

MRCA  
Attachment  
May 6, 2015  
Agenda Item XII

Use Agreement No. 15-07  
Los Angeles River  
Parcels: 276, 352, 1300, 1308, 1512,1514, 1515,  
1516 and 2016  
Right-of-Way Map Nos. 19-RW16.2 and 16.3  
Assessor's Identification Nos. 2375-018-904,  
2375-021-903, and 2375-010-902  
T.G.: 562-E5, 562-F5  
Supervisorial District: 3

### 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

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY,  
a local government public entity,

herein referred to as MRCA

### RECITALS

WHEREAS, DISTRICT owns fee title to portions of the Los Angeles River generally located between Coldwater Canyon and Whitsett Avenue in the Studio City area of the City of Los Angeles, State of California and, as more particularly described in Exhibit A and shown on Exhibit B, attached hereto, and made a part hereof, hereafter referred to as PREMISES.

WHEREAS, MRCA proposes to use PREMISES for public recreational purposes, in connection with the Zev Yaroslavsky Greenway Project (the Project), previously known as the LA River – Studio City Park Project.

WHEREAS, Community Conservation Solutions proposes to secure all permits from the DISTRICT or other public agencies necessary to construct , certain improvements on PREMISES in connection with the Project, including but not limited to native plant landscaping, irrigation systems, fencing, signage, and recreational trails,

hereafter referred to as "IMPROVEMENTS" and the MRCA proposes to operate and maintain said IMPROVEMENTS on the PREMISES.

WHEREAS, the cost of said IMPROVEMENTS will be funded with grants from the Los Angeles County Regional Park and Open Space District, the Santa Monica Mountains Conservancy, the California Natural Resources Agency, and the California Department of Transportation, each of which contain provisions requiring maintenance, upkeep, and preservation of the IMPROVEMENTS, including the planting and maintenance of native habitat for the purposes of mitigating native habitat impacted by the widening of the I-405 in the Sepulveda Pass.

WHEREAS, the native habitat has been designed in an ecosystem-based manner in order to re-establish the native plant habitats of riparian woodland, chaparral and coastal sage scrub, and native grass bioswale, and in order for these habitats to survive and thrive, they require the maintenance of a combination of a diversity of species of native trees, shrubs, grasses, and other plants that are specific to each habitat type.

WHEREAS, the MRCA intends to provide full maintenance of the IMPROVEMENTS as constructed by Community Conservation Solutions and, as necessary, reconstructed or replaced by MRCA, and also intends to provide basic trash, weeds, and graffiti removal on the portions of the PREMISES not included in the plan for IMPROVEMENTS.

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

SECTION 1. Authorized Use

- 1.1. MRCA is authorized and permitted to use PREMISES for the operation, maintenance, use, and, as necessary, reconstruction of IMPROVEMENTS in accordance with the terms and conditions of this Use Agreement. Any other use of PREMISES by MRCA is expressly prohibited.
- 1.2. MRCA'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 MRCA'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 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 MRCA'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 MRCA.

## SECTION 2. Maintenance of Improvements

- 2.1. MRCA 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 commencement of its uses of the PREMISES and IMPROVEMENTS and that MRCA 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, MRCA 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 use of the PREMISES and IMPROVEMENTS authorized hereunder 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. MRCA shall bear responsibility for all costs in connection with the operation, maintenance, use and any reconstruction of the IMPROVEMENTS pursuant to Section 1 above, 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 MRCA, MRCA 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. MRCA shall also obtain DISTRICT's prior written approval should MRCA propose to make any changes to the approved plans and specifications.
- 2.4. Upon completion of any construction activities by MRCA, MRCA shall provide DISTRICT with approved As-Built plans.
- 2.5. MRCA shall keep, inspect, and maintain the PREMISES and the IMPROVEMENTS in a safe, clean, and orderly condition at all times. MRCA shall install and maintain signage with a MRCA phone number. MRCA shall handle complaints from phone calls, patrol PREMISES, and abate homeless encampments. MRCA shall adhere to the maintenance

guidelines established to comply with the habitat mitigation requirements of the grant agreements referenced in the Recitals above. During the term of this Use Agreement MRCA shall not permit trash and debris, including but not limited to rubbish, tin cans, bottles, and garbage to accumulate at any time, nor shall MRCA commit, suffer, or permit any waste on the PREMISES or IMPROVEMENTS or permit any acts to be done in violation of any laws or ordinances thereon.

- 2.6. MRCA shall remove graffiti from the PREMISES and IMPROVEMENTS and any walls, fences, and signs, which are located within the PREMISES, anytime graffiti is discovered by MRCA or anytime MRCA is notified by DISTRICT. The MRCA shall make all reasonable efforts to remove graffiti 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. MRCA shall replace or repair any property of DISTRICT located on the PREMISES that becomes damaged by MRCA or any person entering the PREMISES at MRCA's invitation or with the consent of the MRCA, either expressed or implied, with the exception of any person entering the Premises pursuant to Section 1.3 above, within a reasonable time to the satisfaction of the DISTRICT or shall compensate the DISTRICT for the damage within thirty (30) days of the MRCA's receipt of an invoice from DISTRICT.
- 2.8 MRCA shall close all gates and take all actions necessary to render the PREMISES inaccessible to public access in the event MRCA abandons its operation and maintenance of the 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. The Parties do not intend anything herein to limit any immunity and/or affirmative defense applicable or available to the MRCA or its use of the PREMISES and IMPROVEMENTS hereunder pursuant to any Federal, State, or local law, including, but not limited to, any provision of Chapter 2, Part 2, of Division 3.6, Title 1 of the California Government Code.
- 2.9 The MRCA is not required to maintain the land or any improvements on, under, or above the PREMISES currently maintained by the DISTRICT or the COUNTY OF LOS ANGELES or others, that predate or are not constructed or installed by Community Conservation Solutions or the MRCA pursuant to this Use Agreement and that are unrelated to or unchanged by the construction, use, or maintenance of the IMPROVEMENTS. The MRCA's maintenance responsibility is limited to

the maintenance of the PREMISES and the IMPROVEMENTS as described herein and is not responsible for abating any condition of the PREMISES not directly related to the IMPROVEMENTS.

### SECTION 3. Term

- 3.1. The term of this Use Agreement shall be for twenty (20) years, commencing upon the formal completion of the IMPROVEMENTS, subject to the DISTRICT's right to terminate MRCA'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, upon approval by the DISTRICT's Board of Supervisors, 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 MRCA 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 MRCA's use of PREMISES, pursuant to this Use Agreement, by giving MRCA 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 IMPROVEMENTS and/or MRCA's use of the PREMISES, or any of them, would be substantially incompatible with the proposed project; and
  - 4.1.3. DISTRICT has notified MRCA of the basis for DISTRICT's determination that a substantial incompatibility will exist and has provided MRCA with a reasonable opportunity to propose modifications to the IMPROVEMENTS or MRCA's use of the PREMISES that will eliminate the incompatibility.
- 4.2. DISTRICT shall have the right to cancel this Use Agreement and terminate MRCA's use of PREMISES, by giving MRCA at least sixty (60) days notice, if MRCA breaches any term or condition of this Use Agreement and fails to cure said breach within a reasonable time.
- 4.3. DISTRICT shall have the right to cancel this Use Agreement and terminate MRCA's use of the PREMISES if construction of the

IMPROVEMENTS has not been completed within five (5) years from the date this Use Agreement is fully executed.

- 4.4. DISTRICT shall have the right to immediately cancel and terminate MRCA's use of 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 PREMISES in order to respond to an emergency, as defined in Public Contract Code Section 1102. In the event of an emergency, MRCA shall bear any expenses associated with the cessation of such use, and shall have no rights or claims therefore against DISTRICT.
- 4.5. MRCA shall have the right to cancel and terminate its use of 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, MRCA shall, at its own expense, remove the 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.
- 5.4. Prior to commencing the removal of the IMPROVEMENTS , MRCA 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.
- 5.5. If MRCA fails to remove the IMPROVEMENTS and restore the PREMISES within ninety (90) days of the expiration of this Use Agreement or sooner termination of MRCA's use of PREMISES, pursuant to this Use Agreement, DISTRICT may remove the IMPROVEMENTS.
- 5.6. If DISTRICT removes the IMPROVEMENTS pursuant to Subsection 5.5, DISTRICT shall submit a billing invoice to MRCA indicating the costs and expenses incurred by DISTRICT in connection with the removal of the IMPROVEMENTS and MRCA shall reimburse DISTRICT all such costs and expenses for removing said IMPROVEMENTS within thirty (30) days of the billing invoice.

#### SECTION 6. Miscellaneous Terms and Conditions

- 6.1. Indemnification

6.1.1 In accordance with Government Code Section 895.4, DISTRICT and MRCA agree to apportion responsibility and indemnification, notwithstanding any other provision of laws, as follows:

6.1.1.1 MRCA shall indemnify, defend, and hold DISTRICT and the County of Los Angeles and their respective officers, employees, 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 (1) the maintenance, operation, or use of the PREMISES and IMPROVEMENTS, (2) any reconstruction of the IMPROVEMENTS, or (3) MRCA'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 MRCA and its officers, employees 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 MRCA.

6.1.2. MRCA releases DISTRICT and waives all rights to damages for any loss, costs, or expenses MRCA may sustain as a result of any damage to, or destruction of, the 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 MRCA's indemnification of the DISTRICT, MRCA 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 MRCA against any loss, claim, or damage arising from any injuries or occupational 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.
  - Automobile Liability Insurance: MRCA 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. MRCA shall furnish to DISTRICT a Policy 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.
- 6.3. MRCA 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 MRCA'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 or the IMPROVEMENTS by persons who gain entry through openings or areas provided for MRCA's use except as provided in Section 6.1.1.2. The above notwithstanding, the MRCA is not to incur any liability from any condition or improvement on, under, or above the PREMISES that predate or are not constructed or installed by Community Conservation Solutions or the MRCA pursuant to this Use Agreement and that are unrelated or unchanged by the construction, reconstruction, use, or maintenance of the IMPROVEMENTS. The parties intend that the MRCA's liability is limited to the operation, maintenance, and use of the PREMISES and the IMPROVEMENTS and an reconstruction of the IMPROVEMENTS as described herein.



- 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 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.
- 6.6. 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, which consent shall not be unreasonably denied. 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 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, MRCA 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 MRCA 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  
900 South Fremont Avenue  
Alhambra, CA 91802-1460  
P: (626) 458-7023 or (626) 458-7072; F: (626) 979-5322  
For emergencies, contact (626) 458-HELP (4357)

To MRCA:

Lisa Soghor  
Deputy Executive Officer

Mountains Recreation & Conservation Authority  
570 West Avenue 26, Suite 100  
Los Angeles, CA 90065  
P: (323) 221-9944 Ext. 105; F: (323) 221-9934  
[Lisa.soghor@mrca.ca.gov](mailto:Lisa.soghor@mrca.ca.gov)

For emergencies, contact  
Fernando Gomez  
Chief Ranger  
P: (310) 456-7049

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DRAFT

IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, as authorized by the Los Angeles County Code, Title 2, Division 2, Chapter 2.18, et seq., , and the MRCA has caused this Use Agreement to be executed by its duly authorized officer as of the date indicated below.

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

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

Steven G. Steinhoff  
Assistant Deputy Director

(SEAL)

MRCA:  
MOUNTAINS RECREATION & CONSERVATION  
AUTHORITY, a local government public entity

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

Lisa Soghor  
Deputy Executive Director

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

**ACKNOWLEDGMENT FORM**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(insert name of the officer)

personally appeared \_\_\_\_\_

\_\_\_\_\_

(insert name(s) and title(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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)

