



DATE: August 19, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **RESOLUTION APPROVING THE APPLICATION FOR GRANT FUNDS FOR THE PROPOSITION 50 CALIFORNIA RIVER PARKWAYS GRANT PROGRAM; ACCEPTANCE AND APPROPRIATION OF \$76,836 IN STATE GRANT FUNDS TO THE MISSION RESOURCE RIVER PARKWAY FUND COLLABORATIVE GRANT FUND; PROFESSIONAL SERVICES AGREEMENT AND PURCHASE ORDER WITH MISSION RESOURCE CONSERVATION DISTRICT FOR REMAINING ARUNDO ERADICATION PROJECT**

SYNOPSIS

Staff recommends that the City Council adopt a resolution approving the application for grant funds for the Proposition 50 River Parkways Grant Program for the San Luis Rey River Trail Extension Project; accept and appropriate \$76,836 in state grant funds to the Mission Resource River Parkway fund collaborative grant fund with Mission Resource Conservation District (MRCDD); approve a professional services agreement and purchase order with the Mission Resource Conservation District in an amount not to exceed \$61,403 for remaining Arundo eradication project; authorize the Financial Services Director, or designee, to execute the purchase order; and authorize the City Manager to execute the agreement.

BACKGROUND

The San Luis Rey River (SLRR) and its watershed are the largest in San Diego County, support critical habitat for three endangered species, and provide the opportunity for compatible recreation along a scenic Class 1 Bikeway, the San Luis Rey River Trail (SLRRT). The SLRRT borders the southern side of the SLRR beginning at the intersection of Neptune and Cleveland Streets and continues approximately 7 miles east to College Boulevard. A Class 1 Bikeway is defined as off-street facilities with exclusive rights-of-way, designated for the exclusive use of bicyclists and pedestrians.

The MRCDD manages the second largest *Arundo* eradication program in the State of California and has obtained a California River Parkways Grant through the Proposition 50, Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 administered by the State of California, The Resources Agency. The grant provides for

the 1.7-mile extension of the SLRRT from College Boulevard to Santa Fe Avenue as well as 22.5 acres of riparian restoration and flood risk prevention in the SLRR. On October 18, 2006, the City Council adopted a resolution approving a collaborative grant effort with MRCD for the extension of the SLRRT, Arundo removal and habitat restoration within the adjacent riverbed.

ANALYSIS

By amending the grant agreement with the State the City will become the grantee. The main purpose in becoming the grantee is to expedite and control reimbursements to the City for Phase I and Phase II of the SLRRT Extension Project.

Currently the MRCD is the grantee and is responsible for the grant administration. In order for the City to be reimbursed, MRCD must be able to pay the City for work completed to then be reimbursed by the State. MRCD is unable at this time to secure credit to reimburse the City for the Phase I and Phase II portions of the SLRRT. The State will not directly reimburse the City because we are not currently the grantee.

As stated above the proposed grant amendment that will make the City the grantee will allow the City to receive direct reimbursement from the State. By becoming the grantee the City will now be responsible for reimbursing MRCD \$61,403 for the remaining Arundo removal project. Approval of the professional service agreement and purchase order agreement will allow the City to oversee and reimburse MRCD for the last phase of the Arundo removal project. The City will then be directly reimbursed by the State once the reimbursement request is made. This last phase of the Arundo removal project is relatively simple in terms of scope of work but is an important and final step to protect the large amount of work completed in previous years. City staff in collaboration with MRCD staff will ensure that the Arundo removal project is successful, completed and that reimbursements are made and received in a timely manner.

FISCAL IMPACT

A total of \$558,060 has already been appropriated for Phase I and II of the SLRRT. An additional \$76,836 will be deposited to 904718700272.4376 and appropriated to the Mission Resource River Parkway fund (904718700272.5325). The City will reimburse MRCD \$61,403 to complete the last phase of the Arundo eradication project.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

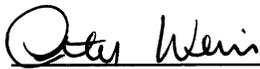
Staff recommends that the City Council adopt a resolution approving the application for grant funds for the Proposition 50 River Parkways Grant Program for the San Luis Rey River Trail Extension Project; accept and appropriate \$76,836 in state grant funds to the Mission Resource River Parkway fund collaborative grant fund with Mission Resource Conservation District (MRCD); approve a professional services agreement and purchase order with the Mission Resource Conservation District in an amount not to exceed \$61,403 for remaining Arundo eradication project; authorize the Financial Services Director, or designee, to execute the purchase order; and authorize the City Manager to execute the agreement.

PREPARED BY:



Nathan R. Mertz
CIP Manager I
Parks Development Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



George Buell, Development Services Director



Scott O. Smith, City Engineer



Margery M. Pierce, Neighborhood Services Director



Teri Ferro, Financial Services Director



Attachments
Resolution
Professional Services Agreement

1 RESOLUTION NO.

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
3 OCEANSIDE APPROVING THE APPLICATION FOR GRANT
4 FUNDS FOR THE CALIFORNIA RIVER PARKWAYS GRANT
5 PROGRAM UNDER THE WATER SECURITY, CLEAN
6 DRINKING WATER, COASTAL AND BEACH PROTECTION
7 ACT OF 2002 (PROPOSITION 50)

8 WHEREAS, the Legislature and Governor of the State of California have provided
9 Funds for the program shown above; and

10 WHEREAS, the Resources Agency has been delegated the responsibility for the
11 administration of this grant program, establishing necessary procedures; and

12 WHEREAS, said procedures established by the State Resources Agency require a
13 resolution certifying the approval of application(s) by the Applicant's governing board before
14 submission of said application(s) to the State; and

15 WHEREAS, the Applicant, if selected, will enter into an agreement with the State of
16 California to carry out the Project

17 NOW, THEREFORE, BE IT RESOLVED that the City of Oceanside

- 18 1. Approves the filing of an application for the San Luis Rey River Trail Extension
19 Project;
- 20 2. Certifies that Applicant understands the assurances and certification in the application;
- 21 3. Certifies that Applicant or title holder will have sufficient funds to operate and
22 maintain the Project(s) consistent with the land tenure requirements or will secure the
23 resources to do so;
- 24 4. Certifies that it will comply with the provisions of Section 1771.8 of the State Labor
25 Code regarding payment of prevailing wages on Projects awarded Proposition 50 Funds;
- 26 5. If applicable, certifies that the Project will comply with any laws and regulations
27 including, but not limited to, legal requirements for building codes, health and safety
28 codes, disabled access laws, and, that prior to commencement of construction, all
applicable permits will have been obtained; and

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1 6. Appoints the City Manager, or designee, as agent to conduct all negotiations, execute
2 and submit all documents including, but not limited to applications, agreements,
3 payment requests and so on, which may be necessary for the completion of the
4 aforementioned Project(s).

5
6 PASSED AND ADOPTED by the City Council of the City of Oceanside, California,
7 this _____ day of _____, 2009, by the following vote:

8 AYES:

9 NAYS:

10 ABSENT:

11 ABSTAIN:

12 _____
MAYOR OF THE CITY OF OCEANSIDE

13 ATTEST:

APPROVED AS TO FORM:

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15 _____
16 CITY CLERK

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CITY ATTORNEY

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: MISSION RESOURCE CONSERVATION GRANT FUND:
Proposition 50 River Parkways Grant for the San Luis Rey River Trail Extension
Project, Arundo Removal and Restorative Planting Project**

THIS AGREEMENT, dated _____, 2009 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and MISSION RESOURCE CONSERVATION DISTRICT (MRCO), hereinafter designated as "CONSULTANT."

RECITALS

- A. CITY desires to obtain professional services from an independent contractor for the above named project and;
- B. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor and;
- D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education, and expertise and;
- E. CITY is interested in the CONSULTANT continuing to provide Arundo removal and restorative planting for the CITY and;
- F. CONSULTANT has heretofore conducted Arundo removal and restorative planting project for the CITY, and agrees to continue and complete the Arundo removal and restorative planting project and;
- G. The Agreement shall consist of this Agreement, Exhibit "A" Statement of Work and Exhibit "B" Payment Schedule.

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Proposition 50 River Parkways Grant for the San Luis Rey River Trail Extension
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NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: CONSULTANT shall perform the work described in the "Statement of Work" attached as Exhibit "A" to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by CITY.

2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. **LIABILITY INSURANCE.**
 - 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

 - 4.2. CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence \$ 1,000,000

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General Aggregate \$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence \$ 1,000,000

General limit project specific aggregate \$ 2,000,000

Automobile Liability Insurance \$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

- 4.3** If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.
- 4.4** All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.5** All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6** All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7** CONSULTANT shall provide evidence of compliance with the insurance

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requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

6. **COMPENSATION**

- 6.1 The Payment Schedule is in Exhibit "B". The CITY is precluded from making payments prior to receipt of services (advance payments). Invoices are subject to the following requirements:

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- 6.2** Fiscal. CITY will pay CONSULTANT the agreed upon price, pursuant to the Payment Schedule in Exhibit “B” for the work specified in Exhibit “A”, Statement of Work.
- 6.2.1** Accounting System And Fiscal Monitoring. CONSULTANT shall provide and maintain an accounting and financial support system to monitor and control costs to assure Agreement completion.
- 6.3** Invoices and Payment.
- 6.3.1** Invoices. Payment for the services performed under this Agreement shall be in accordance with Exhibit “B”, unless other payment methodologies are negotiated and agreed to by both CONSULTANT and CITY. CONSULTANT shall submit approved invoices monthly to the CITY for work performed in the monthly period, accordingly.
- 6.3.2** Payments. CITY agrees to pay CONSULTANT in arrears only after receipt and approval by CITY of properly submitted, detailed and itemized original invoice referencing the Agreement number, a detailed listing of the percentage of task completion showing the appropriate calculation for each, and a progress report documenting the status and accomplishments of the CONSULTANT during the billing period pursuant to Exhibit “B”, documenting the total invoiced amount by CONSULTANT. A copy (or copies) of the invoice shall be submitted to the CITY. Each invoice so approved and paid shall constitute full and complete compensation to CONSULTANT for the work product submitted and for all work completed during the billing period pursuant to Exhibit “A” and Exhibit “B”.
- 6.3.3** Full Compensation. Pending any adjustments by the CITY, each invoice approved and paid shall constitute full and complete compensation to the CONSULTANT for all work completed during the billing period pursuant to Exhibit “A” and Exhibit “B”. CONSULTANT shall be entitled only to compensation, benefits, reimbursements or ancillary services specified in this Agreement.
- 6.3.4** Conditions Prerequisite To Payments. CITY may elect not to make a particular payment if any of the following exists:
- 6.3.4.1** Misrepresentation. CONSULTANT, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to CITY.

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6.3.4.2 Unauthorized Actions by CONSULTANT. CONSULTANT took any action pertaining to this Agreement, which required CITY approval, without having first received said CITY approval.

6.3.4.3 Default. CONSULTANT was in default under any terms and conditions of this Agreement.

6.3.5 CITY Approval. As identified above, all subcontracts under this Agreement shall have prior written approval of the CITY. CITY may withhold payment until reports, data, audits or other information required for Agreement administration or to meet CITY or State reporting or auditing requirements are received and approved by CITY or designee. The CITY may also withhold payment if, in the CITY's opinion, CONSULTANT is in non-compliance with this Agreement.

6.3.6 Availability of Funding. The CITY's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the CITY shall arise for payment beyond June 30 of the calendar year unless funds are designated by the CITY and are made available for such performance. CITY shall have the right to terminate this Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to CONSULTANT in the event that Federal, State or County funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, CITY and CONSULTANT shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no agreement is reached between CITY and CONSULTANT within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination. In the event of termination of this Agreement in accordance with the terms of this Section, CONSULTANT shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which CITY may be entitled, for damages or otherwise, under the terms of this Agreement. In the event of termination of this Agreement pursuant to this Section, in no event shall CONSULTANT be entitled to any loss of profits on the portion of this Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.

6.3.7 Disallowance. In the event the CONSULTANT receives payment for services under this Agreement which is later disallowed by the CITY, CONSULTANT shall promptly refund the disallowed amount to CITY on request, or at its option,

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CITY may offset the amount disallowed from any payment due or to become due to CONSULTANT under any Agreement with the CITY.

6.3.8 Maximum Price. During the performance period of this Agreement, the maximum price for the items and/or services shall not exceed the lowest price at which CONSULTANT then offers the items and/or services to its most favored customer.

6.4 CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$61,403.00.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer. CONSULTANT shall obtain approval by the City Engineer prior to performing any work that results in incidental expenses to CITY.

7. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Engineer within timelines identified within Exhibit "A".

8. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

9. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

10. **TERMINATION.**

10.1 Termination For Default. Upon CONSULTANT's breach of this Agreement, County shall have the right to terminate this agreement, in whole or part. Prior to

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termination for default, CITY will send CONSULTANT written notice specifying the cause. The notice will give CONSULTANT 10 days from the date the notice is issued to cure the default or make progress satisfactory to CITY in curing the default, unless a different time is given in the notice. If CITY determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, CITY may terminate this Agreement immediately upon issuing oral or written notice to the CONSULTANT without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by CONSULTANT under this Agreement shall become the sole and exclusive property of CITY. In the event of such termination, the CITY may purchase or obtain the supplies or services elsewhere, and CONSULTANT shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the CITY. The prevailing market price shall be considered the fair repurchase price. Notwithstanding the above, CONSULTANT shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement by CONSULTANT, and CITY may withhold any reimbursement to CONSULTANT for the purpose of off-setting until such time as the exact amount of damages due CITY from CONSULTANT is determined.

- 10.1.1** If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the CONSULTANT was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of the CITY, be the same as if the notice of termination had been issued pursuant to such clause.
- 10.2** Damages For Delay. If CONSULTANT refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, CITY will be entitled to the resulting damages caused by the delay. Damages will be the cost to CITY incurred as a result of continuing the current level and type of service over that cost that would be incurred had the Agreement segments been completed by the time frame stipulated and any other damages suffered by CITY as allowed by law.
- 10.3** CITY Exemption From Liability. In the event there is a reduction of funds made available by CITY to CONSULTANT under this or subsequent Agreements, the City of Oceanside and its Departments, officers and employees shall incur

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no liability to CONSULTANT and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.

10.4 Termination For Convenience. The CITY may, by written notice stating the extent and effective date, terminate this Agreement for convenience in whole or in part, at any time. The CITY shall pay the CONSULTANT as full compensation for performance until such termination:

10.5.1 The unit or pro rata price for any delivered and accepted portion of the work.

10.5.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the CONSULTANT as approved by the CITY, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.

10.5.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.

10.6 Remedies Not Exclusive. The rights and remedies of County provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

10.7 Full Cost Recovery Of Investigation And Audit Costs. Contractor shall reimburse County of San Diego for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement. Reimbursement for such costs shall be withheld from any amounts due to Contractor pursuant to the payment terms of the Agreement, or from any other amounts due to Contractor from County.

11. COMPLIANCE WITH LAWS AND REGULATIONS

11.1 Conformance With Rules And Regulations. CONSULTANT shall be in conformity with all applicable Federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. CONSULTANT shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.

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- 11.2 CONSULTANT Permits and License. CONSULTANT shall obtain and maintain, at no cost to the CITY, all approvals, permissions, permits, licenses, and other forms of documentation required in order to comply with all existing domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The CITY reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
12. AGREEMENT MODIFICATION. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
13. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

MISSION RESOURCE
 CONSERVATION DISTRICT

By: *Judith M. Tearell*
 Name/Title District Manager

CITY OF OCEANSIDE

By: _____
 City Manager

Date: _____

Date: _____

By: _____
 Name/Title

APPROVED AS TO FORM:
Robert J. Hamilton, ASST.
 City Attorney

Date: _____

95-3696090
 Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On 8-4-09 before me, Sheri Simmons, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Judith Mitchell
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sheri Simmons
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Professional Services Agreement

Document Date: _____ Number of Pages: 10

Signer(s) Other Than Named Above: (MRCO & City of Oceanside)

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here



Phone (760) 728-1332
Fax (760) 723-5316

Mission Resource Conservation District
990 East Mission Road, Fallbrook, California 92028
P.O. Box 1777, Fallbrook, California 92088-1777

RESOLUTION NO. 2009-4

June 22, 2009

BOARD OF DIRECTORS OF MISSION RESOURCE CONSERVATION DISTRICT

A RESOLUTION AUTHORIZING ENTERING INTO AN AGREEMENT WITH THE CITY OF OCEANSIDE AND THE STATE OF CALIFORNIA RESOURCES AGENCY TO CHANGE GRANTEE TO THE CITY OF OCEANSIDE ON AGREEMENT NUMBER R81711-0 AND ANY AMENDMENTS THERETO

Whereas, the Mission Resource Conservation District is authorized to enter into a financial assistance agreement with the State of California and the State Resources Control Board as well as the City of Oceanside; and

Whereas, the Mission Resource Conservation District and the City of Oceanside would like to continue and expeditiously complete Agreement Number R81711-0 and meet the requirements of the payment documentation; and

Whereas, the Mission Resource Conservation District authorized the District Manager, or designee, to sign the financial assistance agreement and any amendments thereto; and

Whereas, the Mission Resource Conservation District agrees and further does authorize the aforementioned representative or her designee to certify that the Mission Resource Conservation District has and will comply with all applicable federal and state statutory and a regulatory requirements related to any financial assistance funds received; and

Now, therefore, be it resolved, that the Mission Resource Conservation District Board of Directors hereby requests that the City of Oceanside be named grantee on Agreement Number R81711 for invoicing and contract completion purposes.

CERTIFICATION

I hereby certify that the foregoing Resolution No. 2009-4 was duly and regularly adopted by the Board of Directors of the Mission Resource Conservation District at the meeting thereof held on the 22th day of June, 2009, motion by K. Thuner and seconded by D. Allen, motion passed by the following roll call vote:

Ayes: 4
Noes: 0
Abstained: 0
Absent: 0
Attest:

Mike Peters, Board Secretary

EXHIBIT "A"

Summary of activities with narrative describing work activities.

Task line items are taken from the 'River Parkways Grant Agreement' and information regarding remaining funding from the Grant Administrator at State Resources at this time.

Project scope descriptions:

Category 1 activities are work activities outlined under the River Parkways project related to the management *Arundo* treatments and re-vegetation tasks (see Category 3). Annual reports documenting work activities are also outlined as Category 1b tasks under the grant agreement/project description.

Category 1b: Planning and Design Arundo treatment and re-veg		
1.5	Project management (MRCD & subs)	\$13,339
1.6	FWS reporting & meetings (Sec 7 complete)	\$2,210
1.7	DFG Permit reporting & meetings (1600 complete)	\$2,210
Total for Cat 1b		\$17,759

1.5 Project management: manage contractors, plan work schedule, complete grant related information processing.

Set up, monitor, and complete all work activities for *Arundo* re-treatment and native planting project. This includes management of sub-contractors used in completing work items below. Invoices for completed work will be prepared and submitted to the City of Oceanside. Work completed by April 1st 2010.

Deliverables: Invoice sets and completed project as outlined in this scope.

1.6 FWS reporting: complete annual report for FWS as required under Section 7 permit.

A sub-contractor selected by MRCD will complete annual reporting. The project site will be monitored before, during and after work is carried out. Photo documentation and verbal descriptions of site conditions will be recorded to aid in report preparation. An annual report for FWS outlining what work has occurred on project will be prepared. This will include a verbal description of work activities, site photos, and maps. This report is required under FWS Section 7 permit agreement. Work completed by April 1st 2010.

Deliverables: Annual FWS report

1.7 DFG reporting: complete annual reports to DFG as required under 1600 Streambed Alteration Agreement.

A sub-contractor selected by MRCD will complete annual reporting. The project site will be monitored before, during and after work is carried out. Photo documentation and verbal descriptions of site conditions will be recorded to aid in report preparation. An annual report for DFG outlining what work has occurred on project will be prepared. This will include a verbal description of work activities, site photos, and maps. This report is required under DFG 1600 permit agreement. Work completed by April 1st 2010.

Deliverables: Annual DFG report

Category 3 activities are work activities outlined under the River Parkways project related to: control of target non-native plants, reduction of stands of non-native vegetation (predominately *Arundo* and tamarisk), re-vegetation with native plantings, watering of plants, and biological monitoring of all work activities to assure permits are being followed. All work activities will be completed by March 15th, 2010. All initial control of target plants has already occurred earlier in the project- all that remains is one fall/winter season of re-treatments, scattered biomass reduction, fill in planting, watering and permitting compliance.

Category 3: Arundo treatment and re-vegetation			
3.1	<i>Arundo treatments:</i>	Task completed	\$33
3.2	<i>Arundo biomass reduction</i>		\$2,847
3.3	<i>Re-vegetation 350 plants per acre, 1 gallon(fill in planning only)</i>		\$3,769
3.4	<i>Re-treatments of Arundo (2009/2010 is final year)</i>		\$19,076
3.5	<i>Watering 1 gallon plants as site (2009/2010 is final year)</i>		\$8,014
3.6	<i>Project acknowledgement sign:</i>	Task completed	\$104
3.7	<i>Biologist on site (per FWS/DFG agreements) (2009/2010 is final year)</i>		\$4,801
			\$38,644

3.2 Arundo biomass reduction: reduce treated non-native plant biomass as needed. Hand crew work at this stage of project.

A sub-contractor selected by MRCD will complete biomass reduction. Treated (dead) *Arundo* and other non-native plant biomass will be reduced (cut with chain saws and/or mowed with a rubber tired tractor fitted with a flail mowing attachment). Biomass reduction creates chipped/mulched material that helps keep other weeds from establishing in the work areas. Biomass reduction will occur between September 15th 2009 and February 28th 2010.

Deliverables: Reduced non-native plant biomass in the project area (reported in DFG and FWS reports).

3.3 Native plant re-vegetation: fill in planting to assure good cover of native vegetation on project site.

A sub-contractor selected by MRCD will complete re-vegetation. The project area has already had extensive planting with native 1 gallon plants. Some areas experience die off, these areas will be re-planted with 1 gallon plants. Plants will be grown from native stock collected from the watershed. Plants will be a mix of: mule fat, elderberry, cottonwood, sycamore, or willows. 500 plants will be planted between November 15th 2009 and February 28th 2010. Plants will be watered in at the time of planting if soils are not saturated.

Deliverables: Native plant re-vegetation in the project area (reported in DFG and FWS reports).

3.4 Re-treatments of Arundo: all treatment areas are searched and Arundo, tamarisk and pepper weed plants are treated to assure control of these target species.

A sub-contractor selected by MRCD will complete non-native plant re-treatments. All portions of the project area will be re-treated for target non-native plants: Arundo, tamarisk, and perennial pepperweed. Planting areas will also have some control of other non-native weeds that are interfering with native planting growth and survival. Re-treatments will occur between September 15th 2009 and February 28th 2010. The sub-contractor will be a licensed applicator with experience treating non-native plants in habitat areas. Only aquatic approved herbicide formulations may be used (glyphosate and/or imazapyr).

Deliverables: Re-treatment of target non-native plants in the project area (reported in DFG and FWS reports).

3.5 Watering of native plantings: plantings are watered by hand crews using water trucks to help plants survive 1st year of growth.

A sub-contractor selected by MRCD will complete watering as directed by the District. Watering of plants planted in 2009 will occur until the onset of rains. Watering is by hand using hoses that are connected to a gas powered pump on a truck with a 1,000 gallon water tank. Watering will occur from the contract initiation date until March 15th 2010.

Deliverables: Watering of native plantings in the project area (reported in DFG and FWS reports).

3.6 Biologist on site: as required under permits, a biologist must be on site to assure conditions of permits are met.

A sub-contractor selected by MRCD will monitor work crews to assure that DFG 1600 streambed alteration agreement and FWS Section 7 consultation agreements are being followed. A biologist will have copies of DFG and FWS permits on site. Biological monitoring will occur from the contract initiation date to the end date of the contract whenever any crews are active in the field.

Deliverables: Biological monitoring of work activities in the project area (reported in DFG and FWS reports).

Retention:

* The State of California Natural Resources Agency through the City of Oceanside will reimburse Mission Resource Conservation District \$5,000 retention upon the completion of the *Arundo donax* control and revegetation portion of the grant.

EXHIBIT "B"

Payment Schedule

1. MRCD shall submit to the City of Oceanside a monthly, itemized statement that describes the work completed that month, number of hours worked that month and operating expenses incurred that month.
2. MRCD shall invoice the City of Oceanside two times during the project and provide invoice sets, including MRCD check stubs to sub-contractors for reimbursement, documentation of completed project tasks as outlined in Exhibit A. MRCD shall file a Notice of Completion (NOC) with the County Clerk's Office with the completion of the project. The total compensation shall not exceed \$ 61,403 without written approval of the City of Oceanside.
3. The first invoice to the City of Oceanside from MRCD shall be made no later than November 30, 2009. The second invoice to the City of Oceanside from MRCD shall be made no later than April 1, 2009.

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Total for Cat 1b	\$17,759

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target plants has already occurred earlier in the project- all that remains is one fall/winter season of re-treatments, scattered biomass reduction, fill in planting, watering and permitting compliance.

Category 3: Arundo treatment and re-vegetation

3.1	<i>Arundo treatments:</i>	Task completed	\$33
3.2	<i>Arundo biomass reduction</i>		\$2,847
3.3	<i>Re-vegetation 350 plants per acre, 1 gallon(fill in planning only)</i>		\$3,769
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