

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE ALHAMBRA, CALIFORNIA 91803-1331

http://dpw.lacounty.gov

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

October 13, 2015

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

Dear Supervisors:

USE AGREEMENT BETWEEN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF MONROVIA SAWPIT WASH PARCELS14, 26, 38, 51, 100, 107, 147, 212, 250, 254, AND 270 AND SAWPIT DEBRIS BASIN PARCELS 1, 5, 6, 17, 20-29, 34, 35, 37, AND 44 IN THE CITY OF MONROVIA (SUPERVISORIAL DISTRICT 5) (3 VOTES)

SUBJECT

This action is to approve a use agreement for public recreational purposes between the Los Angeles County Flood Control District and the City of Monrovia along portions of both Sawpit Wash and Sawpit Debris Basin in the City of Monrovia.

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

1. Find the City of Monrovia's Canyon Park Pedestrian Trail project categorically exempt from the provisions of the California Environmental Quality Act.

2. Find that the use agreement for public recreational purposes between the Los Angeles County Flood Control District and the City of Monrovia along portions of both Sawpit Wash and Sawpit Debris Basin in the City of Monrovia with a term of 25 years will not interfere or be inconsistent with the primary uses and purposes of the property by the Los Angeles County Flood Control District.

3. Delegate authority to the Chief Engineer of the Los Angeles County Flood Control District or her designee to sign the use agreement and authorize delivery to the City of Monrovia.



October 13, 2015 30

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ACTING EXECUTIVE OFFICER

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to obtain approval from the Board, acting as the governing body of the Los Angeles County Flood Control District, to enter into a use agreement with the City of Monrovia for the City's use of the District right of way along portions of Sawpit Wash Parcels 14, 26, 38, 51, 100, 107, 147, 212, 250, 254, and 270 and portions of Sawpit Debris Basin Parcels 1, 5, 6, 17, 20–29, 34, 35, 37, and 44, located in the City of Monrovia, for public recreational purposes, specifically the City's Canyon Park Pedestrian Trail. The use agreement to be executed will be substantially the same as enclosed.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness/Fiscal Sustainability (Goal 1). The City's proposed use will enhance river aesthetics and public recreational opportunities in the area, thereby improving the quality of life for the residents of the County of Los Angeles.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

There will be no monetary consideration paid for this use agreement since this use of the District right of way is for public recreational purposes. The Los Angeles County Flood Control Act provides for the District right of way to be used for public recreational purposes as long as these purposes are compatible with the District's use of the property for flood control, water quality, and water conservation.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Portions of Sawpit Wash Parcels 14, 26, 38, 51, 100, 107, 147, 212, 250, 254, and 270 and portions of Sawpit Debris Basin Parcels 1, 5, 6, 17, 20–29, 34, 35, 37, and 44 are located in the City of Monrovia, as shown on the map that is attached to the enclosed use agreement.

The City operates and maintains the Trail on these parcels and is proposing to make certain drainage improvements to the Trail.

The use agreement is for a term of 25 years and is authorized by Section 2, subsection 14, of the Los Angeles County Flood Control Act. This section authorizes the District "To provide, by agreement with other public agencies...for the recreational use of the lands, facilities, and works of the district, which shall not interfere or be inconsistent, with the primary use and purpose of the lands, facilities, and works by the district."

The use agreement has been reviewed and will be approved by County Counsel as to form prior to execution by the District.

ENVIRONMENTAL DOCUMENTATION

The City's activities under the use agreement are categorically exempt from the provisions of the California Environmental Quality Act (CEQA). The City's proposed activities meet the criteria set forth in Sections 15301, 15302, and 15303 of the CEQA Guidelines and Classes 1, 2, and 3 of the County's Environmental Reporting Procedures and Guidelines, Appendix G.

In addition, there are no cumulative impacts, unusual circumstances, or other limiting factors that would make the above-referenced exemptions inapplicable, based on the project records.

The City is the lead agency under CEQA and has filed a Notice of Exemption under Sections 15301, 15302, and 15303 of the CEQA Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This action allows for the recreational use and enjoyment of the District right of way without interfering with the primary mission of the District.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Survey/Mapping & Property Management Division.

Respectfully submitted,

Hail Farher

GAIL FARBER Director

GF:SGS:ds

Enclosures

c: Auditor-Controller (Accounting Division - Asset Management) Chief Executive Office (Rochelle Goff) County Counsel Executive Office Use Agreement No.: ______ Project Name: Sawpit Wash 14 et al; and Sawpit Debris Basin 1 et al ROW Map No(s): 35-RW 4.1; PL98 Sht.1(A); PL98 Sht.1(B); 35-RW 9.1; 196-RW1.1; 196-RW1.2; A.M.B.: 8526-002; 8527-028; 8518-038 8518-037; 8523-016; 8523-015; 8523-014 8523-019; 8520-008; 8501-004; 8501-010 8501-005; 8501-006; T.G.: 537-H7; 567-J4,J3,J2,H1,H2 Supervisorial District: FIFTH

USE AGREEMENT

This Use Agreement is entered into by and between the

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, herein referred to as "DISTRICT"

and

CITY OF MONROVIA, a Municipal Corporation in the State of California, hereinafter referred to as "CITY"

RECITALS

WHEREAS, DISTRICT owns fee and easement interests to portions of Sawpit Wash and Sawpit Debris Basin, both being flood control facilities generally located in the northeasterly portions of the City of Monrovia, State of California, specifically identified by DISTRICT as Sawpit Wash Parcel Nos. 14, 26, 38, 51, 100, 107, 147, 212, 250, 254 and 270 and Sawpit Debris Basin Parcel Nos. 1, 5, 6, 17, 20-29, 34, 35, 37 and 44 (hereinafter collectively referred to as "PREMISES"); and

WHEREAS, CITY has been operating a public recreational trail (hereinafter referred to as "TRAIL") on the PREMISES since 1995, which is depicted on Exhibit A and generally described as being a variable width, unimproved recreational trail with its most southerly trail opening at the dirt access road on the east bank of Sawpit Wash at Lemon Avenue; continuing northerly to Greystone Avenue, then continuing across the flood control channel at Greystone Avenue bridge, upstream along the west bank/dirt access road of Sawpit Wash onto the westerly asphalt concrete access road of the Sawpit Debris Basin; to the upper entry of the vehicular turnout and double drive gate entry to the Sawpit Debris Basin spillway at North Canyon Boulevard and

the CITY's Monrovia Canyon Park gate entry; then continuing northerly along a 6-8 foot wide trail paralleling North Canyon Boulevard, to the City owned land commonly known as Monrovia Canyon Park; specifically having an Assessor Identification Parcel Number of 8501-010-900.

WHEREAS, said TRAIL includes pedestrian entry points at Lemon Avenue, Wild Rose Avenue, Deodar Lane, Greystone Avenue, Norumbega Drive and North Canyon Boulevard, all in the City of Monrovia, State of California; ; and

WHEREAS, CITY proposes to construct, operate, and maintain certain drainage improvements on the PREMISES in connection with the Monrovia Canyon Park Pedestrian Trail Improvements project (hereinafter referred to as "Project"), including but not limited to those TRAIL improvements previously approved under DISTRICT Permit No. 95090-B, issued May 22, 1995, and a continuous mountable curb, drain inlet/spillways and the minor repair of the TRAIL, all of which are specifically shown on Exhibit B (hereafter collectively referred to as "IMPROVEMENTS").

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

SECTION 1. Authorized Use

- 1.1. CITY is authorized and permitted to use PREMISES for the continued operation, maintenance and use of the TRAIL and for the construction, operation, maintenance and use of IMPROVEMENTS in accordance with the terms and conditions of this Use Agreement. Any other use of the PREMISES by CITY is expressly prohibited.
- 1.2. CITY's use of the PREMISES shall be subordinate to the primary uses and purposes of the PREMISES for watershed management, including flood control, water conservation, and water quality purposes, by DISTRICT and others (pursuant to DISTRICT's permission), and CITY's use of the PREMISES shall at no time interfere with the use of PREMISES or the use of DISTRICT's adjacent property and/or improvements for such purposes.
- 1.3 DISTRICT reserves the right to use or allow others to use the PREMISES for any and all lawful purposes in addition to flood control, water conservation, and watershed management including, but not limited to, public transportation, utilities, roads, parks and recreation, and/or other related uses together with incidental rights of construction and installation of facilities, ingress and egress, operation and maintenance. The exercise of the rights reserved herein shall not be inconsistent with the CITY'S use or constitute unreasonable

interference.

1.4 This Use Agreement is valid only to the extent of DISTRICT'S jurisdiction. Acquisition of permits required by other affected agencies and the consent of underlying fee owner(s) other than DISTRICT'S, if any, are the responsibility of the CITY.

SECTION 2. Construction and Maintenance of Improvements

- 2.1. CITY understands and acknowledges that it is required to comply with the requirements set forth in the California Environmental Quality Act (CEQA) and the State CEQA guidelines prior to implementing IMPROVEMENTS and that CITY shall be the Lead Agency with respect to any and all CEQA compliance related to the IMPROVEMENTS. In addition to its other indemnification obligations as specified below, CITY hereby agrees to indemnify, defend, and hold harmless DISTRICT and COUNTY OF LOS ANGELES and their elected and appointed officers, employees, and agents from and against any and all claims and/or actions related to the IMPROVEMENTS that may be asserted by any third party or public agency alleging violations of CEQA or the CEQA Guidelines or the National Environmental Policy Act.
- 2.2. CITY shall bear all costs in connection with the construction of the IMPROVEMENTS, including preparation of plans and specifications and all construction costs and expenses.
- 2.3. Prior to commencement of any construction activity on PREMISES by or on behalf of CITY, CITY shall submit the plans and specification for the IMPROVEMENTS to, and shall apply for and obtain a permit from, the Land Development Division, Subdivision and Permits Unit, of the County of Los Angeles Department of Public Works. CITY shall also obtain DISTRICT's prior written approval should CITY propose to make any changes to the approved plans and specifications.
- 2.4. Upon completion of the construction of the IMPROVEMENTS, CITY shall provide DISTRICT with approved As-Built plans.
- 2.5. CITY shall keep, inspect, and maintain the PREMISES, the TRAIL and the IMPROVEMENTS in a safe, clean, and orderly condition at all times during the term of this Use Agreement and shall not permit trash and debris, including but not limited to rubbish, tin cans, bottles, and garbage to accumulate at any time, nor shall CITY commit, suffer, or permit any waste on the PREMISES, TRAIL or IMPROVEMENTS or permit any acts to be done in violation of any laws or ordinances thereon.
- 2.6. CITY shall remove graffiti from the PREMISES, TRAIL and IMPROVEMENTS and any walls, fences, and signs, which are located within the PREMISES, anytime graffiti is discovered by CITY or anytime

CITY is notified by DISTRICT. Graffiti must be removed within the following guidelines:

- 2.6.1 Remove vulgar graffiti (i.e., profane, obscene, or racist) within 24 hours, Monday through Friday.
- 2.6.2 Remove other graffiti within 72 hours, Monday through Friday.
- 2.7. CITY shall replace or repair any property of DISTRICT that becomes damaged by CITY or any person entering the PREMISES at CITY's invitation or with the consent of the CITY, either expressed or implied, within a reasonable time to the satisfaction of the DISTRICT or shall compensate the DISTRICT for the damage within thirty (30) days of the CITY's receipt of an invoice from DISTRICT.
- 2.8 CITY shall close all gates and take all actions necessary to render PREMISES inaccessible to public access in the event CITY abandons its operation and/or the maintenance of the TRAIL or IMPROVEMENTS or when the weather forecast for the next 24-hour period is for one (1) inch of rain or more, or when notified by the DISTRICT.

SECTION 3. Term

- 3.1. The term of this Use Agreement shall be for "twenty-five (25) years (Initial Term)", subject to the DISTRICT's right to terminate CITY's use as provided for in Section 4, below.
- 3.2 This Use Agreement shall expire at the end of the Initial Term provided, however, that DISTRICT may extend the term of this Use Agreement beyond the Initial Term, subject to such terms and conditions as it deems appropriate, upon receipt of a written request from CITY no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term.

SECTION 4. Termination of Use

- 4.1. DISTRICT shall have the right to cancel this Use Agreement and terminate CITY's use of PREMISES, pursuant to this Use Agreement, by giving CITY at least ninety (90) days prior written notice under the following conditions:
 - 4.1.1. DISTRICT proposes to implement a project on, or including, the PREMISES for watershed management purposes, including flood control, water conservation, and water quality ; and
 - 4.1.2. DISTRICT determines, in good faith, that the TRAIL, IMPROVEMENTS and/or CITY's use of the PREMISES, or any of them, would be substantially incompatible with the proposed

project; and

- 4.1.3. DISTRICT has notified CITY of the basis for DISTRICT's determination that a substantial incompatibility will exist and has provided CITY with a reasonable opportunity to propose modifications to the TRAIL, IMPROVEMENTS or CITY's use of the PREMISES that will eliminate the incompatibility.
- 4.2. DISTRICT shall have the right to cancel this Use Agreement and terminate CITY's use of the PREMISES if CITY breaches any term or condition of this Use Agreement and fails to cure said breach within a reasonable time after DISTRICT provides written notice of said breach to CITY.
- 4.3 DISTRICT shall have the right to immediately cancel and terminate CITY's use of the PREMISES, pursuant to this Use Agreement or, in the DISTRICT's sole discretion, to temporarily suspend such use in the event DISTRICT determines, in good faith, that it is necessary for DISTRICT to enter and take exclusive possession of the PREMISES in order to respond to an emergency, as defined in Public Contract Code Section 1102. In the event of an emergency, CITY shall bear any expenses associated with the cessation of such use, and shall have no rights or claims therefore against DISTRICT.
- 4.4. CITY shall have the right to cancel and terminate its use of the PREMISES, pursuant to this Use Agreement, for any reason by giving DISTRICT at least sixty (60) days prior written notice.

SECTION 5. Removal of Improvements and Restoration of Premises

- 5.1 Upon the expiration or sooner termination of this Use Agreement, CITY shall, at its own expense, remove the TRAIL and IMPROVEMENTS and restore the PREMISES, to a condition similar to or better than that which existed on the effective date of this Use Agreement, reasonable wear and tear excepted.
- 5.2 Prior to commencing the removal of the TRAIL or IMPROVEMENTS, or any of them, CITY shall apply for and obtain a District Permit from the Land Development Division, Subdivision and Permits Unit, of the County of Los Angeles Department of Public Works.
- 5.3. If CITY fails to remove the TRAIL or IMPROVEMENTS and restore the PREMISES within ninety (90) days of the expiration of this Use Agreement or sooner termination of CITY's use of the PREMISES, pursuant to this Use Agreement, DISTRICT may remove the TRAIL or IMPROVEMENTS.
- 5.4. If DISTRICT removes the TRAIL or IMPROVEMENTS pursuant to

Subsection 5.3, DISTRICT shall submit a billing invoice to CITY indicating the costs and expenses incurred by DISTRICT in connection with the removal of the TRAIL or IMPROVEMENTS and CITY shall reimburse DISTRICT all such costs and expenses for removing said TRAIL or IMPROVEMENTS within thirty (30) days of the billing invoice.

5.5 Notwithstanding the provisions of Section 5.1, the DISTRICT may consent, and direct the CITY in writing, to leave the TRAIL or IMPROVEMENTS in place for the benefit of the DISTRICT upon the expiration of this agreement. In such case the TRAIL or IMPROVEMENTS shall become the sole property and responsibility of the DISTRICT.

SECTION 6. Miscellaneous Terms and Conditions

- 6.1. Indemnification
 - 6.1.1 In accordance with Government Code Section 895.4, DISTRICT and USER Agree to apportion responsibility and indemnification, notwithstanding any other provision of law, as follows:
 - 6.1.1.1. CITY shall indemnify, defend, and hold DISTRICT and the County of Los Angeles, its governing board and their respective officers, employees, contractors and agents harmless from, and against, any claims, demands, liability, damages, costs, and expenses, including, without limitation, involving bodily injury, death, or personal injury of any person or property damage of any nature whatsoever, arising from, or related to, the construction, reconstruction, maintenance, operation, use or removal of the TRAIL, IMPROVEMENTS or CITY's breach of any term of this Use Agreement, except to the extent caused by the willful misconduct of the DISTRICT.
 - 6.1.1.2. DISTRICT shall indemnify, defend, and hold CITY, its governing Council and its officers, employees contractors and agents harmless from and against, any claims, demands, liability, damages, costs, and expenses including, without limitation, involving bodily injury, death, or personal injury of any person or property damage of any nature whatsoever, arising from or related to the construction, reconstruction, maintenance, operation, or removal of any improvements by DISTRICT on, above, or under the PREMISES or arising from any and all uses of the PREMISES by DISTRICT, except to the extent caused by the willful misconduct of the CITY.
 - 6.1.2. CITY releases DISTRICT and waives all rights to damages for any loss, costs, or expenses CITY may sustain as a result of any

damage to, or destruction of, the TRAIL, IMPROVEMENTS or to the PREMISES attributable to DISTRICT's watershed management activities, including any flood control, water conservation or water quality activities on, or adjacent to, the PREMISES, or attributable to any flooding caused by inadequacy or failure of DISTRICT's facilities, except to the extent caused by the DISTRICT'S willful misconduct.

- 6.1.3. Each party to this Use Agreement shall include the other within the protection of any indemnification clause contained in any ancillary contract relating to the PREMISES.
- 6.2. Without limiting CITY's indemnification of the DISTRICT, CITY shall procure and maintain, in full force and effect during the term of this Use Agreement, insurance policies providing for the following insurance coverage
 - Comprehensive general liability and property damage coverage with a combined single limit liability in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence.
 - Worker's Compensation coverage 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 CITY against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by, or any person retained by, CITY in the course of carrying out the work or services contemplated in this Agreement.
 - Automobile Liability Insurance: CITY shall procure such policy with coverage of not less than One Million Dollars (\$1,000,000) per accident.
 - 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 Insureds on all policies of liability insurance. CITY shall furnish to DISTRICT a Policy of Insurance evidencing CITY's insurance coverage no later than (10) working days after execution of the Agreement. Upon renewal of said policy, CITY shall furnish to DISTRICT a Certificate evidencing CITY's continued insurance coverage as required herein.
 - The DISTRICT may accept, should CITY elect to provide, a Certificate of Self-Insurance. The limits of such self-insurance

coverage shall meet or exceed those stated herein.

- 6.3. CITY and DISTRICT shall have no financial obligation to each other under this Use Agreement, except as herein expressly provided.
- 6.4. The parties expressly recognize and intend that in consideration of this Use Agreement, which is solely for CITY's benefit, the DISTRICT is not to incur any liability whatsoever for any injury, death, or property damage arising from any use of the PREMISES, TRAIL or the IMPROVEMENTS by persons who gain entry through openings or areas provided for CITY's use except as provided in Section 6.1.1.2.
- 6.5. DISTRICT, its Board, and 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 Use Agreement, all without interference or hindrance by CITY, 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.
- 6.6. Except as to fuels, lubricants, and products associated with motorized vehicles, equipment, gardening, or maintenance-related substances, or all of the above, CITY 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, which consent shall not be unreasonably denied. In the event of spillage, leakage, or escape of any hazardous substance onto the PREMISES, CITY shall immediately notify DISTRICT by calling (800) 675-4357. If the spillage, leakage, or escape was caused by CITY, CITY shall promptly remove any such substance from the PREMISES to the DISTRICT's satisfaction. In addition to removing any of CITY's hazardous substances, CITY shall be liable for and reimburse DISTRICT for any and all cost and expenses that DISTRICT may incur or suffer as a result thereof. 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, CITY shall have no responsibility regarding any spillage, leakage or escape associated with any of DISTRICT's tenants, licensees or easement holders.
- 6.7. Any notice to be given or document to be delivered by DISTRICT or CITY to the other party may be delivered in person to either party or by private courier or may be deposited in the United States mail, duly registered or certified, with postage prepaid and addressed to the party for whom intended as follows:

To DISTRICT: Los Angeles County Flood Control District Survey/Mapping & Property Management Division P.O. Box 1460 Alhambra, CA 91802-1460; or to: 900 South Fremont Avenue Alhambra, CA 91802-1331 Tel.: (626) 458-7023 or (626) 458-7072; Fax: (626) 979-5322 For emergencies, contact (626) 458-HELP (4357)

To CITY: City of Monrovia Department of Public Works Address: 600 S. Mountain Avenue Monrovia, CA 91016-3611 Attention: Carl E. Hassel, P.E., Director of Public Works Tel.: (626) 932-5575; Fax: (626) 932-5559

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This Use Agreement has been executed on behalf of DISTRICT and USER by and through their respective duly authorized representatives, on the ______ day of

_____20____.

DISTRICT:

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

GAIL FARBER **Director of Public Works**

By _____ STEVEN G. STEINHOFF Its Assistant Deputy Director Survey/Mapping & Property Management Division

APPROVED AS TO FORM

CITY:

MARY WICKHAM Interim County Counsel CITY OF MONROVIA, a Municipal Corporation

Ву _____

Ву _____

Date

Date

ATTEST:

City Clerk











