

FACILITY MODIFICATION AGREEMENT NO.
MOA201600256
FACILITY NAME: Ballona Creek
FLOOD PERMIT NO. PCFL 201600256
APN NOS. 4221-024-907, 4221-024-908, 4221-024-909, 4221-024-910
408 PERMIT NO. Pending

AGREEMENT RE MODIFICATION OF FLOOD CONTROL FACILITY

This 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 & CONSERVATION AUTHORITY,

herein referred to as "PERMITTEE"

RECITALS

DISTRICT operates a flood control facility, known as Ballona Creek Channel, a portion of which is located adjacent to Milton Street between Westlawn Avenue and Mascagni Street in the City of Los Angeles, State of California ("FACILITY"); and

The FACILITY was constructed by the Federal Government and is subject to the provisions of 33 U.S.C. Section 408; and

PERMITTEE has made certain modifications to the FACILITY, including without limitation, the planting of 41 different types of plants on the FACILITY, that require approval from DISTRICT and also from the Federal Government pursuant to 33 U.S.C. Section 408; and

DISTRICT is the non-Federal sponsor of the FACILITY and has applied for a permit under 33 U.S.C. Section 408 ("408 PERMIT") on behalf of PERMITTEE, from the U.S. Army Corps of Engineers ("CORPS"), for a "Third Party" modification to the FACILITY; and

In response to the application for the 408 PERMIT, the CORPS sent a letter to DISTRICT, attached hereto as Exhibit 1, indicating that the newly planted vegetation does not pose an immediate risk to the FACILITY, but requesting that a risk assessment

be performed to determine whether such vegetation might pose a risk to the safety of the FACILITY in the future ("RISK ASSESSMENT"); and

PERMITTEE has applied for a permit from DISTRICT ("FLOOD PERMIT") for the modifications, and PERMITTEE and DISTRICT intend that the FLOOD PERMIT become operative concurrently with this Agreement; and

The FLOOD PERMIT is attached hereto as Exhibit 2;

NOW, THEREFORE, in consideration of these recitals, the DISTRICT and PERMITTEE mutually agree as follows:

SECTION 1. Permitted Activity

- 1.1. PERMITTEE's modifications to the FACILITY, as described in and authorized by the FLOOD PERMIT, shall hereinafter be referred to as the "PERMITTED ACTIVITY".
- 1.2. PERMITTEE shall operate and maintain the PERMITTED ACTIVITY in a safe, clean, and orderly condition at all times, and in a manner that will not interfere with the operation or maintenance of the FACILITY by DISTRICT. PERMITTEE shall obtain a separate permit from DISTRICT prior to performing any substantial repair work or any replacement or reconstruction work related to the PERMITTED ACTIVITY.
- 1.3. In the event PERMITTEE breaches PERMITTEE's obligations described in Section 1.2, or any of them, the following shall apply:
 - 1.3.1. In the event PERMITTEE fails to cure such breach within the time specified by DISTRICT in a written notice to PERMITTEE describing said breach, or within such other time period as may be agreed to by DISTRICT, DISTRICT may, in its sole discretion, take any and all actions reasonably necessary to prevent or mitigate any interference with DISTRICT's operation or maintenance of the FACILITY that may result from PERMITTEE's breach.
 - 1.3.2. Notwithstanding subsection 1.3.1, above, when immediate action is necessary to prevent injury to persons or damage to property or the environment caused by PERMITTEE's breach, DISTRICT may, in its sole discretion, take such immediate action without prior notice to PERMITTEE; provided, however, that DISTRICT shall provide notice to PERMITTEE as soon thereafter as is reasonably practical.
 - 1.3.3. If DISTRICT takes action(s) under subsections 1.3.1 or 1.3.2, above, DISTRICT shall submit a billing invoice to PERMITTEE indicating the costs and expenses reasonably incurred by

DISTRICT in connection with said action(s) and PERMITTEE shall reimburse DISTRICT all such costs and expenses within thirty (30) days of the billing invoice.

- 1.4. PERMITTEE acknowledges that other than the acquisition of the 408 PERMIT, the acquisition of any permits or other approvals for the operation and maintenance of the PERMITTED ACTIVITY required by other affected public agencies, and the consent of any affected owners or easement holder(s) other than the DISTRICT, are the responsibility of the PERMITTEE.
- 1.5. If PERMITTEE proposes to change the scope of the PERMITTED ACTIVITY from the plans and specifications that were approved in connection with the FLOOD PERMIT, PERMITTEE shall submit revised plans and specifications with the proposed revisions clearly identified, to DISTRICT. DISTRICT shall review the proposed revisions for conformance with DISTRICT's criteria and shall also request approval of the proposed revisions from the CORPS. If the proposed revisions are approved by both DISTRICT and the CORPS, DISTRICT shall provide written notice of the approval to PERMITTEE. PERMITTEE shall not implement any of the proposed revisions until it has received written approval from DISTRICT; however, any work or activity associated with the PERMITTED ACTIVITY that does not pertain to the proposed revisions may continue while the proposed revisions are being reviewed by DISTRICT and the CORPS, unless otherwise directed by either DISTRICT or the CORPS.
- 1.6. PERMITTEE shall allow DISTRICT and the CORPS to inspect the PERMITTED ACTIVITY at any reasonable time.
- 1.7. In the event that any property of DISTRICT becomes damaged as a result of the operation or maintenance of the PERMITTED ACTIVITY, PERMITTEE shall promptly obtain a separate permit from DISTRICT to repair or replace the damaged property and, at PERMITTEE's sole expense, repair and/or replace the damaged property to the reasonable satisfaction of DISTRICT. Should PERMITTEE fail to do so, DISTRICT may perform such work and submit a billing invoice to PERMITTEE indicating the costs and expenses reasonably incurred by DISTRICT in connection with said work. PERMITTEE shall pay all such costs and expenses within thirty (30) days of the date of the invoice.
- 1.8. Should PERMITTEE wish to cease its operation and maintenance of the PERMITTED ACTIVITY, it shall be permitted to do so only in accordance with the provisions described in Section 3, below.

- 1.9. The provisions of this Agreement are intended to be supplemental to the FLOOD PERMIT. The provisions of the FLOOD PERMIT shall be deemed to be incorporated into this Agreement, by reference, and PERMITTEE shall comply with all the provisions of both this Agreement and the provisions contained in the FLOOD PERMIT.

SECTION 2. Risk Assessment and 408 PERMIT

- 2.1. DISTRICT shall prepare the risk assessment requested by the CORPS.
- 2.2. PERMITTEE shall cooperate in good faith with DISTRICT, in connection with DISTRICT's preparation of the risk assessment, and shall promptly provide any pertinent documents or other information upon request by DISTRICT.
- 2.3. Once completed, DISTRICT shall submit the risk assessment to the CORPS for the CORPS' evaluation.
- 2.4. PERMITTEE shall be responsible for complying with any conditions or requirements imposed by the CORPS arising from the CORPS' evaluation of the risk assessment, including the complete or partial removal of the vegetation, if deemed necessary by the CORPS.
- 2.5. If the CORPS issues a 408 PERMIT for the PERMITTED ACTIVITY, PERMITTEE shall be responsible for complying with all "Third Party" terms and conditions of the 408 PERMIT.

SECTION 3. Termination of Permitted Activity

- 3.1. DISTRICT shall have the right to terminate the PERMITTED ACTIVITY in the event PERMITTEE breaches any term or condition of this Agreement and fails to cure such breach within the time specified by DISTRICT in a written notice to PERMITTEE describing said breach, or within such other time period as may be agreed to by DISTRICT.
- 3.2. PERMITTEE may terminate the PERMITTED ACTIVITY, for any reason, by giving DISTRICT at least thirty (30) days advance, written notice thereof.
- 3.3. If the PERMITTED ACTIVITY is terminated, DISTRICT may, in its sole discretion, provide to PERMITTEE a written notice to remove the PERMITTED ACTIVITY, and PERMITTEE shall remove the PERMITTED ACTIVITY and restore the FACILITY to the reasonable satisfaction of the DISTRICT, at no cost to DISTRICT, in accordance with the following:
 - 3.3.1. Prior to commencing the removal of the PERMITTED ACTIVITY, PERMITTEE shall apply for a separate permit therefor from DISTRICT. As part of DISTRICT's review of the permit application,

DISTRICT shall request the CORPS to modify the 408 PERMIT to authorize the removal of the PERMITTED ACTIVITY.

- 3.3.2. If the CORPS modifies the 408 PERMIT to authorize the removal of the PERMITTED ACTIVITY, and PERMITTEE's application is otherwise acceptable to DISTRICT, DISTRICT shall issue to PERMITTEE a permit to remove the PERMITTED ACTIVITY and restore the FACILITY. The removal/restoration permit shall include any conditions imposed by the CORPS as well as those conditions imposed by DISTRICT.
- 3.3.3. PERMITTEE shall complete the removal of the PERMITTED ACTIVITY and all restoration of the FACILITY within the time specified in the removal/restoration permit issued by DISTRICT, or within such other time period as may be agreed to by DISTRICT.
- 3.4. If PERMITTEE fails to remove the PERMITTED ACTIVITY and restore the FACILITY in accordance with subsection 3.3, DISTRICT may, in its sole discretion, remove the PERMITTED ACTIVITY and restore the FACILITY.
- 3.5. If DISTRICT removes the PERMITTED ACTIVITY and restores the FACILITY pursuant to subsection 3.4, DISTRICT shall submit a billing invoice to PERMITTEE indicating the costs and expenses reasonably incurred by DISTRICT in connection with said removal and restoration, and PERMITTEE shall reimburse DISTRICT all such costs and expenses within thirty (30) days of the billing invoice.

SECTION 4. Miscellaneous Terms and Conditions

4.1. Indemnification

- 4.1.1. PERMITTEE shall indemnify, defend, and hold DISTRICT, the County of Los Angeles (when acting on behalf of DISTRICT), and the United States, and their respective officers, employees, and agents harmless from and against any claims, demands, liability, damages, costs, and expenses, arising from or caused by the operation, maintenance, repair, rehabilitation, replacement, use or removal of the PERMITTED ACTIVITY, or any portion thereof; provided, however, that PERMITTEE's obligations to indemnify DISTRICT or the County of Los Angeles or the United States, respectively, shall not apply to any claim, demand, liability, damage, cost or expense to the extent that such claim, demand, liability, damage, cost or expense is caused by the fault or negligence of DISTRICT, or the County of Los Angeles, or the United States, respectively, or any of their respective officers, employees or agents.

- 4.1.2. PERMITTEE shall include DISTRICT, the County of Los Angeles and the United States within the protection of any indemnification clause contained in any ancillary contract relating to the PERMITTED ACTIVITY.
- 4.2. PERMITTEE acknowledges and agrees that the issuance of the FLOOD PERMIT and the 408 PERMIT does not excuse or exempt PERMITTEE's compliance with any federal, state or local law or regulation that is otherwise applicable to the operation or maintenance of the PERMITTED ACTIVITY.
- 4.3. PERMITTEE and DISTRICT shall have no financial obligation to each other under this Agreement, except as herein expressly provided.
- 4.4. Except as to fuels, lubricants and products associated with motorized vehicles, equipment, gardening or maintenance-related substances, or all of the above, PERMITTEE shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the FACILITY without the prior written consent of DISTRICT which consent shall not be unreasonably denied. In the event of spillage, leakage or escape or any hazardous substance onto the FACILITY, PERMITTEE shall immediately notify DISTRICT by calling (800) 675-4357. If the spillage, leakage or escape was caused by PERMITTEE, PERMITTEE shall promptly remove any such substance from the PREMISES to DISTRICT's satisfaction. In addition to removing any of PERMITTEE's hazardous substances, PERMITTEE 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, PERMITTEE shall have no responsibility regarding any spill, leak or escape to the extent caused by any of DISTRICT's tenants, licensees or easement holders.
- 4.5. Any notice to be given or document to be delivered by DISTRICT or PERMITTEE 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, with postage prepaid and addressed to the party for whom intended as follows:

To DISTRICT:

Los Angeles County Flood Control District
Attention Land Development Division - Permits
P.O. Box 1460
900 South Fremont Avenue, Alhambra, CA 91802-1460
tel.: (626) 458-3129
for Emergencies, contact (626) 458-HELP (4357)

To PERMITTEE:
[Permittee's name] _____

Attention: _____

- 4.6. Permittee represents and warrants that it has the authority to enter into this Agreement on behalf of itself and its successors and assigns, and this Agreement shall be binding upon Permittee's successors and assignees, as well as Permittee.

The parties hereto have caused this Agreement to be executed by and through their respective and duly authorized representatives on the day and year indicated below.

PERMITTEE: _____

By: _____ Date: _____

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

By: _____ Date: _____

DRAFT