

33596

AGREEMENT NO. _____
RIGHT-OF-WAY MAP NOS. 19-RW49, 19-RW50, AND 19-RW51
LOS ANGELES RIVER - PARCELS 6, 8, 9, AND 97

USE AGREEMENT

THIS USE AGREEMENT, made and entered into on this 21st day of October, 2014, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter referred to as LACFCD), and the CITY OF LONG BEACH, a municipal corporation (hereinafter referred to as CITY).

RECITALS

WHEREAS, LACFCD owns the fee title to certain properties along the east side of the Los Angeles River between Osgood Street and West Del Amo Boulevard in the City of Long Beach, as shown on Exhibit A attached hereto and made a part hereof. These properties, specifically excluding the adjacent County of Los Angeles equestrian trail and the LACFCD's adjacent flood control channel and appurtenant structures, shall hereinafter be referred to as PREMISES; and

WHEREAS, CITY desires to develop, construct, operate, and maintain open space, parkland, trails, and other recreational amenities in connection with the DeForest Wetlands Project (hereinafter referred to as AMENITIES) on PREMISES; and

WHEREAS, LACFCD and CITY are mutually interested in providing quality public open space, parkland, and other recreational amenities to CITY's residents; and

WHEREAS, LACFCD, while performing the primary functions of flood control and water conservation, is willing to cooperate where feasible with CITY in CITY's development, construction, operation, and maintenance of AMENITIES on PREMISES; and

WHEREAS, LACFCD and CITY entered into Use Agreement No. 13-01 on June 6, 2012, for the use of PREMISES; and

WHEREAS, LACFCD and CITY desire to enter into this USE AGREEMENT, to replace Agreement No. 13-01 and to establish the terms and conditions applicable to CITY's use of PREMISES for the development, construction, operation, and maintenance of AMENITIES.

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

1. AUTHORIZED USE:

- a. CITY is authorized and permitted to use PREMISES only for the development, construction, operation, maintenance, and use of AMENITIES and only in accordance with the terms and conditions of this USE AGREEMENT and any permit obtained from LACFCD as described below. Any other use of PREMISES or any portion thereof by CITY is expressly prohibited.
- b. CITY's use of PREMISES for open space, parkland, trails, and other recreational amenities for the DeForest Wetlands Project is nonexclusive and shall be subordinate to the primary uses and purposes of PREMISES for flood control, water conservation, watershed management, water quality; and CITY's use of PREMISES shall be designed and implemented so as not to interfere with the use of PREMISES or the use of LACFCD's adjacent property and/or improvements for any such purpose.
- c. LACFCD reserves the right to convey an easement or other interest in the PREMISES for any and all lawful purposes and any use in lieu of condemnation in addition to flood control, water conservation, and watershed management purposes and including, but without limitation, public transportation, public utilities, and/or other related uses, together with right of ingress and egress, operation, and maintenance. Any such easement or use for nonemergency purposes that requires construction, demolition, or installation of facilities shall not interfere with CITY's use.
 - (i). Reasonable and unavoidable interruption of CITY's use for the minimum period necessary to permit construction and installation of other facilities allowed under this agreement shall not be deemed unreasonable interference.
 - (ii). CITY shall be notified at least ninety (90) days prior to the commencement of any such construction or alteration, and CITY's objections or proposed alternatives shall be considered in good faith by LACFCD.
 - (ii). No improvements or structures shall be attached to, built upon, or otherwise unreasonably interfere with CITY's use without the written approval of CITY.
- d. This USE AGREEMENT is valid only to the extent of LACFCD's jurisdiction. Acquisition of permits required by other affected agencies and consent of underlying fee owner(s) other than LACFCD, if any, are the responsibility of the CITY.

2. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS:

- a. CITY understands and acknowledges that it is required to comply with the requirements set forth in the California Environmental Quality Act (CEQA) and CEQA Guidelines prior to implementing AMENITIES and that CITY shall be the lead agency with respect to any and all CEQA compliance related to AMENITIES. In addition to its other indemnification obligations as specified below, CITY hereby agrees to indemnify, defend, and hold harmless LACFCD, the 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 AMENITIES that may be asserted by a third party or public agency alleging violations of CEQA, CEQA Guidelines, or the National Environmental Policy Act.
- b. CITY shall bear all costs in connection with the construction of the AMENITIES, including preparation of plans and specifications and all construction costs and expenses.
- c. Prior to commencing the development or construction of any of AMENITIES, CITY shall obtain a permit from LACFCD, including the approval by LACFCD of the plans and specifications for AMENITIES. Permits shall be obtained by application to the County of Los Angeles Department of Public Works, Land Development Division, Permits and Subdivisions Unit. This USE AGREEMENT will be referenced in the permit conditions.
- d. Upon completion of the construction of any of AMENITIES on PREMISES, CITY shall provide LACFCD with approved as-built plans.
- e. CITY shall keep, inspect, and maintain PREMISES and all AMENITIES located thereon in a safe, clean, and orderly condition 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 PREMISES or AMENITIES or permit any acts to be done in violation of any laws or ordinances.
- f. CITY shall remove graffiti from PREMISES and all AMENITIES located thereon and any other walks, fences, and signs that are located within PREMISES in accordance with the following time periods:
 - (i). Vulgar graffiti (i.e., profane, obscene, or racist) shall be removed within twenty-four (24) hours, Monday through Friday.
 - (ii). All other graffiti shall be removed within seventy-two (72) hours, Monday through Friday.

- g. CITY shall replace or repair any property of LACFCD that becomes damaged by CITY (including any person entering the PREMISES at CITY's invitation or with the consent of CITY, either expressed or implied) within a reasonable time to the satisfaction of LACFCD or shall compensate LACFCD for the damage within thirty (30) days of billing.
- h. 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 maintenance of PREMISES and AMENITIES or when notified by LACFCD. LACFCD shall close all gates when the weather forecast predicts significant rainfall within the next 24-four hour period.

3. TERM:

- a. The term of this USE AGREEMENT shall be for forty (40) years (Initial Term), subject to LACFCD's right to terminate CITY's use as provided for in Section 4 below.
- b. This USE AGREEMENT shall expire at the end of the Initial Term, provided, however, that LACFCD 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.

4. TERMINATION OF USE:

- a. LACFCD shall have the right to cancel and terminate CITY's use of the PREMISES or any portion thereof, by giving CITY at least a one hundred eighty (180)-day prior written notice, if all the following conditions are compiled with:
 - (i). LACFCD proposes to implement or approve the implementation of a project to carry out any of the objects or purposes of the Los Angeles County Flood Control Act, including flood control, water conservation, and water quality, that will be located on or that will include PREMISES or any portion thereof, and there are no feasible alternatives; and
 - (ii). LACFCD determines, in good faith, that CITY's AMENITIES and/or CITY's use of PREMISES or portion thereof or any of them will actually interfere with or prevent the proposed project; and
 - (iii). LACFCD has notified CITY of the basis for LACFCD's determination that CITY's AMENITIES and/or CITY's use of PREMISES or portion thereof or any of them will actually interfere

with or prevent the proposed project and has provided CITY with a reasonable opportunity to propose modifications to the LACFCD project, the AMENITIES, or to CITY's use of PREMISES or portion thereof that will eliminate the incompatibility. LACFCD shall consult with CITY and seriously consider its proposed alternatives.

- (iv.) After consideration of any such modifications proposed by CITY, DISTRICT, in good faith, determines that it is not feasible to incorporate any such modifications or that, notwithstanding any such modifications, CITY's AMENITIES and/or CITY's use of the PREMISES would still interfere with or prevent the proposed project.
- b. LACFCD shall have the right to cancel and terminate CITY's use of PREMISES in the event the CITY breaches an essential term or condition of this USE AGREEMENT by giving CITY at least a thirty (30)-day prior written notice of the CITY's breach and provided that the breach is not cured within thirty (30) days after the written notice from LACFCD.
- c. Where there are no reasonable and less intrusive alternatives, LACFCD and the Army Corps of Engineers (Corps) shall have the right to permanently or temporarily reduce the PREMISES, or to suspend CITY's access to, and use of, the PREMISES due to the need for emergency flood control or to respond to an emergency as defined in Public Contract Code, Section 1102; or, for the minimum period and to the minimum extent required, for necessary maintenance and repair activities.

5. REMOVAL OF IMPROVEMENTS AND RESTORATION OF PREMISES:

- a. Upon the expiration or earlier termination of this USE AGREEMENT, in the event LACFCD or Corps determines, in its reasonable discretion, that the AMENITIES constructed by CITY interferes with LACFCD's and/or Corps' abilities to inspect, construct, reconstruct, operate or maintain its flood control improvements, CITY shall, upon sixty (60) days' advance written notice, at its sole expense, obtain a separate permit from LACFCD and remove any or all AMENITIES constructed or installed by or on behalf of CITY on PREMISES and restore 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, unless CITY requests from LACFCD in writing to leave all or a portion of said AMENITIES on the PREMISES. Should LACFCD, in its reasonable discretion, decide that CITY need not remove all or any part of the AMENITIES, LACFCD shall notify CITY in writing that it shall leave some or all of the AMENITIES as is.

- b. If CITY fails to remove AMENITIES and restore PREMISES or portion thereof as provided for in Subsection 5.a., within thirty (30) days of the expiration of this USE AGREEMENT or sooner termination of CITY's use of PREMISES or portion thereof, LACFCD may remove said AMENITIES.
- c. If LACFCD removes any of AMENITIES pursuant to Subsection 5.b., LACFCD shall submit a billing invoice to CITY indicating the costs and expenses incurred by LACFCD in connection with the removal of any AMENITIES and CITY shall reimburse LACFCD all such actual and reasonable costs and expenses within thirty (30) days of the billing invoice.

6. MISCELLANEOUS TERMS AND CONDITIONS:

a. Indemnification

- (i). In accordance with Government Code, Section 895.4, LACFCD and CITY agree to apportion responsibility and indemnification notwithstanding any other provision of the law as follows:
 - (1). CITY shall indemnify, defend, and hold LACFCD, 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 the construction, reconstruction, maintenance, operation, use, or removal of any of AMENITIES.
 - (2). LACFCD shall indemnify, defend, and hold CITY 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 in connection with the construction, reconstruction, maintenance, operation, use, or removal of any improvements constructed or maintained by LACFCD on, above, or under PREMISES or arising from any and all uses of PREMISES by LACFCD.
- (ii). CITY releases LACFCD and waives all right to damages for any loss, costs, or expenses CITY may sustain as a result of any damage to or destruction of any of AMENITIES on PREMISES or any portion thereof attributable to LACFCD's watershed

management activities, including any flood control, water conservation, or water-quality activities on or adjacent to PREMISES or attributable to any flooding caused by inadequacy or failure of LACFCD's facilities.

- (iii). Each party to this USE AGREEMENT shall include the other within the protection of any indemnification clause contained in any ancillary contract relating to PREMISES.
- b. Without limiting CITY's indemnification of LACFCD, LACFCD acknowledges that CITY is self-insured for its primary Commercial General and Automobile liabilities as well as Workers' Compensation. CITY shall maintain self-insurance coverage equivalent in coverage and scope to the following:
 - (i). Commercial General Liability equivalent in coverage to ISO form CG 00 01 10 93 in an amount not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate.
 - (ii). Commercial Automobile Liability equivalent in coverage to ISO form CA 00 01 06 92 in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) combined single-limit per accident for bodily injury and property damage covering Auto Symbol 1 (any Auto).
 - (iii). Workers' Compensation and Employer's Liability in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) per accident or occupational illness as required by the California Labor Code. With respect to this coverage under Section 6 b. (III), CITY agrees to waive its right of subrogation against LACFCD with respect to this USE AGREEMENT.
 - (iv). CITY shall furnish to LACFCD a Certificate of Self-Insurance evidencing CITY's self-insurance program no later than ten (10) working days after execution of this USE AGREEMENT or before CITY takes possession of PREMISES, whichever occurs first.
- c. CITY and LACFCD shall have no financial obligation to each other under this USE AGREEMENT except as herein expressly provided.
- d. CITY expressly acknowledges that this USE AGREEMENT is primarily for CITY's benefit and that LACFCD is not to incur any liability whatsoever for any injury, death, or property damage arising from any use of PREMISES or any portion thereof or any of AMENITIES by persons using AMENITIES.

- e. LACFCD and its Board, authorized officer, engineer, employee, contractor, and agents or representatives shall have full right and authority to enter in and upon PREMISES or any portion thereof at any and all reasonable times during the term of this USE AGREEMENT, all without interference or hindrance by CITY and 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 LACFCD.
- f. Except as to fuels, lubricants, and products associated with motorized vehicles, equipment, and 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 PREMISES or any portion thereof without the prior written consent of LACFCD. In the event of spillage, leakage, or escape of any hazardous substance onto PREMISES or any portion thereof, CITY shall immediately notify LACFCD by calling (800) 675-4357. If the spillage, leakage, or escape was caused by CITY, CITY shall promptly remove any such substance from PREMISES or the affected portion thereof to LACFCD's satisfaction. In addition to removing any of CITY's hazardous substances, CITY shall be liable for and reimburse LACFCD for any and all cost and expenses that LACFCD may incur or suffer as a result thereof. Such responsibility shall include cost or expenses as LACFCD may incur by reason of the Federal, State, local, or other authoritative agency's laws and regulations. Notwithstanding the foregoing, CITY shall have no responsibility regarding any spill, leak, or escape associated with any of LACFCD's tenants, licensees, or easement holders.
- g. Any notice, invoices, reports, correspondence, or other communication concerning this USE AGREEMENT shall be directed to the following, except that either party may change the name or address by giving the other party at least a ten (10)-day written notice of the new name or address:

LACFCD: Mr. Gary Hildebrand, Assistant Deputy Director
County of Los Angeles
Department of Public Works
Watershed Management Division, 11th Floor
P.O. Box 1460
Alhambra, CA 91802-1460

CITY: Mr. George Chapjian, Director
City of Long Beach
Department of Parks, Recreation & Marine
2760 North Studebaker Road
Long Beach, CA 90815-1697

- h. Parties are and shall at all times remain as wholly independent entities to each other. No party to this USE AGREEMENT shall have power to incur any debt or liability on behalf of the other party unless expressly provided to the contrary by this USE AGREEMENT. No employee, agent, or officer of either party shall be deemed for any purpose whatsoever to be an agent, employee, or officer of the other party.
- i. This USE AGREEMENT shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
- j. If any provision of this USE AGREEMENT shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of this USE AGREEMENT shall not be affected and this USE AGREEMENT shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this USE AGREEMENT.
- k. This USE AGREEMENT may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.
- l. Parties have been represented by counsel in the preparation and negotiation of this USE AGREEMENT. This USE AGREEMENT shall be construed according to its fair language, and any ambiguities shall not be resolved against the drafting party.
- m. Each of the persons signing below on behalf of a party represents and warrants that he or she is authorized to sign this USE AGREEMENT on behalf of such party.
- n. The effective date of this USE AGREEMENT shall be the date of the last party's signature.

7. STATE COASTAL CONSERVANCY:

A copy of all notices of alleged breach of this USE AGREEMENT and proposed termination or suspension of this USE AGREEMENT shall be sent timely to:

Executive Officer
State Coastal Conservancy
1330 Broadway, Suite 1300
Oakland, CA 94612

The Conservancy is a third-party beneficiary of this USE AGREEMENT with the right to enforce the obligations in this Paragraph 7.

8. TERMINATION OF EXISTING USE AGREEMENT

Upon full execution of this USE AGREEMENT, the existing Use Agreement No. 13-01 between the parties dated June 6, 2012, is terminated and is of no further effect.

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 Chairman of the Board of Supervisors and the seal of the DISTRICT to be affixed hereto and attested by its executive Officer of the Board of Supervisors, and the CITY has hereunto subscribed their names, the date and year first above written.


CITY:

City of Long Beach,
a municipal corporation

By:  Assistant City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM:

By: 
Deputy City Attorney



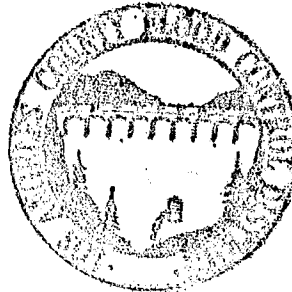
DISTRICT:

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
a body corporate and politic

By: *Alan Krabe*
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

Sachi A. Hamai, Executive Officer
of the Board of Supervisors
of the County of Los Angeles



By: *Carla Little*
Deputy

APPROVED AS TO FORM:

RICHARD D. WEISS
Acting County Counsel

By: *[Signature]*
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

36-

OCT 21 2014

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 6, 1987, the Board of Supervisors for the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts adopted a resolution pursuant to Section 25103 of the Government Code that authorized the use of facsimile signatures of the Chairman of the Board on all papers, documents, or instruments requiring the Chairman's signature.

The undersigned hereby certifies that on this 21st day of October, 2014, the facsimile signature of DON KNABE, Chairman of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, was affixed hereto as the official execution of this document. The undersigned further certifies that on this date a copy of the document was delivered to the Chairman of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

In witness whereof, I have also hereunto set my hand and affixed my official seal the day and year above written.



SACHI A. HAMAI, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By: Carla Little
Deputy

(LACFCD-SEAL)

APPROVED AS TO FORM:

RICHARD D. WEISS
Acting County Counsel

By: [Signature]
Deputy

CW:psr
P6:\LONG BEACH USE AGMT

LOS ANGELES RIVER - PARCEL NOS. 6, 8, 9, AND 97

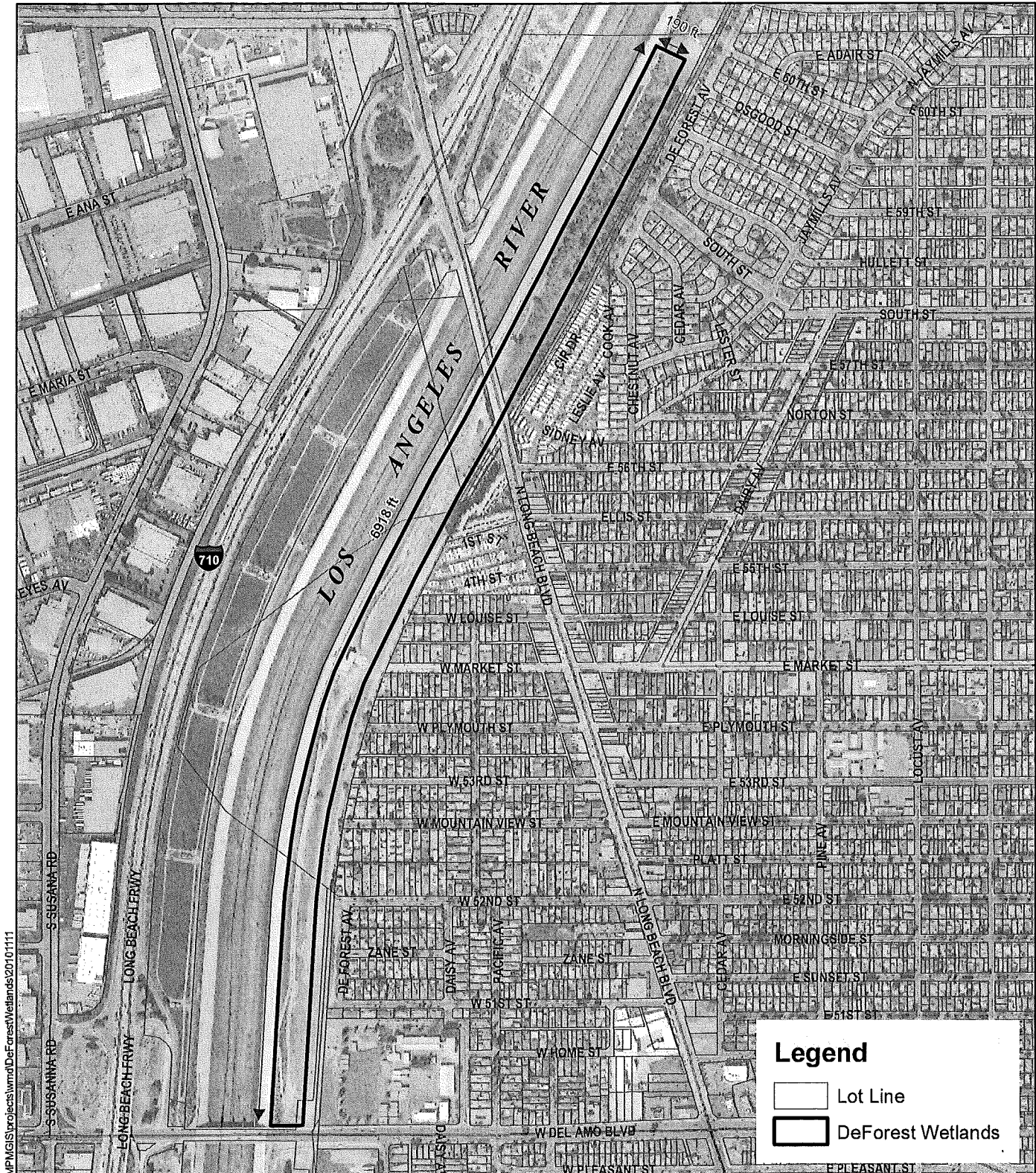
USE AGREEMENT NO. 78282



Exhibit A



SPM-GIS Services



MPMGIS\projects\wms\DeForestWetlands\20101111

Data contained in this map is produced in whole or part from the Los Angeles County Department of Public Works' digital database.

0 380 760 1,140 1,520
Feet

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ACKNOWLEDGMENT FORM

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(insert name of the officer) (insert title 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)

ACKNOWLEDGMENT FORM

[illegible]

On _____, before me, _____, Notary Public,
(insert name of the officer) (insert title 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)