



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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May 12, 2009

IN REPLY PLEASE

REFER TO FILE: PD-3

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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MAY 12, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**ENVIRONMENTAL ENHANCEMENT AGREEMENT BETWEEN THE MOUNTAINS
RECREATION AND CONSERVANCY AUTHORITY AND THE COUNTY OF
LOS ANGELES DEPARTMENT OF PUBLIC WORKS TO FUND 0.66 ACRES OF
OFF-SITE ENVIRONMENTAL MITIGATION FOR THE ARRASTRE CANYON ROAD
600 FEET AND 2,000 FEET SOUTH OF THE CROWN VALLEY ROAD PROJECT IN
THE UNINCORPORATED COUNTY AREA OF ACTON
(SUPERVISORIAL DISTRICT 5)
(3 VOTES)**

SUBJECT

This action is to authorize the Director of Public Works or her designee to sign the environmental enhancement agreement between the Mountains Recreation and Conservancy Authority and the County of Los Angeles Department of Public Works to provide, restore, maintain, monitor, and report on 0.66 acres of Mountains Recreation and Conservancy Authority-owned property as mitigation for the Arrastre Canyon Road 600 feet and 2,000 feet south of the Crown Valley Road project in the Santa Clara River Watershed.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that this environmental enhancement agreement is exempt from the provisions of the California Environmental Quality Act.
2. Approve and authorize the Director of Public Works or her designee to sign the environmental enhancement agreement between the Mountains Recreation and Conservancy Authority and the County of Los Angeles Department of Public Works. The agreement provides for the Mountains

Recreation and Conservancy Authority to provide, restore, maintain, monitor, and report on 0.66 acres of mitigation for the Arrastre Canyon Road 600 feet and 2,000 feet south of the Crown Valley Road project in the Santa Clara River Watershed. The Department of Public Works will finance the contract cost in the amount of \$108,900.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to fulfill the conditions of the permits issued by the United States Army Corps of Engineers (Corps) and the Regional Water Quality Control Board (RWQCB) for the Arrastre Canyon Road 600 feet and 2,000 feet south of the Crown Valley Road project to mitigate construction impacts at the site. The contract amount is based on a negotiated price of \$165,000 per acre to perform the re-vegetation work, maintenance, monitoring, and reporting. Documentation verifying purchase of 0.66 acres of credit for restoration from an approved in-lieu fee mitigation program is required by the Corps no later than 45 days after initiating construction.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1) by contracting for specialized services not currently provided by the Department of Public Works (Public Works).

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

The total cost to implement this agreement is \$108,900. We are seeking reimbursement for a portion of the project cost under Federal and State disaster assistance programs. Funding for this project is included the Fifth Supervisorial District's Road Construction Program in the Fiscal Year 2009-10 Road Fund Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Mountains Recreation and Conservancy Authority (MRCA) is a California joint powers agency of the Santa Monica Mountains Conservancy (SMMC), the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. SMMC, and its joint powers agencies, are the only in-lieu fee mitigation providers approved by the Corps for projects in the Santa Clara River Watershed. This contract is a standard agreement used by MRCA for off-site mitigation services and will be

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approved as to form by County Counsel prior to execution by the Director of Public Works or her designee.

Public Works will soon contract for the Arrastre Canyon Road storm damage roadway repair project. In order to carry out this project, Public Works requested and obtained permits from the Corps and the RWQCB. As a condition of these permits, Public Works is required to mitigate construction impacts to the environment by restoring and re-vegetating a combined total area of approximately 0.66 acres.

MRCA owns properties in the vicinity of our project site that would meet the restoration and re-vegetation mitigation requirements. MRCA is willing to set aside, restore, maintain, monitor, and report on 0.66 acres of their property to the permit agencies to meet the mitigation requirements for the fee of \$165,000 per acre for a total of \$108,900.

ENVIRONMENTAL DOCUMENTATION

This agreement for habitat restoration is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15333 of the CEQA guidelines for small habitat restoration. The road repair project is statutorily exempt from CEQA pursuant to Section 21080 (b)(4) of the Public Resources Code and Section 307.B.5 of the Environmental Reporting Procedures and Guidelines adopted by your Board on November 17, 1987. These exemptions provide for the proposed project in a disaster stricken area in which a state of emergency has been proclaimed by the Governor of California.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

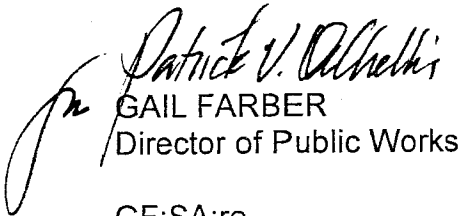
Restoration and re-vegetation of the mitigation site will enhance the environment and provide habitat to compensate for areas impacted by the construction project.

The Honorable Board of Supervisors
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CONCLUSION

Please return one adopted copy of this letter to Public Works, Programs Development Division.

Respectfully submitted,


GAIL FARBER
Director of Public Works

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Attachment

c: Chief Executive Office (Lari Sheehan)
County Counsel
Department of Public Works (Public Relations)

ENVIRONMENTAL ENHANCEMENT AGREEMENT

This Agreement is made and entered into on this ____ day of _____ 2009, by and between the County of Los Angeles Department of Public Works, collectively referred to herein as "Public Works" and the Mountains Recreation and Conservation Authority, a joint powers agency of the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District and the Rancho Simi Recreation and Park District, referred to herein as "MRCA."

RECITALS

WHEREAS

- A. Public Works is responsible for the operation and maintenance of the following "Project" Arrastre Canyon Road 600 and 2,000 feet south of Crown Valley Road located in Los Angeles County, consisting of:
1. The replacement of an existing dip crossing at Arrastre Canyon Road 600 feet south of Crown Valley Road with a 28-foot wide by 300-foot long dip crossing with concrete headwall and 45-degree sloped riprap rock protection blanket .
 2. The replacement of an existing dip crossing at Arrastre Canyon Road 2,000 feet south of Crown Valley Road with a 28-foot wide by 200-foot long dip crossing with 45-degree sloped riprap rock protection blankets.
 3. The fill and grading of the streambed upstream and downstream of the dip crossing 2,000 feet south of Crown Valley Road.
- B. In order to commence the Projects, Public Works requested and obtained the following permits, certifications, and agreements that have mitigation requirements:
1. United States Department of the Army, Corps of Engineers ("Corps") Nationwide Permit SPL-2007-00353-VEN. Based on the requirement of the permit, Public Works is required to mitigate for the project at a ratio of three-to-one for a total of 0.66 acre of riparian habitat from a Corps approved mitigation bank or in-lieu fee program.
 2. Regional Water Quality Control Board ("Regional Board") Water Quality Certification File No. 07-033. Based on the requirement of the certification, Public Works is required to mitigate for the project at a ratio of three-to-one for a total of 0.66 acre within the Santa Clara River Watershed.
- C. MRCA owns property that contains habitat similar to that in the vicinity of the Project, which habitat is in need of restoration and re-vegetation. The specific property, which is to be the subject of this Agreement ("Property") is to be determined by the Agreement between MRCA and Public Works and a property description of the Property is to be incorporated into the Habitat Mitigation Monitoring Plan ("the Plan"), which will become Exhibit A to this Agreement;
- D. MRCA is willing to set aside, restore, maintain, and report on a total of 0.66 acres of the Property as shown as "Potential Restoration Area" on Exhibit A hereto ("the Mitigation Parcel") so as to meet Public Works' requirements under the previously

indicated permits, certifications, and authorization and will not engage in nor permit any other entity to engage in activities that would negatively impact water quality, stream integrity, wildlife habitat, species diversity, and would preclude the introduction of non-native species.

- E. Santa Monica Mountains Conservancy, and all joint powers agencies formed with the Santa Monica Mountains Conservancy, including MRCA, is the only Corps approved in-lieu fee program provider for mitigation for projects in the Santa Clara River Watershed.

NOW, THEREFORE it is agreed as follows:

- A. **Payment.** Within 60 days after the date hereof, Public Works will pay to MRCA the amount of \$165,000 per acre, for a total of \$108,900, for the preparation of the Plan, which will become Exhibit A hereto, the restoration of the Property as set forth in paragraphs C and D above and in full consideration for all of the obligations undertaken by MRCA in this Agreement.
- B. **Habitat Mitigation Monitoring Plan.** Within 60 days of receiving payment hereunder, MRCA will prepare and submit to Public Works, the Corps and the Regional Board a Habitat Mitigation Monitoring Plan, which will address the requirements of the above-cited permits consistent with the provisions of this Agreement. On approval of the Plan by the Regional Board and the Corps, the MRCA will implement the Plan as if the same were fully set forth herein and the Plan will become Exhibit A to this Agreement.

If the Plan is not approved by the Regional Board or by the Corps, Public Works shall have the right to terminate this Agreement by serving on MRCA a notice of termination. If Public Works terminates this Agreement pursuant to this paragraph, MRCA shall refund the amount of \$108,900 to the Public Works within 30 days of the notice of termination.

- C. **Restoration of Mitigation Parcel.** Upon approval of the Plan as set forth in the previous paragraph, MRCA shall begin restoration of the Mitigation Parcel as provided in Exhibit A hereof by removing all non-native, exotic or invasive plants and vegetation thereon and by planting such native plants and vegetation as may be necessary to restore a natural riparian habitat, which shall be completed within a period of 12 months. For a period of at least five years thereafter, MRCA will take appropriate measures to prevent the re-establishment of non-native, exotic or invasive plants and vegetation, and to maintain the native plants and vegetation, on the Mitigation Parcel.
- D. **Covenant for Preservation.** MRCA hereby agrees and covenants that it will not engage in nor permit any other entity to engage in activities that would negatively impact the Mitigation Parcel, including without limitation the water quality, stream integrity, wildlife habitat, and species diversity thereof, and that it will preclude the planting of non-native species therein.
- E. **Exclusive Allocation to Public Works.** The Mitigation Parcel shall be allocated and designated exclusively as mitigation measures by and for Public Works. MRCA warrants and represents that the Mitigation Parcel has not been claimed or used in

whole or in part by any other entity for the purposes of mitigation of any environmental impact under any federal, state or local law or ordinance. MRCA shall not permit the Mitigation Parcel to be claimed or used in whole or in part at any time hereafter by any other entity for the purposes of mitigation of any environmental impact under any federal, state or local law or ordinance. However, MRCA may conduct similar mitigations for other entities immediately adjacent to the Mitigation Parcel. MRCA agrees to assume all of Public Works' obligations to the Corps and the Regional Board for the off-site in-lieu fee mitigation as fully described above in perpetuity. If as a result of a material breach of this paragraph by MRCA, Public Works is required by the Corps or the Regional Board, or any other entity having authority to do so, to provide a replacement or substitute mitigation, MRCA will indemnify and hold Public Works harmless for any and all costs, expenses, claims and liabilities resulting there from.

- F. **Reporting.** MRCA shall submit annual reports to the appropriate agencies, including the Corps and the Regional Board, on Public Works' behalf, by January 1 of each year for 5 years after planting. The reports shall include the survival, percent cover, and height by species of both trees and shrubs, with photos, as indicated in the agreements with the regulatory agencies.
- G. **Release of Public Works.** Payment by Public Works to MRCA relieves Public Works of any further obligation whatsoever to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the Property or any part thereof.
- H. **Monitoring.** MRCA agrees to monitor, over a 5-year period, the status of the Mitigation Parcel and conduct any restoration activities that may be necessary thereon to maintain the Mitigation Parcel in compliance with the terms of this Agreement. MRCA shall permit authorized representatives of Public Works at reasonable times and on reasonable notice to enter onto the Property so as to inspect and monitor the Mitigation Parcel. Any inspection by Public Works shall be for its sole benefit and is not intended to be relied upon by any other entity. MRCA shall provide Public Works with access to, and permit copying of, any and all documents in its possession or control related to the restoration of the Mitigation Parcel and its ongoing maintenance.
- I. **Notices.** Notices shall be in writing and delivered personally; by facsimile (with original forwarded by U.S. Mail), by U.S. Mail first class, postage pre-paid; or by guaranteed overnight delivery service, addressed as follows:

If to Public Works	If to MRCA
Dale Sakamoto Associate Civil Engineer P.O. Box 1460 Alhambra, CA 91803-1460 dsakamoto@dpw.lacounty.gov 626-458-3915 fax: 626-458-3179	Chris Trumpy Project Analyst II 5810 Ramirez Canyon Road Malibu, California 90265 asmall@smmc.ca.gov 310-589-3200 Ext. 263 fax: 310-589-3210

Notice shall be deemed given on the date personal delivery is made or, if sent by U.S. Mail, three days following deposit in the mail, as provided above.

- J. **Default and Enforcement.** In the event of any breach of this Agreement by either party, the other party may enforce this Agreement by any means available at law or in equity. In the event of litigation, mediation or arbitration to resolve any breach of, or dispute related to, this Agreement, the prevailing party shall be entitled to receive from the other party its reasonable legal costs and expenses, including reasonable legal fees and the reasonable cost of in-house counsel related to the breach or dispute.
- K. **Modifications.** This Agreement may be amended only by a written document signed by both parties.
- L. **Assignment.** This Agreement shall not be assigned by either party without the prior written consent of the other party that shall not be unreasonably withheld. Failure to respond to a written request for such consent within 90 days shall be deemed implied consent.
- M. **Integration and Construction of Agreement.** This Agreement sets forth the complete and final understanding of the parties with regard to the subject matter hereof (with the exception of the preparation of the Plan, which shall become Exhibit A hereto, as provided for herein) and supersedes any and all prior communications, representations, negotiations, understandings and agreements, whether written or oral, concerning such subject matter.
- N. **Non-waiver.** A failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver, or as a waiver of the right to compel enforcement of that provision.
- O. **Successors and Assigns.** This Agreement shall inure to the benefit of each party's successors and assigns.
- P. **Governing Law.** This Agreement shall be governed by the laws of the State of California without regard to choice of law principles.
- Q. **Authority and Counterparts.** The persons signing this Agreement represent and warrant that they are authorized to do so by the party for whom they are signing. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement.
- R. **Indemnification.** MRCA shall fully indemnify, defend and hold Public Works and its officers, agents, and employees harmless from and against any claim, liability, demand, damage, cost or expense, including, without limitation, defense costs, arising from (i) a breach of MRCA's obligations under this Agreement, or (ii) any act or omission of MRCA or its officers, agents, employees, contractors or subcontractors in the performance of the MRCA's obligations described in this Agreement.

IN WITNESS WHEREOF, Public Works and MRCA have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS	MOUNTAINS RECREATION AND CONSERVATION AUTHORITY (MRCA)
By _____ Deputy	
APPROVED AS TO FORM:	
ROBERT E. KALUNIAN Acting County Counsel	
By _____ Deputy	By: _____ Rorie Skei , Deputy Executive Director Mountains Recreation and Conservation Authority

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EXHIBIT A

Habitat Mitigation Monitoring Plan

(to be inserted as provided for in paragraph C hereof)