COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

GAIL FARBER, Director

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
http://dpw.lacounty.gov

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

March 3, 2009

IN REPLY PLEASE REFER TO FILE: MP-6

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

BALLONA CREEK - PARCELS 2, ET AL.
AGREEMENT BETWEEN
THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
AND THE MOUNTAINS RECREATION AND CONSERVATION AUTHORITY
IN THE CITIES OF CULVER CITY AND LOS ANGELES
AND UNINCORPORATED COMMUNITY OF PLAYA DEL REY
(SUPERVISORIAL DISTRICT 2)
(3 VOTES)

SUBJECT

This action is to approve an agreement for recreational purposes between the Los Angeles County Flood Control District and the Mountains Recreation and Conservation Authority, along portions of Ballona Creek, in the Cities of Culver City and Los Angeles and unincorporated community of Playa del Rey.

IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:

1. Find that this project is categorically exempt from the provisions of the California Environmental Quality Act.

2. Find that the 20-year Agreement for recreational purposes along Ballona Creek, Parcels 2, et al., in the Cities of Culver City and Los Angeles and unincorporated community of Playa del Rey, between the Los Angeles County Flood Control District and the Mountains Recreation and Conservation Authority will not interfere with the primary use and purposes of the Los Angeles County Flood Control District.

3. Instruct the Chairman to sign the Agreement, to be effective upon execution of Agreement by both parties, and authorize delivery to the Mountains Recreation and Conservation Authority.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to obtain your Board's approval of an agreement between the Los Angeles County Flood Control District (LACFCD) and the Mountains Recreation and Conservation Authority (MRCA) to use portions of Ballona Creek, located in the Cities of Culver City and Los Angeles and unincorporated County area of Playa del Rey for recreational purposes. The MRCA proposes to construct, operate, and maintain interpretive signs, decorative gates, fences, native plant landscaping, irrigation, seating, drinking fountains, bike racks, directional signs, community bulletin boards, and incidental recreational uses in connection with the MRCA's Ballona Creek Trail and Bike Path project.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Community Services (Goal 6). The improvements will enhance river aesthetics and recreational opportunities in the area, thereby improving quality of life for the residents of the County of Los Angeles.

FISCAL IMPACT

There will be no impact to the County General Fund.

There will be no monetary consideration paid for the Agreement since the use of the LACFCD property is for recreational purposes. The Los Angeles County Flood Control Act provides for the LACFCD property to be used for these purposes as long as the public recreational purposes are compatible with the LACFCD purposes of flood control, water quality, or water conservation.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Agreement is for the use of portions of Ballona Creek, from south of National Boulevard in Culver City, extending southerly in the City of Los Angeles, to the Ballona Wetlands, north of Pacific Avenue in the unincorporated community of Playa del Rey, as shown on the attached maps. The Agreement is for 20 years, effective upon execution of Agreement by both parties.

The Agreement is authorized by Section 2, Paragraphs 5 and 2 of the Los Angeles County Flood Control Act. Paragraph 5 authorizes the Flood Control District "to ... improve any works or provides that the improvement of existing facilities may involve...aesthetic treatment in order that the facility will be compatible with existing or planned development in the surrounding area of the improvement." Paragraph 2 authorizes the Flood Control District, "to provide, by agreement with other public agencies... for the recreational use of the facilities, and works of such district, which shall not interfere or be inconsistent with the primary use and purposes of such lands, facilities, and works of such district."

The attached Agreement has been reviewed and approved by County Counsel as to form.

ENVIRONMENTAL DOCUMENTATION

The MRCA's project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15301(c) and 15304 of the CEQA Guidelines and Class 1(e), Classes 1(x)(13) and (24), and Class 4 of the Environmental Reporting Procedures and Guidelines adopted by your Board on November 17, 1987. These exemptions provide for the minor alterations of existing public facilities and minor alterations in the condition of the land, such as grading, gardening, and landscaping that do not affect sensitive resources. The MRCA is the lead agency for this project and a Notice of Exemption was prepared by the MRCA and filed with the Registrar-Recorder/County Clerk on August 15, 2008.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This action allows for the dual use of the LACFCD right of way without interfering with the primary mission of the LACFCD.

CONCLUSION

Please return one adopted copy of this letter and two executed Agreements to the Department of Public Works, Mapping & Property Management Division.

Respectfully submitted,

for Patrick V. DeChellis
GAIL FARBER
Director of Public Works

GF:PAP:hp

Attachments (3)

c: Auditor-Controller (Accounting Division-Asset Management)
Chief Executive Office (Lari Sheehan)
County Counsel

BALLONA CREEK TRAIL & BIKE PATH

A project of:
Baldwin Hills Regional Conservation Authority
Mountains Recreation and Conservation Authority

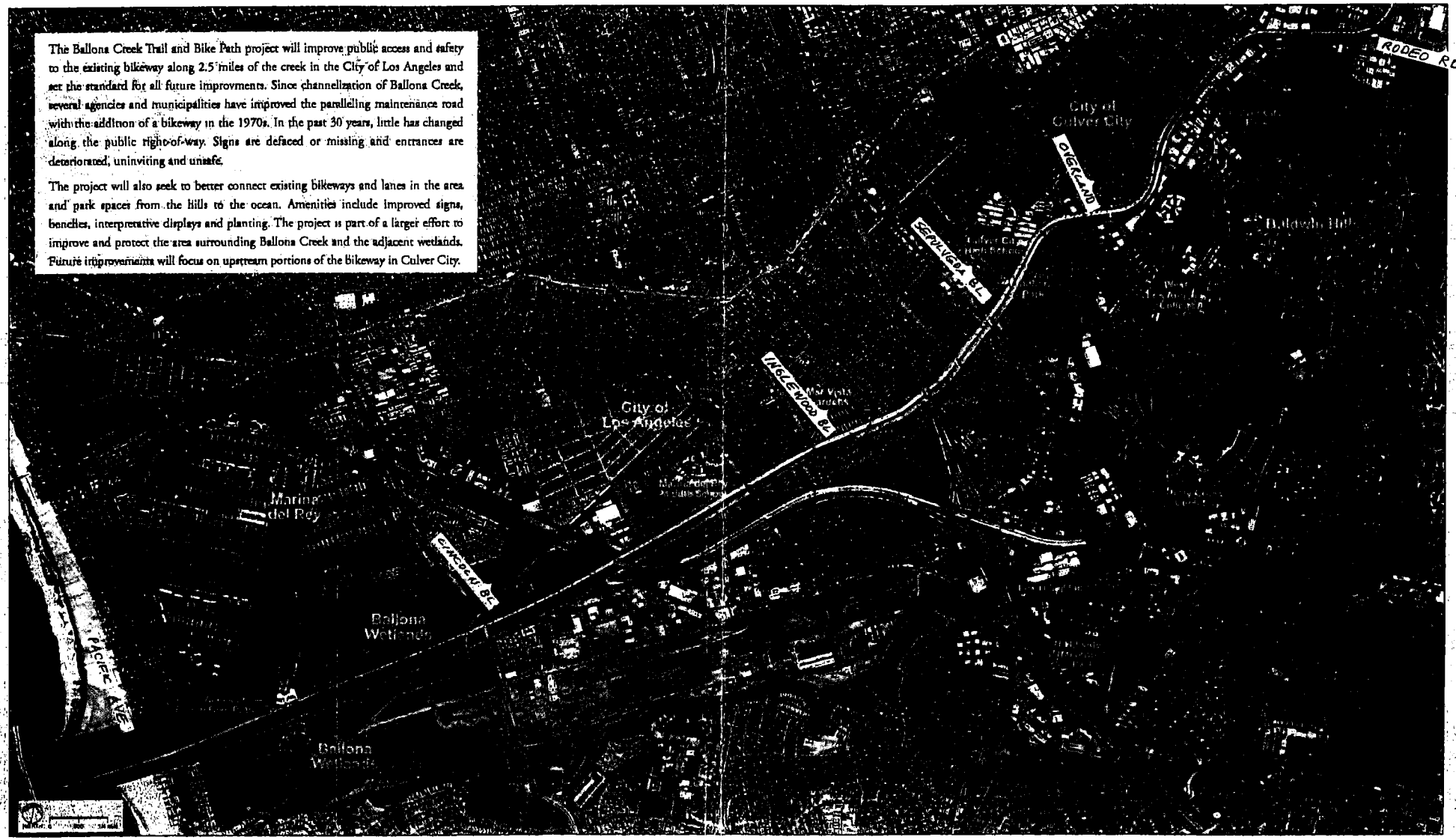
TG 672

Los Angeles River Center and Gardens
570 West Avenue Twenty-six, Suite 100
Los Angeles, California 90065

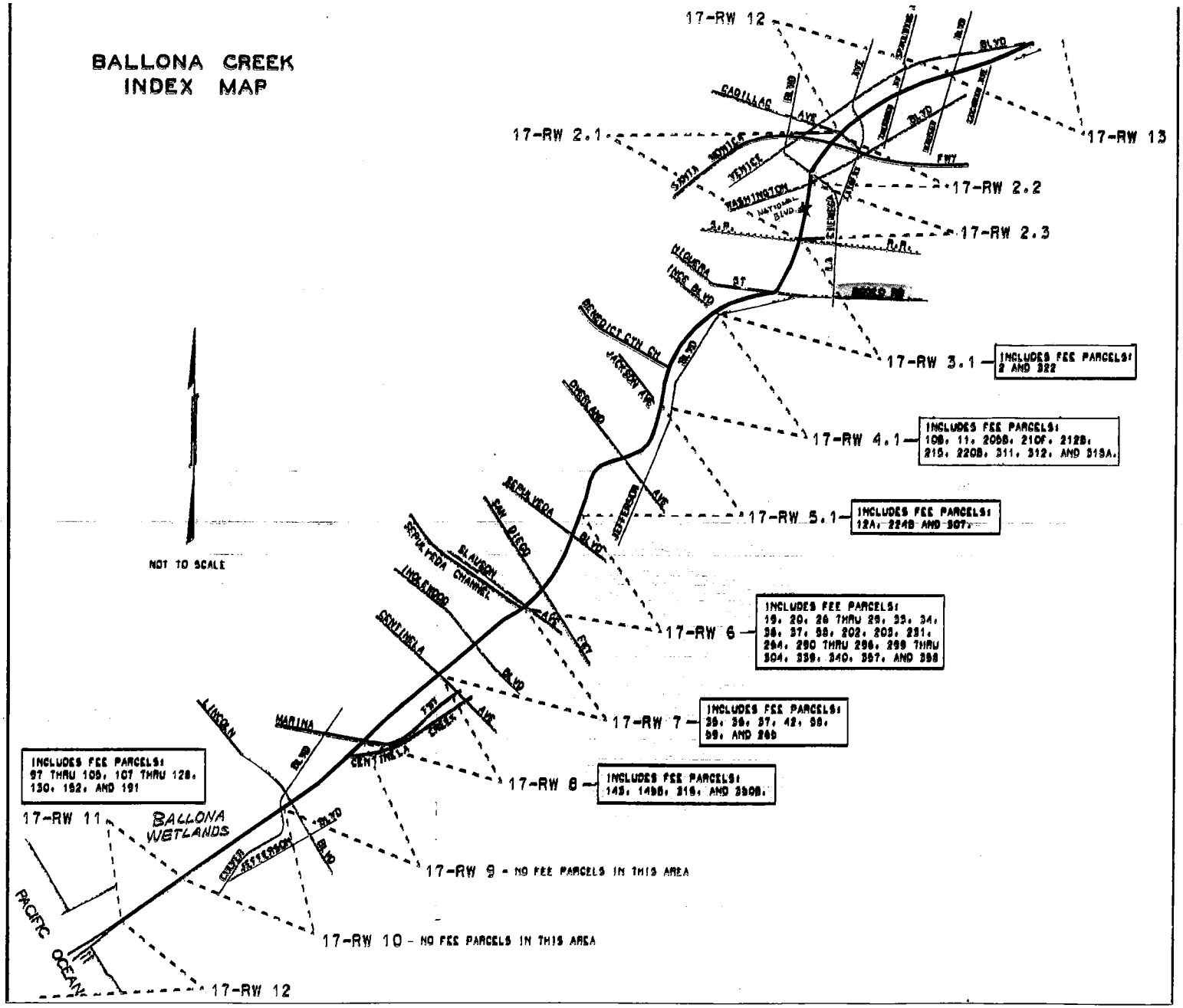
X NATIONAL BLVD

The Ballona Creek Trail and Bike Path project will improve public access and safety to the existing bikeway along 2.5 miles of the creek in the City of Los Angeles and set the standard for all future improvments. Since channelization of Ballona Creek, several agencies and municipalities have improved the parallelling maintenance road with the addition of a bikeway in the 1970s. In the past 30 years, little has changed along the public right-of-way. Signs are defaced or missing and entrances are deteriorated, uninviting and unsafe.

The project will also seek to better connect existing bikeways and lanes in the area and park spaces from the hills to the ocean. Amenities include improved signs, benches, interpretative displays and planting. The project is part of a larger effort to improve and protect the area surrounding Ballona Creek and the adjacent wetlands. Future improvements will focus on upstream portions of the bikeway in Culver City.



BALLONA CREEK INDEX MAP



AGREEMENT NO. 11-13-08
BALLONA CREEK BETWEEN NATIONAL
BOULEVARD TO BALLONA WETLANDS
NORTH OF PACIFIC AVENUE
FILE WITH PARCEL 2
RIGHT OF WAY MAP NO. 17-RW 3.1, ETC.
THOMAS GUIDE 632-J7, 672J1-C7, AND
702 C1-B2
SECOND DISTRICT

AGREEMENT

This Agreement, entered into on _____ 200__ 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 Simi Recreation and Park District (hereinafter referred to as MRCA)

W I T N E S S

WHEREAS, DISTRICT owns, operates, and maintains certain flood control facilities known as Ballona Creek, from south of National Boulevard 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 the PREMISES); and

WHEREAS, MRCA proposes to use portions of the PREMISES to install certain recreation-related improvements and maintain them along only those portions of the PREMISES improved by MRCA in connection with MRCA's project known as the Ballona Creek Trail and Bike Path Project which include, but are not limited to 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, DISTRICT, while performing the primary function of flood control, watershed management, and water conservation is willing to cooperate where feasible with MRCA in the development of the PROJECT IMPROVEMENTS along portions of the PREMISES improved by the MRCA; and

WHEREAS, DISTRICT and MRCA desire to enter into this 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, 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 MRCA's use of the PREMISES.

2. To obtain approval of the plans and specifications for construction of the PROJECT IMPROVEMENTS, which is expected to be done in various phases, in the form of a Permit from DISTRICT's Construction Division, Permits and Subdivisions Unit prior to any construction. A copy of this Agreement will be referenced in 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. To bear all costs for the installation, operation, and maintenance of the PROJECT IMPROVEMENTS, including but not limited to, landscaping, utilities, 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 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 on the PREMISES and the PROJECT IMPROVEMENTS along only those portions of the PREMISES improved by 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 the following guidelines:

   a) Remove vulgar graffiti (i.e., profane, obscene, or racist) within 24 hours, Monday through Friday.

b) Remove other graffiti within 72 hours, Monday through Friday.

7. If property of DISTRICT is damaged by MRCA or any person entering the portion of the PREMISES improved by MRCA, with the consent of MRCA, either expressed or implied, MRCA shall replace or repair the damaged property to the satisfaction of DISTRICT within thirty (30) days, if feasible, after MRCA is notified of the damages.

8. The PROJECT IMPROVEMENTS installed will be subject to removal by MRCA at DISTRICT's request under a separate permit, and all costs for removal and restoration of the PREMISES improved by MRCA, including inspections, shall be borne by MRCA. At the expiration or sooner termination of this Agreement, MRCA shall, at its own expense, restore the portions of the PREMISES improved by MRCA to the satisfaction of DISTRICT, to a condition similar to that which existed on the date of this Agreement, reasonable wear and tear excepted. If MRCA fails to remove the PROJECT IMPROVEMENTS and restore the portions of the PREMISES improved by MRCA within thirty (30) days after receipt of notice by DISTRICT, DISTRICT may remove the PROJECT IMPROVEMENTS itself and MRCA agrees to reimburse DISTRICT for any and all expenses incurred within thirty (30) days of billing.

9. 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:

   a) 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.

   b) 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 the PREMISES, at 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 the 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.

c) 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 the 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.

d) 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.

10. Without limiting MRCA's indemnification of DISTRICT, MRCA shall procure and maintain, in full force and effect at all times during MRCA's use of the PREMISES pursuant to this Agreement, insurance coverage in the amounts equivalent to the following commercial insurance coverage:

a) Comprehensive General Liability Insurance and property damage: MRCA 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.

b) Automobile Liability Insurance. MRCA shall procure such policy with coverage not less than ONE MILLION DOLLARS ($1,000,000) per accident.

c) 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 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 Agreement.

d) 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 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.

e) 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.

11. Portions of the existing bike path located within the PREMISES are maintained by the County of Los Angeles Department of Public Works, the City of Los Angeles, and the City of Culver City. Prior to any installation or subsequent modification of the PROJECT IMPROVEMENTS, MRCA shall submit plans and specifications for the PROJECT IMPROVEMENTS to each agency that has jurisdiction of the portion of the PREMISES affected by the PROJECT IMPROVEMENTS and shall obtain that agency's approval of the plans and specifications. Acquisition of permits required by other affected agencies is the responsibility of MRCA and shall be a condition precedent to the issuance of any Permit from the DISTRICT's Construction Division, Permits and Subdivisions Unit, as described in paragraph 2 of Section I, above. Nothing contained in the Agreement shall be construed as relinquishment of any rights now held by the DISTRICT.

SECTION II

DISTRICT AGREES:

1. To timely review the project plans and specifications for the PROJECT IMPROVEMENTS, which is expected to be done in various phases, in the form of a permit from DISTRICT's Construction Division, Subdivisions and Permits Unit, and notify MRCA of its approval.

2. To grant MRCA permission to use the PREMISES for purposes stated herein.

3. To inspect those portions of the PREMISES improved by MRCA for compliance with approved plans and specifications and terms of this Agreement.

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 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, and shall at no time interfere with DISTRICT's use of the PREMISES for such purposes. DISTRICT reserves the right to cancel this Agreement or any Permit issued should the DISTRICT determine, in its sole opinion, that a substantial incompatibility has developed 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 DISTRICT's Chief Engineer. MRCA also agrees to perform any required modifications or to relocate or remove any of the PROJECT IMPROVEMENTS within the PREMISES upon receipt of written notice from DISTRICT if in the sole opinion of the DISTRICT it is determined that MRCA's PROJECT IMPROVEMENTS interfere with DISTRICT's primary function of flood control, water 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 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 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. 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 in connection with the PROJECT IMPROVEMENTS.

5. Any amendment to this Agreement shall be executed by DISTRICT's Chief Engineer or his/her designee.

6. The term of this Agreement shall be 20 years and shall commence upon the date it has been executed by the last party to sign the Agreement. This Agreement 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, or 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 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 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: Joseph T. Edmiston

CW:adg
P6\USE AGRMT 11-13-8

ACKNOWLEDGMENTS

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 Agreement to be subscribed by the Chairman 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 MOUNTAINS RECREATION AND CONSERVATION AUTHORITY 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:
Sachi A. Hamai, Executive Officer
Of the Board of Supervisor of the County of Los Angeles

By : _____
Deputy

Approved as to Form:
RAYMOND G. FORTNER, JR.
County Counsel

By: _____
Deputy

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

Approved as to Form:
ROCKARD J. DELGADILLO
City Attorney

By: _____ Title _____ Date 11-19-08

By _____ Deputy

Contracts Officer Title _____ Date

ACKNOWLEDGMENT

State of California
County of Los Angeles)

On November 24, 2008 before me, Shannon Murray, Notary Public, personally appeared Cara Meyer, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

SHANNON MURRAY
Commission # 1641532
Notary Public - California
Los Angeles County
My Comm. Expires Jan 28, 2010