regulations. Notwithstanding the foregoing, MRCA shall have no responsibility regarding any spill, leak or escape associated with any of DISTRICT's tenants, licensees or easement holders.

4. MRCA shall be the lead agency and will provide the necessary environmental clearances and any other permits as required by law.
5. Any amendment to this Use Agreement or Permit issued shall be executed by the DISTRICT's Chief Engineer or his designee.
6. The term of this Use Agreement shall be 20 years and shall commence upon execution by the DISTRICT (Commencement Date). This Use Agreement and any subsequent permit(s) affecting the PREMISES issued by the DISTRICT, shall terminate upon thirty (30) days' written notice from DISTRICT or designee to MRCA, at DISTRICT'S sole discretion.
7. DISTRICT, its Board, any authorized officer, engineer, employee, contractor, through its agents or representatives, shall have full right and authority to enter in and upon PREMISES at any and all reasonable times during the term of this Use Agreement all without interface or hindrance by MRCA, its agents, officers, contractors, employees, or representatives for the purpose of inspecting the same and to serve or post any notice required or permitted by law for protection of any right or interest of

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DISTRICT.

8. Notices.

All notices herein that are to be given or that may be given by either party shall be in writing and shall be deemed to have been given three business days after deposit in the U.S. Mail addressed as follows:

To DISTRICT:

Los Angeles County Flood Control District
c/o Department of Public Works
900 South Fremont Avenue, 10th Floor, Alhambra, CA 91803-1331
Telephone: (626) 458-7072
Fax: (626) 289-3618
Emergencies: (626) 458-HELP (4357)

To MRCA:

Mountains Recreation & Conservation Authority
Los Angeles River Center and Gardens
570 West Avenue Twenty-Six, Suite 100
Los Angeles, CA 90065
Telephone: (323) 221-9944
Fax: (323) 221-9934
ATTN: Ana Petrlc / Leslie Chan

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IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, has caused this Use Agreement to be subscribed by the Chair of the Board and the seal of the DISTRICT to be affixed hereto and attested by its executive Officer of the Board of Supervisors, and the MRCA has hereunto subscribed its name, the date and year first above written.

DISTRICT:

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic

By: _____

ATTEST:

REGISTRAR-RECORDER/COUNTY CLERK
of the County of Los Angeles

By: _____

MRCA:

MOUNTAINS RECREATION & CONSERVATION AUTHORITY, a joint powers authority of the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Semi Recreation and Park District

By: _____
Title Date

Date

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DR:gp
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