

Project: Franklin Channel
Pedestrian Bridge
APN: 004-011-044

**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, a special district, (herein the "DISTRICT"); and the City of Carpinteria (herein the "CITY") with reference to the following:

WHEREAS, the DISTRICT holds fee ownership of that certain parcel of land in the County of Santa Barbara, City of Carpinteria, State of California and more particularly described as APN 004-011-044, (hereinafter the "Property").

WHEREAS, the DISTRICT operates and manages flood control facilities on the Property known as the Franklin Channel; 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 has required as a condition of development of Tract 25,169 the installation of a pedestrian and bicycle bridge over Franklin Channel located on the Property, and CITY desires to comply with DISTRICT'S policy on secondary use of Flood Control owned property.

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:

- PROPERTY and PROJECT LOCATION:** DISTRICT owns that certain parcel of land located in the County of Santa Barbara, City of Carpinteria, State of California, known as APN 004-011-044 and operates a portion of the Franklin Channel thereon. The DISTRICT acquired the Property for flood control purposes, via Grant Deed recorded June 12, 1975 as Instrument number 19580, Book 2570, Page 565 in the office of the Santa Barbara County Recorder. The CITY has requested the privilege of constructing a pedestrian and bicycle bridge over the channel. The Property and the approximate location of the bridge are shown on Exhibit "A" attached hereto and incorporated herein.
- 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 this Agreement or occasioned by the performance or attempted performance of the provisions hereof; 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 sole 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 herein as Exhibit "B." CITY further agrees that it is responsible for all maintenance costs associated with the bridge improvements on the Property.

4. **DISTRICT CONSENT:** DISTRICT hereby consents to CITY'S secondary use of DISTRICT'S Property. CITY and DISTRICT further agree that any improvements made on the Property 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 bridge improvements referenced in this Agreement shall be constructed per the approved plans for City of Carpinteria Tract Map 25,169 Mission Terrace as prepared by Flowers & Associates and as approved by the District, on file with the City of Carpinteria. If the bridge 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 ANY damages to the pedestrian bridge and associated facilities if such damage is associated with DISTRICT'S access to the Property and/ or work in the Franklin Channel; and
- c) CITY shall submit to DISTRICT an inspection deposit and be responsible for the actual costs incurred by the DISTRICT toward the inspection of the improvements referenced above; and
- d) The location and design of the bridge have been approved by the National Resource Conservation Service (NRCS); and
- e) DISTRICT shall have the right to suspend or rescind this Agreement 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; and
- f) CITY is responsible for all maintenance of the bridge and associated facilities on the DISTRICT'S Property; and
- g) Except for the DISTRICT'S right to terminate, this Agreement may only be amended or modified by the written, mutual consent of both parties.

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

IN WITNESS WHEREOF, DISTRICT and 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.

SANTA BARBARA COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

ATTEST:

MICHAEL F. BROWN

Ex Officio Clerk of the Board of Directors of
The Santa Barbara County Flood Control and
Water Conservation District.

By: _____

Supervisor Salud Carbajal, Chair

By: _____

Deputy

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

By: _____

Kevin Ready for:
S. B. C. Flood Control District

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

By: _____

APPROVED:

Scott McGolpin
Public Works Department

APPROVED AS TO INSURANCE FORM:

Ray Aromatorio
Risk Program Administrator

ATTEST:

JAYNE DIAZ

By: _____

CITY CLERK

CITY OF CARPINTERIA

By: _____

Mayor: Michael Ledbetter

Date: _____

August 14, 2007

APPROVED AS TO FORM:

PETER N. BROWN
CITY ATTORNEY

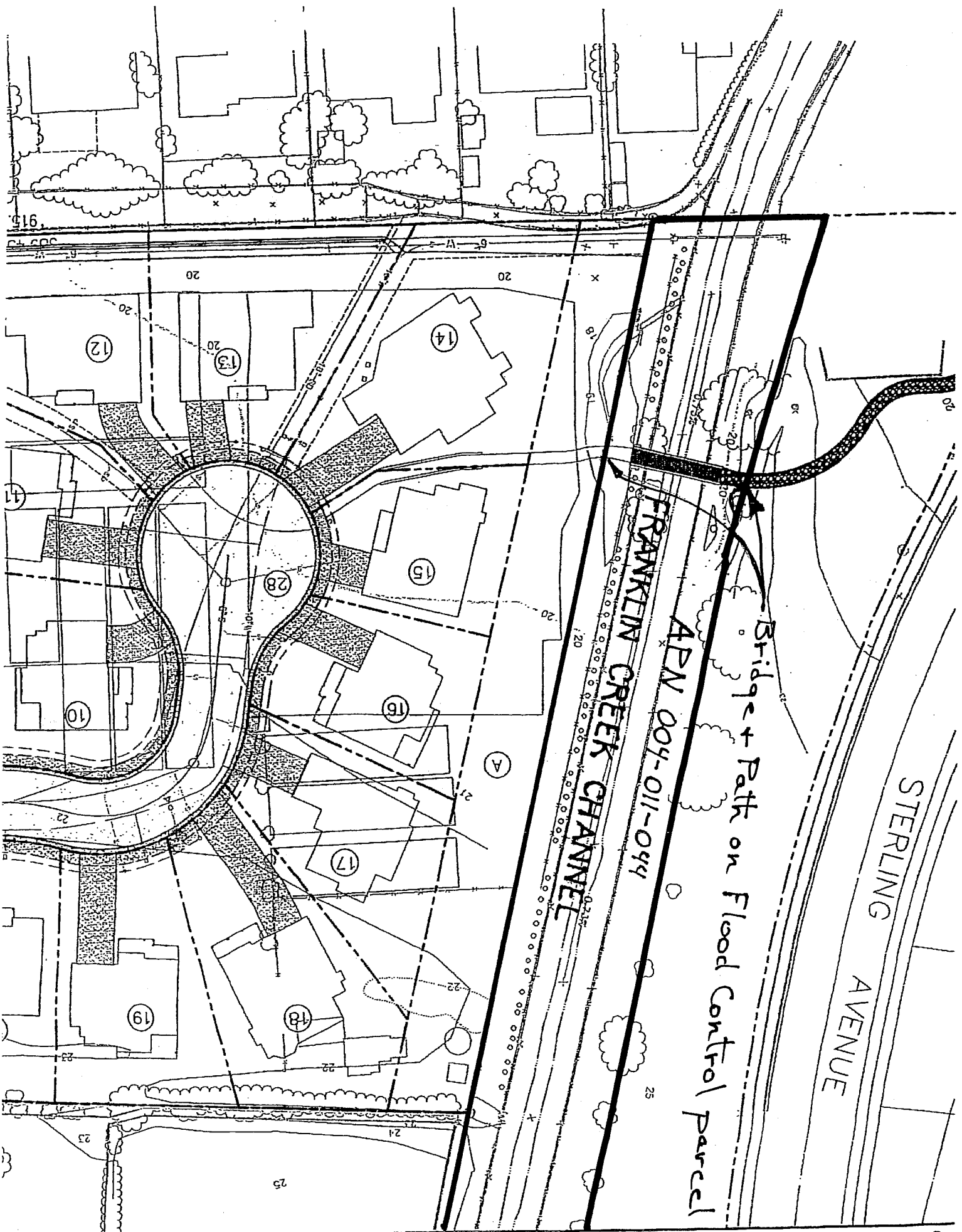


EXHIBIT A

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.