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MAYOR

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PUBLIC WORKS**

**BUREAU OF
ENGINEERING**

GARY LEE MOORE, PE, ENV SP
CITY ENGINEER

1149 S. BROADWAY, SUITE 700
LOS ANGELES, CA 90015-2213

<http://eng.lacity.org>

April 25, 2017

The Honorable Mitch O'Farrell, Chair
Arts, Parks, and River Committee
Los Angeles City Council

c/o Eric Villanueva
City Clerk
City Hall, Room 395

**COUNCIL FILE NO. 11-1246-S1 - NORTH ATWATER MULTIMODAL BRIDGE OVER
THE LOS ANGELES RIVER**

Dear Councilmember O'Farrell and Honorable Members:

We are writing pursuant to your November 21, 2016 request for additional information regarding the North Atwater Multimodal Bridge over the Los Angeles River (Project) (CF 11-1246-S1), a recommendation of the City's Los Angeles River Revitalization Master Plan (CF 07-1342). As detailed below, we have identified all of the funds necessary to proceed immediately with the Project's construction, preserving the existing funds that were at risk of return without timely action by the City.

RECOMMENDATIONS

We hereby recommend that the City Council, subject to the approval of the Mayor:

1. Authorize the City Engineer to execute the attached Gift Agreement (Attachment 1) between the City and private donor Morton La Kretz with general terms for the City to accept a cash donation of \$3,888,603 to construct the Project;
2. Authorize the City Engineer to execute the attached Gift Agreement (Attachment 2) between the City and River LA, a nonprofit organization formerly known as the LA River Revitalization Corporation, with general terms for River LA to transfer to the City: (1) all grant funds assigned to the Project, and (2) deliver and assign all documents necessary for the construction of the Project;
3. Request the Controller to establish a new account within the Bureau of Engineering (BOE), Engineering Special Services Fund No. 682, Department 50, entitled "North Atwater Multimodal Bridge" to receive the cash donation from the private donor;



4. Authorize the Controller to establish a new account within the Public Works Trust Fund (PWTF), Fund No. 834, Department No. 50, entitled "North Atwater Multimodal Bridge – PWTF Loan", subject to the approval by the Board of Public Works of a new loan of \$6,933,133 from PWTF for this Project. Instruct the Los Angeles Department of Transportation to repay the PWTF loan of \$6,933,133 in annual increments of \$693,313.30 starting Fiscal Year 2018-19;
5. Authorize the Controller to make any technical accounting corrections or clarifications to the above instructions that will effectuate the timely construction of the Project and will preserve its existing funding, including, but not limited to, a \$3,660,000 grant from the California Department of Transportation (Caltrans);
6. Request the Departments of Building and Safety, Cultural Affairs, Recreation and Parks, Water and Power, and others, as necessary, to facilitate implementation of the Project; and
7. Authorize the City Engineer to make any technical correction or clarifications to the above instructions.

DISCUSSION

The Project is a non-motorized bridge for equestrians, pedestrians and bicyclists to make year-round crossings of the Los Angeles River between the communities of Atwater Village in Council District 13 and Griffith Park in Council District 4. River LA managed the Project's initial fundraising, design, cost estimations, specifications, permits/easements, and agreements. River LA's design is a cable-stayed steel bridge frame (see Diagram 1), that spans the approximately 320-foot-wide river channel, with one major pier in the channel. The bridge has two separate paths, one for equestrians and the other to be shared by pedestrians and bicyclists.



Diagram 1: Conceptual rendering of the Cable-Stayed Bridge Design

On November 21, BOE reported to the Arts, Parks, and River Committee that each of the five official construction bids received indicated a funding shortfall to construct the Project. BOE was subsequently instructed to report back with a comparison of costs between the Project and a pre-fabricated design option (Diagram 2). In response to that instruction, please see the table and discussion below.



Diagram 2: Typical Steel Truss (H-Section Type) Pedestrian Bridge

Construction Cost Comparison of the Two Bridge Designs		
Item	Cable-Stayed Construction Budget based on Lowest Bid	Pre-Fabricated Proposed Design and Construction Budget
Additional Design	-	350,000
Construction	12,545,369	8,200,000
Construction Contingency	1,800,000	800,000
City Staff, consultants, permits	1,800,000	1,000,000
Recirculate for CEQA	-	150,000
10% inflation	-	930,000
Total:	\$ 16,145,369	\$ 11,430,000
Existing Funding		
Council District 4	35,633	35,633
LADWP via BOE	220,000	220,000
LA County Supervisorial District 3	333,000	333,000
California Community Foundation	75,000	0*
Caltrans ATP	3,660,000	0**
Private Donor	3,888,603	0***
MICLA Financing	1,000,000	1,000,000
Public Works Trust Fund	6,933,133	6,933,133
Total:	\$ 16,145,369	\$ 8,521,766
Funding Shortfall	(\$0)	(\$2,908,234)

*These were awarded to River LA for its bridge design and may not be available for a different design.

**The Caltrans ATP funds are at high risk of lapsing and are not identified as a funding source because the construction contract must be awarded by September 30, 2017 and this is not likely (see below).

***The donor is not interested in a redesign.

FISCAL IMPACT STATEMENT

The above table provides a comparison between the advertised cable-stayed bridge and the proposed construction budget for the pre-fabricated bridge. The table does not include an estimate of maintenance costs; ten years of maintenance is expected to cost approximately \$900,000 for the cable-stayed design and \$300,000 for the pre-fabricated design. Inflation is only estimated for the pre-fabricated design because it would be constructed with future dollars while the cable-stayed bridge would be locked in at the current official bid price.

It is also important to note that the cable-stayed bridge, because it is fully-designed and permitted, would be complete in September 2019, but the pre-fabricated version would not be complete until June 2021. The estimated schedule for the pre-fabricated design is as follows, assuming funds for redesign are identified and available:

- Solicitation of consultant team - *June 2017 thru July 2017*
- Redesign (includes structural analysis, preparation of specifications and construction plans, preparation of revised permits and environmental document) - *August 2017 thru January 2018*
- Recirculation of the environmental document to comply with the California Environmental Quality Act (CEQA) – *February 2018 thru April 2018*
- Revalidation of permits with US Army Corps of Engineers, LA County Flood Control District, California State Regional Water Quality Control Board, California Department of Fish and Wildlife – *February 2018 thru May 2018*
- Bid and Award - *June 2018 thru October 2018*
- Contractor preparation for water diversion and environmental mitigation within the LA River- *November 2018 thru May 2019*
- Construction commences in the LA River - *June 2019*
- Anticipated construction completion - *June 2021*

The Public Works Trust Fund (PWTF) will provide \$6,933,133 of funds to allow this project to be awarded in May 2017. LADOT identified Local Transportation Funds (LTF)/Transportation Development Act (TDA) Article 3 resources that are available to repay the PWTF over the course of ten fiscal years. LTF/TDA funds are allocated annually to cities within Los Angeles County on a per capita basis and must be used for the planning and construction of bicycle and pedestrian facilities. Metro is the responsible entity in administering and establishing policies for the program.

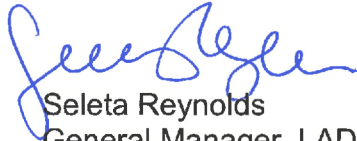
With the addition of the PWTF, BOE would have sufficient funding to award the construction contract of the advertised cable-stayed bridge design to the lowest, responsive, responsible bidder by May 2017, and commence construction activities in June 2017. The cable-stayed design is shovel-ready with active construction bids, and it leverages approximately \$7.7M in external funding. The cable-stayed option can be completed almost two years sooner than the prefabricated option, assuming the prefabricated option identifies funds needed for redesign and the construction shortfall.

April 25, 2017

Page 5 of 5

If you have any questions, please contact Shirley Lau of BOE, at (213) 485-5228.

Sincerely,



Seleta Reynolds
General Manager, LADOT

Sincerely,


Electronically signed by 21866 on 04/25/2017 at 8:18:32 AM

Gary Lee Moore, PE, ENV SP
City Engineer

cc: Barbara Romero, Office of the Mayor
Greg Good, Office of the Mayor
Carol Armstrong, Office of the Mayor
Ted Bardacke, Office of the Mayor
Kevin James, Board of Public Works
Joel F. Jacinto, Board of Public Works
Sharon Tso, Office of the Chief Legislative Analyst
Deborah Weintraub, Bureau of Engineering

GIFT AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
and MORTON LA KRETZ
REGARDING THE NORTH ATWATER NON-MOTORIZED MULTIMODAL BRIDGE

This Gift Agreement (“AGREEMENT”) is entered into this ____ day of _____ 2017, (“COMMENCEMENT DATE”) by and among the City of Los Angeles, a municipal corporation acting by and through its Department of Public Works (“CITY”), and Morton La Kretz, an individual (“LA KRETZ”). CITY AND LA KRETZ may be collectively referred to herein as “PARTIES”.

RECITALS

WHEREAS, the Los Angeles River (“RIVER”) divides the communities of Atwater Village and Griffith Park and multimodal users must currently cross it by traveling across its bed because no other option exists nearby for bicyclists, equestrians, and pedestrians to safely cross; and,

WHEREAS, River LA (“RIVER LA” and formerly known as the Los Angeles River Revitalization Corporation), a California 501(c)(3) non profit corporation, in consultation with the CITY, has identified a beneficial location for a bridge to be constructed over the RIVER on real property owned by the CITY and the County of Los Angeles (“COUNTY”), approximately one-half mile upstream of Los Feliz Boulevard, corresponding to the delineated area designated as the “Premises Area” on the Site Map attached hereto and incorporated herein by reference as **Exhibit A** (“PREMISES”); and,

WHEREAS, the Los Angeles River Revitalization Master Plan (the “MASTER PLAN”) calls for a non-motorized multi-modal bridge in the vicinity of the PREMISES for use by pedestrians and equestrians to complement other improvements at North Atwater Park (“Project 147”); and,

WHEREAS, LA KRETZ has long desired to facilitate the MASTER PLAN and began working with RIVER LA in 2009 to implement Project 147 and promote the revitalization of the RIVER and raising its profile as a valuable regional asset; and,

WHEREAS, through the ensuing seven years LA KRETZ has collaborated with RIVER LA in conceiving a plan for an iconic multi-modal bridge over the RIVER connecting the community of

Atwater Village in Council District 13 to Griffith Park in Council District 4; and

WHEREAS, in 2010 LA KRETZ funded conceptual design of the bridge, and in March 2011 approved Buro Happold as the bridge designer. In July 2011, LA KRETZ approved design of the bridge (hereinafter, the "IMPROVEMENTS"); and,

WHEREAS, since 2010, through the La Kretz Family Foundation (the "FOUNDATION") and other sources, LA KRETZ has made FOUR MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$4,750,000) in funds available to RIVER LA for development and construction of the IMPROVEMENTS, of which approximately EIGHT HUNDRED SIXTY ONE THOUSAND THREE HUNDRED NINETY SEVEN DOLLARS AND SIXTEEN CENTS (\$861,397.16) has been expended to date by RIVER LA in connection with the due diligence, permitting and the design of the IMPROVEMENTS; and,

WHEREAS, on July 15, 2011, a council motion was introduced (CF 11-1246) moving, among other things, that the Los Angeles City Council ("COUNCIL") accept the gift of a multimodal bridge across the Los Angeles River and that the bridge be named after LA KRETZ; and,

WHEREAS, on May 22, 2012, COUNCIL adopted recommendations contained in reports from the Public Works Committee and the Ad Hoc River Committee to request the preparation of a gift agreement to accept a completed multimodal bridge across the Los Angeles River and to submit the gift agreement to COUNCIL for approval; and,

WHEREAS, RIVER LA has entered into a contract for the design and specifications of the IMPROVEMENTS, which resulted in the completion of design and construction plans prepared by Fuscoe Engineering/Buro Happold Engineering dated December 11, 2015 (the "PLANS") which have been comprehensively reviewed and approved by the CITY, including review for structural compliance ("PLANS" Index Number D-34739 at <http://engvault.lacity.org/epps/>, signed by the City Engineer on August 2, 2016); and,

WHEREAS, LA KRETZ, through the FOUNDATION, desires to donate to the CITY the remaining THREE MILLION EIGHT HUNDRED EIGHTY EIGHT THOUSAND SIX HUNDRED AND TWO DOLLARS AND EIGHTY FOUR CENTS (\$3,888,602.84) in funds previously made available by LA KRETZ to be used by the CITY, subject to the terms and conditions of this AGREEMENT, for construction of the IMPROVEMENTS in substantial conformance with the PLANS (the "LA KRETZ GIFT"); and,

WHEREAS, the CITY's Bureau of Engineering (BOE), Bridge Improvement Division, is performing at the request of the Mayor's Office and CALTRANS, the project management of the IMPROVEMENTS including contract bidding and award, construction management and post-

construction of the IMPROVEMENTS; and,

WHEREAS, a mitigated negative declaration under the California Environmental Quality Act (CEQA) was developed by BOE and adopted for the project by COUNCIL; and,

WHEREAS, CALTRANS has approved the IMPROVEMENTS' Right-of-Way certification and National Environmental Policy Act (NEPA) certification; and,

WHEREAS, the Active Transportation Program (ATP) funds totaling THREE MILLION SIX HUNDRED SIXTY THOUSAND DOLLARS (\$3,660,000) was allocated for the IMPROVEMENTS at the March 2016 California Transportation Committee meeting and that pursuant to that allocation, the IMPROVEMENTS will be reviewed by CALTRANS for an "Authorization to Proceed" or E-76 to be established prior to advertising the reimbursement rights and date for the construction phase of work; and,

WHEREAS, CITY desires to accept the LA KRETZ GIFT all as more particularly set forth in this AGREEMENT; and,

WHEREAS, The PARTIES understand and agree that this AGREEMENT sets forth the intent and agreement of the parties, but does not guarantee that the IMPROVEMENTS will be constructed; and,

NOW THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein and the performance thereof, PARTIES hereby agree as follows:

A G R E E M E N T

1. PURPOSE:

The purposes of this AGREEMENT are:

A. For LA KRETZ: (i) to transfer the LA KRETZ GIFT to the CITY, for use by the CITY in constructing the IMPROVEMENTS in substantial accordance with the PLANS, and (ii) to set forth the terms and conditions of the LA KRETZ GIFT; and

B. For the CITY to acknowledge and accept the LA KRETZ GIFT.

2. RELATIONSHIP OF PARTIES:

LA KRETZ is acting hereunder as an individual, and not as agents or employees of the CITY. LA KRETZ shall not represent or otherwise hold themselves or any of its board, officers, agents, employees, assigns, or successors in interest to be an agent or employee of the CITY.

Nothing in this AGREEMENT will be deemed or construed as creating a joint venture or partnership between any of the parties hereto. No party is, by virtue of this AGREEMENT, authorized as an agent, employee, or legal representative of any other party. No party will have any power or authority to bind or commit any other party. No party will hold itself out as having any authority or relationship in contravention of the herein **Section 2**.

3. TERM AND TERMINATION:

The term of this AGREEMENT shall commence upon the COMMENCEMENT DATE specified above and, except for the continuing obligations set forth in this AGREEMENT, unless otherwise terminated pursuant to the terms and conditions contained herein, shall expire upon issuance of the Statement of Completion by the CITY ("TERM"). PARTIES may agree to extend this AGREEMENT mutually by written amendment.

All finished and unfinished documents and materials produced or procured under this AGREEMENT, including all intellectual property rights thereto, shall become CITY property upon the COMMENCEMENT DATE.

The CITY will diligently work to commence implementation activities (with bid and award) in 2017. If the CITY has not issued a Notice to Proceed (NTP) within ten (10) months of its receipt of qualified bids from contractors on October 19, 2016, LA KRETZ or the CITY, or any of them, can terminate the AGREEMENT for convenience upon thirty (30) days' written notice in which case the LA KRETZ GIFT, shall be returned to LA KRETZ or his successors as provided herein.

4. LA KRETZ FUNDING:

[INTENTIONALLY OMITTED]

5. DEVELOPMENT OF THE IMPROVEMENTS:

(i) Subject to the provisions set forth in this AGREEMENT, CITY agrees to contract with and pay all contractors, to be selected by the CITY at its sole and absolute discretion (collectively, "CONTRACTORS") directly as required for future design services, construction, and completion of the IMPROVEMENTS in substantial accordance with the PLANS.

(ii) CITY shall provide quarterly written progress reports to LA KRETZ containing updated applicable budgets, plans and specifications, design and construction contracts, schedule, and evidence that CITY continues to be in substantial compliance with this AGREEMENT, and such other information as may reasonably requested by LA KRETZ in writing.

(iii) Design and Location:

1. The IMPROVEMENTS shall be constructed on the PREMISES in substantial accordance with the PLANS subject to field conditions that reasonably require minor alterations to the design. All costs or expenses incurred by the CITY in connection with any change shall be the CITY'S responsibility. LA KRETZ shall not, under any circumstance, incur additional cost or expense in excess of the LA KRETZ GIFT.
2. The IMPROVEMENTS shall be located within the designated area(s) of PREMISES, as identified on the Site Map attached hereto and incorporated herein by reference as **Exhibit A**, pursuant to terms and conditions of a permit issued by CITY and conditions of the Clean Water Act, Section 401 Certification, Clean Water Act, Section 404 Permit, U.S. Army Corps of Engineers Section 14 of the Rivers and Harbors Act of 1899 ("Section 408") Permit, and any other applicable permits required authorizing access to PREMISES for purposes of constructing/installing the IMPROVEMENTS.

6. EXCUSABLE DELAYS

In the event that performance under this AGREEMENT (other than obligations relating solely to the payment of money) on the part of any party hereto or thereto, as the case may be, is delayed or suspended as a result of Force Majeure, the delayed party shall perform its obligations hereunder or thereunder, as the case may be, promptly after the cause of the delay or suspension has abated and none of the parties shall incur any liability to the other parties as a result of such delay or suspension. "Force Majeure" means, with respect to a party, a material event or circumstance directly affecting such party's ability to comply with its obligations under this AGREEMENT (other than obligations relating solely to the payment of money) that, despite the exercise of reasonable diligence, such party is unable to prevent or avoid, including, but not limited to, acts of God or of the public enemy; insurrection; acts of the federal government or any unit of state or local government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes (but not strikes of the defaulting party's own employees, agents, contractors or subcontractors) causing slowdown, interruption or cessation of work; freight embargoes; and delays in transportation, in each case (a) to the extent not resulting from the party's own fault or negligence.

7. REPRESENTATIONS AND WARRANTIES:

- A. CITY represents and warrants that it has the right and power to enter into and perform this AGREEMENT, and that it will comply with all applicable rules, regulations, ordinances and laws related to the use and operation of the IMPROVEMENTS and PREMISES.
- B. LA KRETZ represents and warrants that he has the right and power to enter into and perform this AGREEMENT, and to grant the rights granted herein.

8. INDEMNIFICATION/HOLD HARMLESS:

Except for the active negligence or willful misconduct of LA KRETZ, or any of its successors in interest, CITY undertakes and agree to defend, indemnify and hold harmless LA KRETZ, and any of its respective boards, officers, agents, employees, assigns, and successors in interest, and undertakes and agree to defend, indemnify and hold harmless LA KRETZ, and any of its respective boards, officers, agents, employees, assigns, and successors in interest from and against all suits and cause of action, claims, losses, demands and expenses, including, but not limited to (1) attorney's fees (both in house and outside counsel) and (2) cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), (3) damages or liability of any nature whatsoever, for death or injury to any person, including LA KRETZ's employees and agents, or (4) damage or destruction of any property of any PARTY hereto or of their affiliates (collectively "LOSSES"), arising out of City's performance of its obligations under this AGREEMENT. Rights and remedies available to LA KRETZ under this **Section 8** are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this **Section 8** shall survive the expiration or termination of this AGREEMENT.

9. BOOKS AND RECORDS:

CITY shall maintain records, including records of financial transactions, pertaining to the performance of this AGREEMENT, in their original form, in accordance with requirements prescribed by CITY. These records shall be retained for a period of the lesser of three (3) years after termination of this AGREEMENT or ten (10) years from the date of the record. Said records shall be subject to examination and audit by authorized CITY or LA KRETZ personnel, or by their representative(s), at any time during the TERM of this AGREEMENT, or within the three years following the termination date of this AGREEMENT.

10. LA KRETZ GIFT USE RESTRICTIONS

- (i) The LA KRETZ GIFT shall be used by the CITY only for construction of the IMPROVEMENTS in substantial accordance with the PLANS. No portion of the LA KRETZ GIFT shall be used for any purpose other than construction, and
- (ii) The BOE shall request the Controller to establish a new account within the BOE, Engineering Special Services Fund No. 682, Department 50, entitled "North Atwater Multimodal Bridge" (ACCOUNT) to receive the LA KRETZ GIFT; and
- (iii) At the time the completed IMPROVEMENTS are accepted by the Board of Public Works, all unused funds within the ACCOUNT shall be dispersed to LA KRETZ; and
- (iv) If the CITY does not perform a final inspection by the City's Bureau of Contract Administration, which occurs at 100% completion of construction, within 42 months from the issuance of the Notice to Proceed, all unused funds within the ACCOUNT shall be dispersed to LA KRETZ.

11. RECOGNITION OF LA KRETZ GIFT:

(i) Signage/Naming: As part of the construction of the IMPROVEMENTS, the City shall install, and thereafter maintain as part of and for the life of the IMPROVEMENTS in first class order, repair and condition a total of two signs, one located prominently at the ingress and one located prominently at the egress of the IMPROVEMENTS, designating the IMPROVEMENTS as "La Kretz Crossing" in accordance with signage plans and specifications mutually determined within 180 days of the COMMENCEMENT DATE by the parties in good faith consultation with one another. "La Kretz Crossing" shall be the exclusive name of the IMPROVEMENTS, and no signage or monumentation shall identify the IMPROVEMENTS other than as "La Kretz Crossing."

(ii) Renaming of Improvements: If at any time the CITY shall fail to maintain the IMPROVEMENTS in good and safe condition and repair, LA KRETZ shall have the right, in his sole discretion, to require the CITY to rename the IMPROVEMENTS to a name not containing the name "La Kretz" and to remove and replace all signs bearing the name "La Kretz."

(iii) La Kretz Remedies: The CITY and LA KRETZ recognize and agree that LA KRETZ's remedies at law, including damages, for any breach or default by the CITY of its obligations under this **Section 11** may be inadequate. Therefore, unless this AGREEMENT has been terminated by LA KRETZ, or (at any time that LA KRETZ lacks legal capacity or is no longer living) the LA KRETZ SUCCESSORS, upon the occurrence of any default by the CITY of any of the terms, covenants or

conditions of this **Section 11**, shall have, in addition to any other remedies available at law or in equity (all of which remedies shall be distinct, separate and cumulative), the right to injunctive relief, declaratory relief and specific performance. Prior to exercising such remedies, LA KRETZ, or (at any time that LA KRETZ lacks legal capacity or is no longer living) the LA KRETZ SUCCESSORS shall give City written notice of such default and one hundred twenty (120) days reasonable opportunity to cure.

(iv) The terms of this **Section 11** shall survive expiration of the TERM or any termination of this AGREEMENT.

12. GENERAL:

- A. Any variation or amendment to this AGREEMENT shall be in writing and signed by all PARTIES, subject to prior approvals by CITY and the Los Angeles City Attorney.
- B. Nothing herein contained shall constitute a partnership or joint venture by the PARTIES of this AGREEMENT. This AGREEMENT is not intended for the benefit of any non-PARTY.
- C. This AGREEMENT is not intended for the benefit of any non-PARTY; provided, however, that the LA KRETZ SUCCESSORS (as hereinafter defined) are intended third party beneficiaries of all obligations and agreements running in favor of LA KRETZ under this AGREEMENT.
- D. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflicts of law. PARTIES consent to the sole and exclusive jurisdiction and venue in the Federal or State courts in Los Angeles County, California, and agree that all disputes based on or arising out of this AGREEMENT shall only be submitted to and determined by said courts, which shall have sole and exclusive jurisdiction.
- E. All notices, requests and demands required to be given hereunder shall be in writing and shall be personally delivered or sent by courier, by overnight mail, by registered or certified mail, postage prepaid, by fax, or by email, and shall be deemed to be given on the day such writing is delivered to the intended recipient thereof, or in the case of notice by fax, upon confirmed transmission. Notices, demands, instructions and other written communications shall be made upon each party at the address, fax number, or email address indicated below unless the party has given notice of a change in address, fax number, or email in accordance with the provisions of this **Section 12.E**:

CITY: City of Los Angeles
Department of Public Works
Bureau of Engineering
1149 S Broadway, Suite 700
Los Angeles, CA 90015
Attn: Gary Lee Moore, PE, ENV SP
City Engineer
Fax: (213)485-4923
Email: Gary.Lee.Moore@lacity.org

LA KRETZ or THE
LA KRETZ SUCCESSORS:

Morton La Kretz
c/o Crossroads Management, Inc.
6671 Sunset Boulevard, Suite 1575
Los Angeles, CA 90028
Fax: (323)463-0297
Email: Linda@crossroadsproperties.com

- F. The provisions of this AGREEMENT that, by their nature, are intended to survive, shall survive the expiration or earlier termination of this AGREEMENT.
- G. No right, obligation, duty, benefit or promise of this AGREEMENT, or any portion thereof, may be assigned by any party without the express written consent of the other party. Notwithstanding anything to the contrary in this AGREEMENT, all terms, obligations and agreements in this AGREEMENT that run in favor of LA KRETZ may, at any time that LA KRETZ lacks legal capacity or is no longer living, be enforced by the living children of LA KRETZ, acting jointly (collectively, the "LA KRETZ SUCCESSORS"). In the event that the need should arise for the PARTIES to amend this AGREEMENT by mutual consent at a time when LA KRETZ lacks legal

capacity to do so or is no longer living, then the LA KRETZ SUCCESSORS, acting in the same order, shall have a right to do so on behalf of LA KRETZ.

- H. CITY's use of the IMPROVEMENTS and the PREMISES shall be primary to any other use by any other party.
- I. If any provision of this AGREEMENT is declared or determined to be unlawful, invalid or unconstitutional, that declaration shall not in any manner affect the legality of the remaining provisions, and each provision of this AGREEMENT shall be deemed to be separate and severable from every other provision.
- J. Time is of the essence in this AGREEMENT. Unless a cure period is specified elsewhere in this AGREEMENT, in the event a PARTY to this AGREEMENT is late with any of its material obligations, the other PARTY shall give the late PARTY written notice and sixty (60) days reasonable opportunity to cure.
- K. In the event of a dispute between PARTIES with respect to the CITY's obligation under **Section 11**, the prevailing PARTY, as determined by the court or arbitrator, shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing PARTY. In no event shall the reasonable attorney's fees and costs collectively exceed \$50,000 over the life of the IMPROVEMENTS.
- L. **INCORPORATION OF DOCUMENTS:** This AGREEMENT and incorporated documents represent the entire integrated agreement and understanding of the PARTIES with respect to the subject matter hereof, and supersedes all prior written or oral representations, discussions, and agreements. The following documents are incorporated in and made a part hereof by reference to the extent that any provision of this AGREEMENT is inconsistent with the following documents, the terms and conditions of this AGREEMENT shall apply.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first above written.

CITY:

CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF PUBLIC WORKS, delegated to the City Engineer

By: _____

Gary Lee Moore, PE, ENV SP
City Engineer

Date: _____

LA KRETZ:

Morton La Kretz

Morton La Kretz

Date: _____

APPROVED AS TO FORM:

Michael N. Feuer, City Attorney

By: _____
Assistant City Attorney

Date: _____

SITE MAP

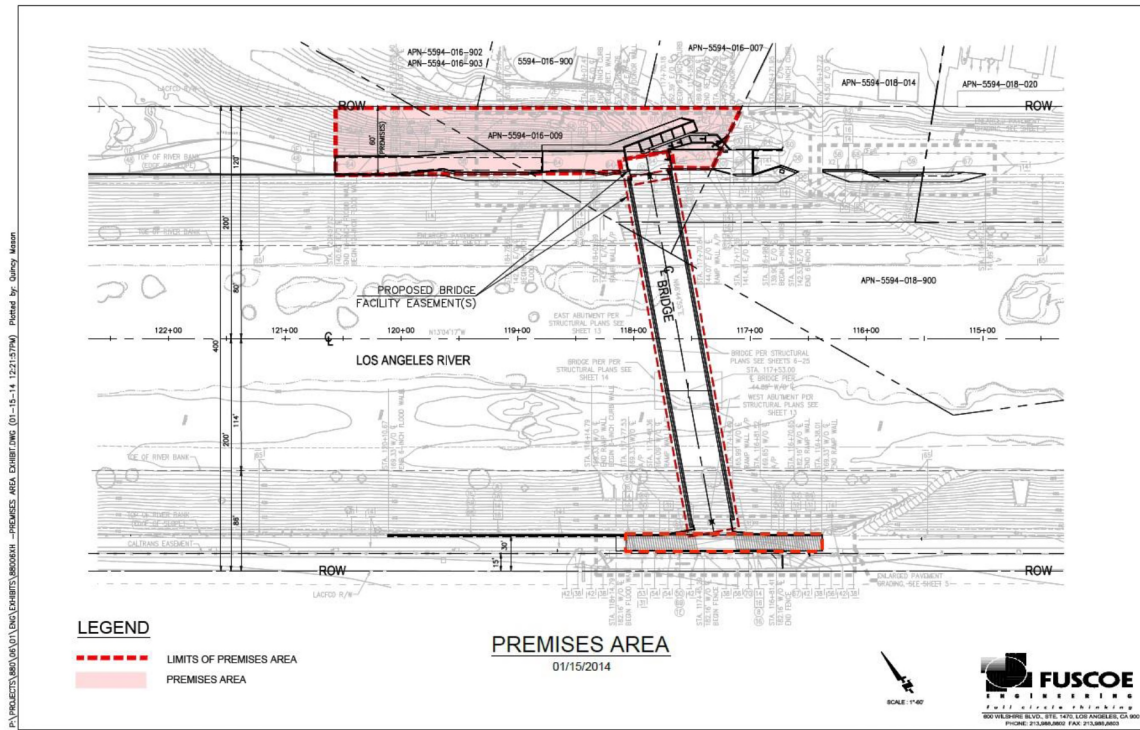


Exhibit A - "Premise" Map

GIFT AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND
RIVER LA (OR SUCCESSOR ENTITY),
FOR THE NORTH ATWATER NON-MOTORIZED MULTIMODAL BRIDGE

This Gift Agreement ("AGREEMENT") is entered into this ____ day of _____ 2017, ("COMMENCEMENT DATE") by and between the City of Los Angeles, a municipal corporation acting by and through its Department of Public Works ("CITY") and River LA ("RIVER LA" and formerly known as the Los Angeles River Revitalization Corporation), a California 501(c) (3) non-profit corporation. CITY and RIVER LA may be collectively referred to herein as "PARTIES".

WHEREAS, the Los Angeles River ("RIVER") divides the communities of Atwater Village and Griffith Park and multimodal users must currently cross it by traveling across its bed because no other option exists nearby for bicyclists, equestrians, and pedestrians to safely cross; and

WHEREAS, RIVER LA, in consultation with the CITY, has identified a beneficial location for a bridge to be constructed over the RIVER on real property owned by the CITY and the County of Los Angeles ("COUNTY"), approximately one-half mile upstream of Los Feliz Boulevard, corresponding to the delineated area designated as the "Premises Area" on the Site Map attached hereto and incorporated herein by reference as **Exhibit A** ("PREMISES"); and

WHEREAS, the CITY has a long-standing desire to have various improvements provided at the PREMISES, comprising a non-motorized multi-modal bridge for use by pedestrians, equestrians, and bicyclists, access ramps and structures, landscaping, and access paths (collectively referred to as, "IMPROVEMENTS"); and

WHEREAS, RIVER LA has secured two hundred seventy thousand dollars (\$270,000) from the CITY'S Bureau of Engineering ("BOE") (C.F. 11-1246-S1), three hundred thirty three thousand dollars (\$333,000) from the Los Angeles County Supervisorial District 3, seventy five thousand dollars (\$75,000) from the California Community Foundation, three million six hundred sixty thousand dollars (\$3,660,000) via the California Department of Transportation ("CALTRANS") Active Transportation Program ("ATP"), three hundred thousand dollars (\$300,000) from Council District 4, two hundred thousand dollars (\$200,000) from Council District 13 to implement the proposed IMPROVEMENTS at the PREMISES; and

WHEREAS, RIVER LA has entered into a contract for the design and specifications of the bridge; and

WHEREAS, the CITY's Bureau of Engineering, Bridge Improvement Division is performing, at the request of the Mayor's Office and CALTRANS, the project management of the IMPROVEMENTS including contract bidding and award, construction management and post-construction of the IMPROVEMENTS; and

WHEREAS, RIVER LA has also complied with the conditions of the Clean Water Act, Section 401 Certification, Clean Water Act, Section 404 Permit, USACE Section 14 of the Rivers and Harbors Act of 1899 ("Section 408") Permit required for the purpose of constructing/installing IMPROVEMENTS on the PREMISES; and

WHEREAS, a mitigated negative declaration under the California Environmental Quality Act (CEQA) was developed by BOE and adopted for the project by COUNCIL; and

WHEREAS, CALTRANS has approved the IMPROVEMENTS' Right-of-Way certification and National Environmental Policy Act (NEPA) certification; and

WHEREAS, the Active Transportation Program (ATP) funds totaling three million six hundred sixty thousand dollars (\$3,660,000) was allocated for the IMPROVEMENTS at the March 2016 California Transportation Committee meeting and that pursuant to that allocation, the IMPROVEMENTS will be reviewed by CALTRANS for an "Authorization to Proceed" or E-76 to be established prior to advertising the reimbursement rights and date for the construction phase of work; and

WHEREAS, RIVER LA desires to (a) transfer the ATP grant funds and all other grant funds for the IMPROVEMENTS to the CITY, and (b) deliver and assign all project documents including those necessary for the construction of the IMPROVEMENTS to the CITY (collectively, the "GIFT"), subject to the terms and conditions set forth in this AGREEMENT; and

WHEREAS, CITY desires to accept this GIFT all as more particularly set forth in this AGREEMENT; and

WHEREAS, The PARTIES understand and agree that this AGREEMENT sets forth the intent of the parties but does not guarantee that IMPROVEMENTS will be constructed; and

NOW THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein and the performance thereof, PARTIES hereby agree as follows:

1. PURPOSE:

The purpose of this AGREEMENT is for RIVER LA to transfer the GIFT from RIVER LA to the CITY and outline continuing support from RIVER LA to the project.

2. DONATION:

As of the date hereof, RIVER LA has donated the GIFT to the CITY, and the CITY hereby accepts the donation of the GIFT. RIVER LA has no further liability of obligation to the City except as expressly set forth in Sections 6(B)(1), 9 and 10.

3. RELATIONSHIP OF PARTIES:

RIVER LA is acting hereunder as an independent organization and not as an agent or employee of the CITY. The RIVER LA shall not represent or otherwise hold itself or any of its board, officers, agents, employees, assigns, or successors in interest to be an agent or employee of the CITY.

Nothing in this AGREEMENT will be deemed or construed as creating a joint venture or partnership between any of the parties hereto. No party is, by virtue of this AGREEMENT, authorized as an agent, employee, or legal representative of any other party. No party will have any power or authority to bind or commit any other. No party will hold itself out as having any authority or relationship in contravention of the herein **Section 3**.

4. TERM AND TERMINATION:

The term of this AGREEMENT shall commence upon the COMMENCEMENT DATE specified above and, except for the continuing obligations of RIVER LA set forth in this AGREEMENT, unless otherwise terminated pursuant to the terms and conditions contained herein, shall expire upon issuance of the Statement of Completion by the CITY ("TERM"). PARTIES may agree to extend this AGREEMENT mutually-agreed by amendment.

All finished and unfinished documents and materials produced or procured under this AGREEMENT, including all intellectual property rights thereto, shall become CITY property upon the date the GIFT is made. RIVER LA agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

5. FUNDING:

It is understood that RIVER LA has secured a grant award for future funding of Three Million Six Hundred Sixty Thousand Dollars (\$3,660,000) from the CALTRANS Active Transportation Program (ATP), two hundred seventy thousand dollars (\$270,000) from BOE (C.F. 11-1246-S1), three hundred thirty three thousand dollars (\$333,000) by LA County Supervisorial District 3, seventy five thousand dollars (\$75,000) by the California Community Foundation, three hundred thousand dollars (\$300,000) from Council District 4, and two hundred thousand dollars (\$200,000) from Council District 13 for the design

and construction of the IMPROVEMENTS on the PREMISES. RIVER LA has transferred its rights to all funds upon execution of this agreement.

6. DEVELOPMENT OF IMPROVEMENTS:

Subject to the provisions set forth in this AGREEMENT, CITY agrees to contract with and pay all contractors, to be selected by the CITY at its sole and absolute discretion (collectively, "CONTRACTORS") directly as required for future design services, construction, and completion of IMPROVEMENTS, using GIFT funds procured by the RIVER LA.

A. Design and Location:

1. CITY and its CONTRACTORS shall construct the IMPROVEMENTS on PREMISES, in accordance with SPECIFICATIONS, to the extent possible. Field conditions and other monetary constraints may require alterations to the design. All costs or expenses incurred by the CITY in connection with any change shall be the CITY'S responsibility. RIVER LA shall not, under any circumstance, incur additional cost or expense in excess of the GIFT.
2. IMPROVEMENTS shall be located within the designated area(s) of PREMISES, as identified on the Site Map attached hereto and incorporated herein by reference as **Exhibit A** pursuant to terms and conditions of a permit issued by CITY and conditions of the Clean Water Act, Section 401 Certification, Clean Water Act, Section 404 Permit, U.S. Army Corps of Engineers Section 14 of the Rivers and Harbors Act of 1899 ("Section 408") Permit, and any other applicable permits required authorizing access to PREMISES for purposes of constructing/installing IMPROVEMENTS.
3. CITY shall, at its sole discretion, review and approve the design of and SPECIFICATIONS for the IMPROVEMENTS.

B. Bidding, Construction and Post-Construction:

1. RIVER LA shall to the extent directed by CITY, but at no cost or expense to RIVER LA, use commercially reasonable efforts to work in partnership with the CITY to identify, pursue, and secure other outside funding to fill any funding gaps for construction of the IMPROVEMENTS, as well as all costs for project management, construction management, design services during construction and post-construction, bidding, construction, and post-construction including, but not limited to, environmental remediation, change orders, design changes during construction, design discrepancies, any unanticipated permits, or any other unanticipated

project costs, etc., of IMPROVEMENTS, pursuant to SPECIFICATIONS approved by CITY pursuant to **Section 6.A.3** above. RIVER LA has no obligation or requirement to provide any additional permits or approvals for CITY in connection with the IMPROVEMENTS.

7. EXCUSABLE DELAYS

In the event that performance under this AGREEMENT (other than obligations relating solely to the payment of money) on the part of any party hereto or thereto, as the case may be, is delayed or suspended as a result of Force Majeure, the delayed party shall perform its obligations hereunder or thereunder, as the case may be, promptly after the cause of the delay or suspension has abated and none of the parties shall incur any liability to the other parties as a result of such delay or suspension. "Force Majeure" means, with respect to a party, a material event or circumstance directly affecting such party's ability to comply with its obligations under this Agreement (other than obligations relating solely to the payment of money) that, despite the exercise of reasonable diligence, such party is unable to prevent or avoid, including, but not limited to, acts of God or of the public enemy; insurrection; acts of the federal government or any unit of state or local government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes (but not strikes of the defaulting party's own employees, agents, contractors or subcontractors) causing slowdown, interruption or cessation of work; freight embargoes; and delays in transportation, in each case (a) to the extent not resulting from the party's own fault or negligence.

8. REPRESENTATIONS AND WARRANTIES:

- A. RIVER LA represents and warrants that it has the right and power to enter into and perform this AGREEMENT, and to grant the rights granted herein.
- B. CITY represents and warrants that it has the right and power to enter into and perform this AGREEMENT, and that it will comply with all applicable rules, regulations, ordinances and laws related to the use and operation of the IMPROVEMENTS and PREMISES.

9. INDEMNIFICATION/HOLD HARMLESS:

Except for the active negligence or willful misconduct of the CITY, or any of its boards, officers, agents, employees, assigns, and successors in interest, RIVER LA undertakes and agrees to defend, indemnify and hold harmless the CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all suits and cause of action, claims, losses, demands and expenses, including, but not limited to (1)

attorney's fees (both in house and outside counsel) and (2) cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), (3) damages or liability of any nature whatsoever, for death or injury to any person, including RIVER LA's employees and agents, or (4) damage or destruction of any property of either party hereto or of their parties (collectively "LOSSES"), arising out of RIVER LA's performance of its obligations under this AGREEMENT. RIVER LA shall assign any indemnification rights or warranties it has received to the CITY to the extent that such warranties are assignable. Rights and remedies available to RIVER LA under this **Section 9** are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this **Section 9** shall survive the expiration or termination of this AGREEMENT.

10. BOOKS AND RECORDS:

RIVER LA and CITY shall maintain records, including records of financial transactions, pertaining to the performance of this AGREEMENT, in their original form, in accordance with requirements prescribed by CITY and RIVER LA. These records shall be retained for a period of the lesser of three (3) years after termination of this AGREEMENT or ten (10) years from the date of the record. Said records shall be subject to examination and audit by authorized CITY or RIVER LA personnel or by their representative(s) at any time during the TERM of this AGREEMENT, or within the three years following the termination date of this AGREEMENT.

11. GENERAL:

- A. Any variation or amendment to this AGREEMENT shall be in writing and signed by all PARTIES, subject to prior approvals by CITY and the Los Angeles City Attorney.
- B. Nothing herein contained shall constitute a partnership or joint venture by the PARTIES of this AGREEMENT. This AGREEMENT is not intended for the benefit of any non-PARTY.
- C. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflicts of law. PARTIES consent to the sole and exclusive jurisdiction and venue in the Federal or State courts in Los Angeles County, California, and agree that all disputes based on or arising out of this AGREEMENT shall only be submitted to and determined by said courts, which shall have sole and exclusive jurisdiction.

- D. Any notices permitted or required to be given under this AGREEMENT shall be sent by courier and addressed to the PARTIES as follows:

CITY: City of Los Angeles
Department of Public Works
Bureau of Engineering
1149 S Broadway, Suite 700
Los Angeles, CA 90015
Attn: Gary Lee Moore, PE, ENV SP
City Engineer

RIVER LA: Los Angeles River Revitalization Corporation
La Kretz Innovation Campus
525 South Hewitt Street
Los Angeles, CA 90013
Attn: Omar Brownson
Executive Director

- E. Notices shall be deemed received when delivered by courier. PARTIES may change the person and address to which notice shall be given by giving notice of such change pursuant to the provisions of this AGREEMENT.
- F. The provisions of this AGREEMENT that, by their nature, are intended to survive, shall survive the expiration or earlier termination of this AGREEMENT.
- G. No right, obligation, duty, benefit or promise of this AGREEMENT, or any portion thereof, may be assigned by either party without the express written consent of the other party; provided that the RIVER LA may assign to an affiliate with prior written consent by CITY.

- H. CITY's use of IMPROVEMENTS and the PREMISES shall be primary to any other use by any other party, including RIVER LA.
- I. If any provision of this AGREEMENT is declared or determined to be unlawful, invalid or unconstitutional, that declaration shall not in any manner affect the legality of the remaining provisions, and each provision of this AGREEMENT shall be deemed to be separate and severable from every other provision.

12. RATIFICATION:

At the request of CITY, and because of the need therefore, RIVER LA began performance of the responsibilities herein required prior to the execution hereof. By its execution hereof, CITY hereby accepts such service subject to all the terms, covenants, and condition of this AGREEMENT, and ratifies its AGREEMENT with RIVER LA for such services.

Any amendment, extension, or modification to this AGREEMENT shall be executed pursuant to prior approvals by CITY and City Attorney.

13. INCORPORATION OF DOCUMENTS

This AGREEMENT and incorporated documents represent the entire integrated agreement and understanding of the PARTIES with respect to the subject matter hereof supersedes all prior written or oral representations, discussions, and agreements. The following documents are incorporated and made a part hereof by reference to the extent that any provision of this AGREEMENT is inconsistent with the following documents, the terms and conditions of this AGREEMENT shall apply.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first above written.

CITY:

CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF PUBLIC WORKS, delegated to the City Engineer

By: _____
Gary Lee Moore, PE
City Engineer
Date: _____

APPROVED AS TO FORM:

Michael N. Feuer, City Attorney

By: _____
Assistant City Attorney
Date: _____

RIVER LA:

RIVER LA, a California 501(c)(3) non-profit, Corporation

By: _____
Omar Brownson
Executive Director
Date: _____

SITE MAP

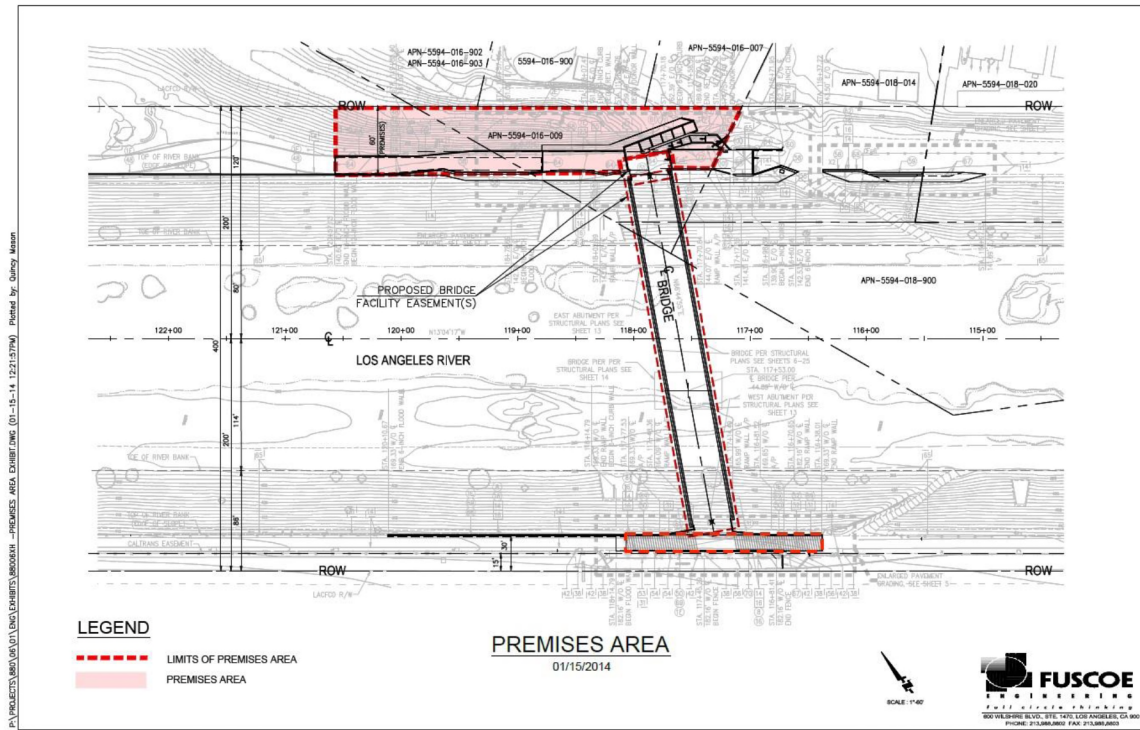


Exhibit A - "Premise" Map