

Project: Mission Creek Fish Passage at
the CalTrans Channel

025-210-010, 025-291-013,
025-291-013, 027-161-011,
027-211-009, 039-053-001,
039-113-001, 039-161-013,
039-211-015, 039-261-011,
APNs: 039-301-017

**REAL PROPERTY AGREEMENT;
SECONDARY USE OF FLOOD CONTROL LAND**

THIS REAL PROPERTY AGREEMENT ("Agreement") is made by and between the SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (herein the "DISTRICT"), a special district; and the CITY OF SANTA BARBARA (herein the "CITY"), with reference to the following:

WHEREAS, the DISTRICT holds fee ownership of certain parcels of land in the County of Santa Barbara, City of Santa Barbara, State of California, particularly described as APNs 025-210-010, 025-291-013, 025-291-013, 027-161-011, 027-211-009, 039-053-001, 039-113-001, 039-161-013, 039-211-015, 039-261-011, 039-301-017, (hereinafter the "Properties"); and

WHEREAS, the DISTRICT operates and manages flood control facilities on the Properties known as the CalTrans Channel on Mission Creek; and

WHEREAS, on July 7, 1998, the Board of Directors of the Santa Barbara County Flood Control and Water Conservation District adopted Resolution No. 98-266 establishing a policy entitled "A Policy for Secondary Uses of Flood Control and Water Conservation Facilities for Bikeway and Recreational Purposes;" and

WHEREAS, the CITY hopes to obtain the grant funding necessary to design and construct a project in the CalTrans Channel to allow the migration of fish within Mission Creek (hereinafter referred to as a "Fish Passage Project"); and

WHEREAS, the CITY agrees to comply with the DISTRICT'S policy on secondary use of property owned by the District.

NOW, THEREFORE, subject to the criteria and conditions set forth in Resolution No. 98-266, and the other considerations hereinafter set forth, it is mutually agreed and understood as follows:

1. **PROPERTY and PROJECT LOCATION:** The CITY has requested the right to construct a project intended to allow the migration of fish within Mission Creek. The Properties

and the approximate location of the Fish Passage Project are shown on Exhibit "A" attached hereto and incorporated herein.

2. **INDEMNIFICATION:** The CITY shall defend, indemnify and save harmless the DISTRICT, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the performance or attempted performance of the CITY's Fish Passage Project; including, but not limited to, any act or omission to act on the part of the CITY or its agents or employees or other independent contractors directly responsible to the CITY; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the negligence or willful misconduct of the DISTRICT.

3. **CITY'S OBLIGATIONS:** The CITY shall be obligated and agrees to be bound by the above referenced Resolution number 98-266 which is attached hereto in its entirety and incorporated by reference herein as Exhibit "B." CITY further agrees that it is responsible for all maintenance costs directly associated with the Fish Passage Project on the Properties such as debris removal and project repair. CITY shall not be responsible for maintenance and repair costs associated with the unmodified portions of the existing concrete channel.

4. **DISTRICT CONSENT:** The DISTRICT hereby consents to the CITY'S secondary use of the Properties. CITY and DISTRICT further agree that any improvements made on the Properties by or for the CITY shall not conflict or interfere with the use and maintenance needs of the DISTRICT and shall adhere to the following restrictions:

a) The Fish Passage Project referenced in this Agreement shall be constructed per the plans developed by the City of Santa Barbara for the Mission Creek Fish Passage Project at the CalTrans Channel on APNs 025-210-010, 025-291-013, 025-291-013, 027-161-011, 027-211-009, 039-053-001, 039-113-001, 039-161-013, 039-211-015, 039-261-011, 039-301-017, and approved by the DISTRICT Board of Directors prior to the initiation of construction by the City. If the project is not constructed in accordance with those plans the DISTRICT reserves the right to halt construction and require changes as needed; and

b) DISTRICT is not responsible for damages to the project if such damage is associated with DISTRICT'S access to, or work on the Properties or Mission Creek for flood control purposes; and

c) CITY shall submit to DISTRICT an inspection deposit in an amount not to exceed \$10,000 and be responsible for the actual reasonable costs incurred by the DISTRICT toward the inspection of the Fish Passage Project improvements during project construction and after completion of construction; and

d) DISTRICT shall have the sole right to suspend or rescind this Agreement if the City facilities on the Properties are not adequately maintained or the permitted activities become incompatible with DISTRICT flood control activities within the CalTrans Channel on Mission Creek; and

e) CITY is responsible for all maintenance associated with the Fish Passage Project on the Properties such as debris removal and project repair; and

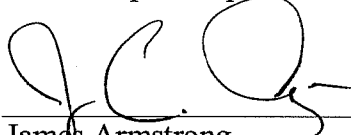
f) Except for the DISTRICT'S right to terminate under certain circumstances, this Agreement may only be amended or modified by the written, mutual consent of the DISTRICT and the CITY.

5. **EXPIRATION IF PROJECT NOT COMMENCED.** If CITY does not commence construction of the Fish Passage Project by October 31, 2015, this Agreement shall expire.

This Agreement shall run with the land and shall be binding upon the DISTRICT and the CITY, their successors and assigns.

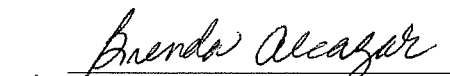
IN WITNESS WHEREOF, the DISTRICT and the CITY have executed this Secondary Use Agreement by the respective authorized officers as set forth below to be effective as of the date executed by the DISTRICT.

CITY OF SANTA BARBARA
A Municipal Corporation



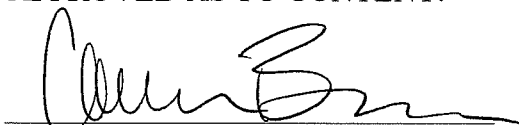
James Armstrong
City Administrator

ATTEST:



for Cynthia M. Rodriguez, CMC
City Clerk Services Manager

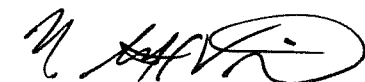
APPROVED AS TO CONTENT:



Cameron Benson
Creeks Restoration/Clean Water
Manager

APPROVED AS TO FORM:

Stephen P. Wiley
City Attorney

By 

SANTA BARBARA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By: _____
Chair, Board of Directors

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK PROGRAM ADMINISTRATOR

APPROVED AS TO FORM:
SCOTT D. McGOLPIN
PUBLIC WORKS DIRECTOR

By: _____

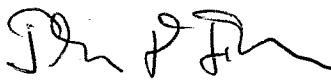
By:  _____

EXHIBIT A

MAP SHOWING THE PROPERTIES AND THE APPROXIMATE LOCATION OF THE MISSION CREEK FISH PASSAGE PROJECT

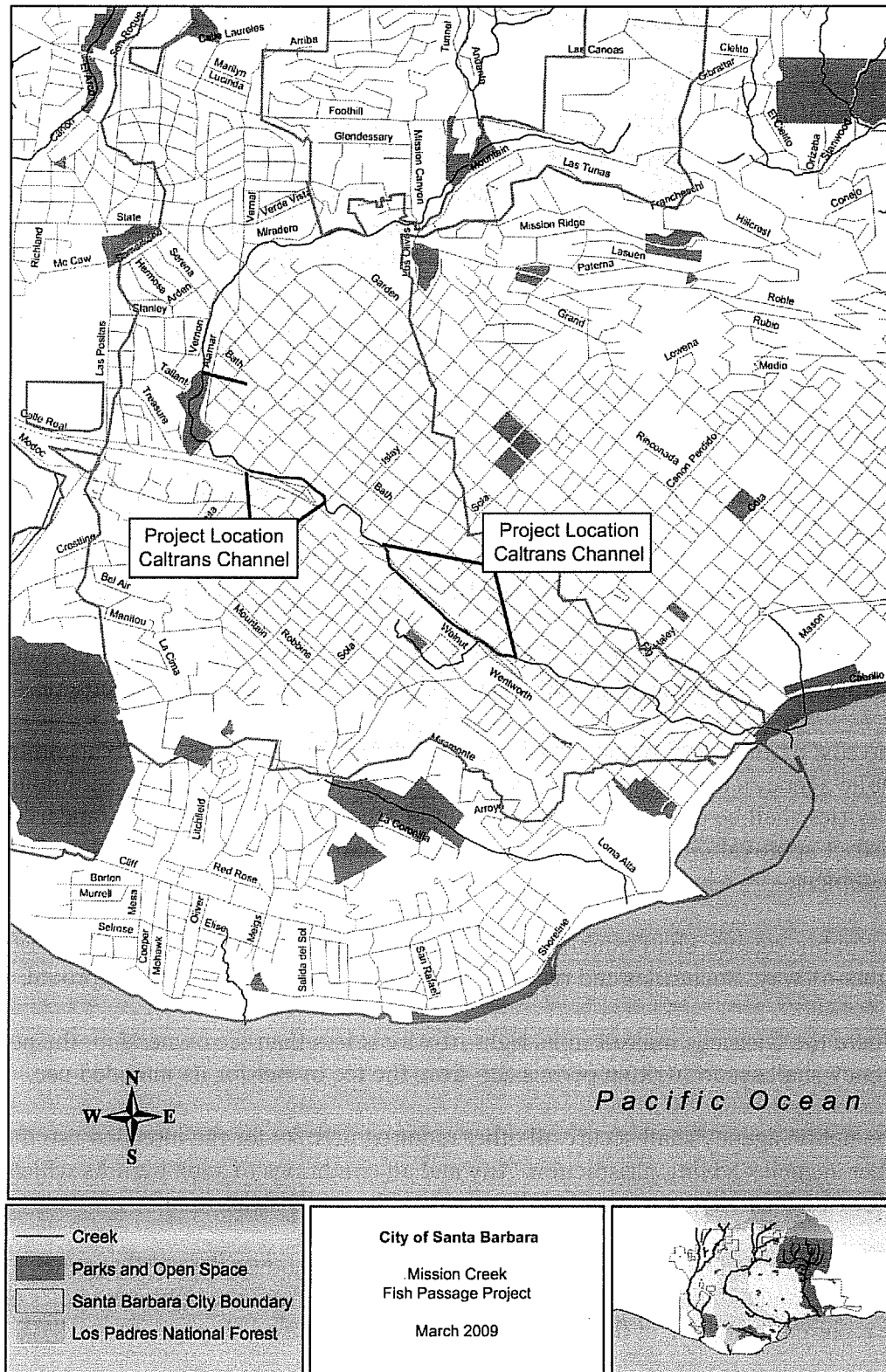


EXHIBIT B

"A POLICY FOR SECONDARY USES OF FLOOD CONTROL AND WATER CONSERVATION FACILITIES FOR BIKEWAY AND RECREATION PURPOSES" BY THE BOARD OF DIRECTORS OF THE SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

In order to maximize the public benefit and public convenience, it is the policy of the Santa Barbara County Flood Control District that the secondary use of Flood Control property for recreational and trail purposes shall be encouraged. To this end, the District may license or permit the use of a right-of-way for development and use for bicycle, hiking and riding trails, and other park and recreation purposes, under the following criteria and conditions:

1. A public agency empowered to engage in and finance the proposed park and/or recreation use shall enter into a formal written agreement with the District regarding such use. The District reserves the right to deny such use at its sole discretion. The public agency shall pay all District costs for developing such agreement.
2. The public agency's use shall not conflict with the District's use of its rights- of-way, which is primarily for flood control purposes. *All* other uses shall be subordinate to flood control purposes. The public agency shall compensate the District for any increased costs and/or decreases in revenues associated with any granted secondary uses.
3. Joint use of District fee property and/or right-of-way are limited to those uses and locations that are compatible with District operation and maintenance activities.
4. The cost of any improvements and associated maintenance necessary to accommodate the public agency's use shall be borne by that agency. Such improvements and maintenance activities shall be designed and carried out in accordance with District standards subject to District approval. Such maintenance activities shall include any litter and graffiti abatement.
5. The public agency shall establish rules and regulations for public use of the District's rights-of-way. Such rules and regulations shall be subject to District's approval.
6. Where the District's interest in its right-of-way is less than fee ownership, the public agency shall secure written permission from the fee owner for its intended use.
7. The public agency shall secure all other required permits for the intended use from any other agencies having jurisdiction. Any and all conditions of such permits which may affect the District's property shall be approved by the District.
8. Any changes to District facilities necessary to accommodate the public agency's use shall be made, and any damage to District facilities arising from the public agency's use shall be repaired forthwith, at the public agency's sole expense.

9. The District shall not be liable for any damage to improvements made by the public agency which arise from the District's use of its rights-of-way for flood control purposes, including changes which the District may make to its facilities.
10. The District shall not be liable for any injury or damage to persons or property arising out of the use of its rights-of-way for park and recreation purposes.
11. The public agency shall defend, indemnify and hold harmless the District against any and all claims or lawsuits arising out of or connected with the use of the District's rights-of-way for park, recreation, or other uses. Such indemnification language in the agreement shall be in a form acceptable to County Counsel and Risk Management.
12. All proposed uses are subject to approval by the District and must be compatible with the use and maintenance needs of the District.
13. Recreational facilities planned along a flood control facility either constructed by, or in cooperation with a federal agency, must receive approval from the federal agency in addition to the District. Federal requirements may specify whether a license or permit will be issued.
14. Only approved uses will be granted a license or permit for the use. The District reserves the right to suspend or revoke a license or permit if, in the District's sole opinion, the permitted activities become incompatible with District activities or if the interests of the District should so require.

