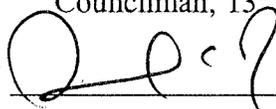


MOTION

I MOVE that the matter of the Arts, Parks, and River and Public Works and Gang Reduction Committees' Report and Transportation Committee Report relative to the proposed North Atwater Non-Motorized Multimodal Bridge project over the Los Angeles River, Item No. 15 on today's Council Agenda (CF 11-1246-S1), BE AMENDED to adopt the following recommendations in lieu of any other recommendations relative to this matter in order to consolidate them into one document, provide clear direction, and to include various technical corrections:

1. AUTHORIZE the City Engineer to execute the Gift Agreement attached to this Motion 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 Los Angeles River Project (Project).
2. AUTHORIZE the City Engineer to execute the Gift Agreement contained in Attachment 2 of the April 25, 2017 Bureau of Engineering report, attached to the File, between the City and River LA, a nonprofit organization formerly known as the LA River Revitalization Corporation, with general terms for River LA to: (1) transfer to the City 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 Engineering Special Services Fund No. 682-50, 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 No. 834-50, 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 this Fund for this Project and transfer said loan amount therefrom to the Engineering Special Services Fund No. 682-50 incrementally, on an as-needed basis, as requested by the City Engineer, for this Project with annual loan re-payments in the amount of \$693,313.30 to begin in FY 2018-19, as established through the annual budget process, and paid through various funding sources, such as Gas Tax, Measure R, Measure M, and other potential sources including but not limited to future grant funds, and new revenue sources.
5. AUTHORIZE the Controller to make any technical corrections or clarifications to the above accounting instructions in order to effectuate the timely construction of the North Atwater Multimodal Bridge and preserve its existing funding, including, but not limited to, a grant of \$3,660,000 from the California Department of Transportation.
6. DIRECT the Departments of Building and Safety, Cultural Affairs, Recreation and Parks, Department of Water and Power, and others, as necessary, to facilitate implementation of the North Atwater Multimodal Bridge.
7. AUTHORIZE the City Engineer to make any technical corrections or clarifications to the above instructions.

PRESENTED BY 
MITCH O'FARRELL
Councilman, 13th District

SECONDED BY 

May 26, 2017

ak



OFFICIAL

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 and National Philanthropic Trust (collectively “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 designed and constructed 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 along with a long term maintenance agreement for the bridge and to submit the agreements 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 revise the gift from a designed and constructed bridge to a donation to the CITY of THREE MILLION EIGHT HUNDRED EIGHTY EIGHT THOUSAND SIX HUNDRED AND TWO DOLLARS AND EIGHTY FOUR CENTS (\$3,888,602.84) in funds (the "LA KRETZ GIFT") previously made available by LA KRETZ to be used by the CITY, subject to the terms and conditions of this AGREEMENT, for no other purpose than the construction of the IMPROVEMENTS in substantial conformance with the PLANS; 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:

AGREEMENT

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 towards 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) by August 18, 2017, 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 and Council containing updated applicable budgets, plans and specifications, signage, design and construction contracts, schedule, and evidence that CITY continues to be in substantial compliance with this AGREEMENT.

(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 agrees 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 agrees 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 "Project 147 North Atwater Bridge" (ACCOUNT) to receive the LA KRETZ GIFT; and
- (iii) At the time the completed IMPROVEMENTS are accepted by the Board of Public Works, any unused funds of the LA KRETZ GIFT 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, any unused funds of the LA KRETZ GIFT within the ACCOUNT shall be dispersed to LA KRETZ.

11. GIFT RECOGNITION SIGNAGE AND NAMING OF IMPROVEMENTS:

(i) Signage and 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, declaring that the IMPROVEMENTS were "Made possible by a generous donation of Morton La Kretz", 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. Gift recognition signage will be of size, of high quality, and of a design and specification approved by City and LA KRETZ, and shall be well-maintained. For the life of the IMPROVEMENTS, the IMPROVEMENTS shall not be named after an individual, living or deceased, or organization.

(ii) Removal of Gift Recognition Signage: 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 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 (defined herein under Section 12 G), 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 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: _____

National Philanthropic Trust:

Date: _____

APPROVED AS TO FORM:

Michael N. Feuer, City Attorney

By: _____

Assistant City Attorney

Date: _____

EXHIBIT A

SITE MAP

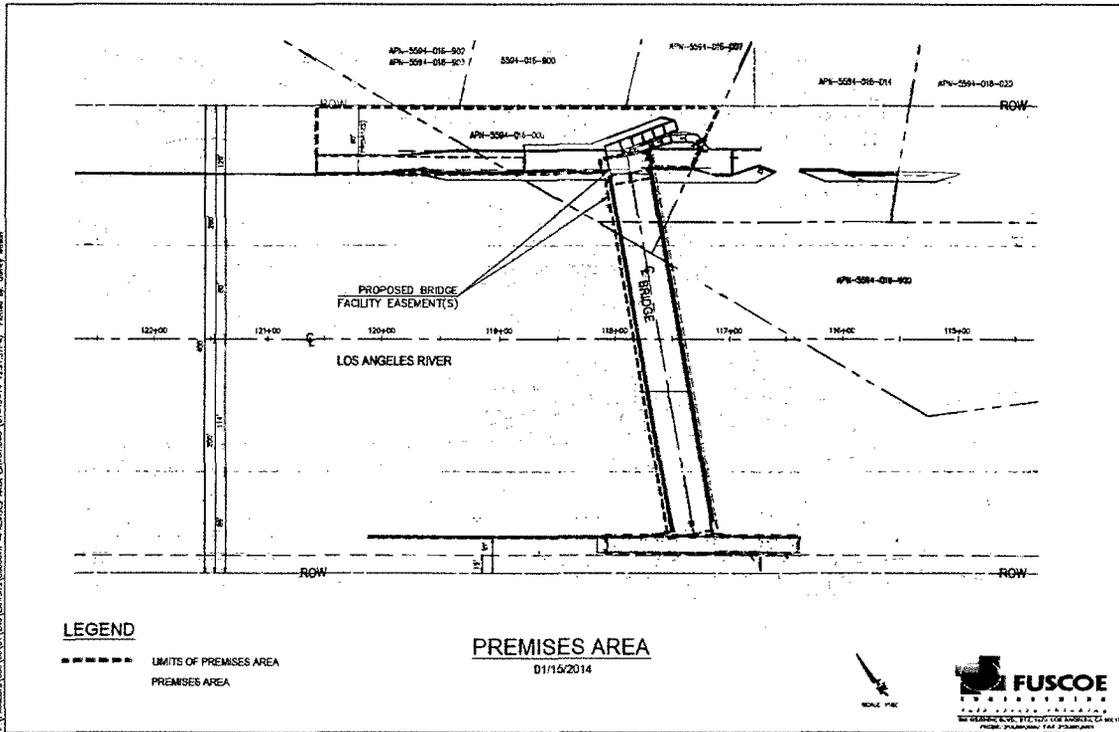


Exhibit A - "Premise" Map